



ENVIRONMENTAL LAW

The 'Environment' is very important for us to understand because it constitutes our surroundings and affects our ability to live on the earth. It comprises of the air we breathe, the water that covers most of the earth's surface, the plants and animals around us, and much more. It is therefore, very important to understand and appreciate the importance of 'environment' in our daily life. In recent years, scientists have been carefully examining the various ways by which people affect the 'Environment'. They have found that we are causing air pollution, deforestation, acid rain, and other problems that are dangerous both to the earth and to ourselves.

You may have heard of laws, rules and regulations to deal with the above-mentioned situations. The Government in the last few decades has shown keen interest in protecting and promoting the environment and consequently enacted various Environmental Laws.

This lesson aims at discussing the details about the environment and its degradation with special reference to environmental pollution. The lesson further focuses on the laws pertaining to the protection of environment from pollution and other environmental issues. The discussion is also on other environment related issues.



OBJECTIVES

After completing this lesson, you will be able to:

- explain the term 'environment; and its importance in our life;
- find out what is 'environmental pollution' and what are the various kinds of 'pollution';
- appreciate the need for protection of environment;
- identify the factors responsible for environmental pollution;
- know the various laws relating to the protection and promotion of environment; and
- understand the functions of Central Pollution Board and the State Pollution Boards.

**Notes****24.1 MEANING OF ENVIRONMENT**

The word 'environment' is derived from the French word '*environner*', which means 'to encircle' or to surround. The most suitable definition of environment is as follows:

It is the sum total of water, air and land and the interrelationships that exist among them with human beings, other living organisms and materials.

The geographical meaning of environment is as follows:

It is a combination of living and non-living things and their mutual interaction with each other which leads to an ecosystem.

The environment encompasses all living and non-living things occurring naturally on earth. The Honourable Supreme Court has the following definition of 'environment':

"Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously, that is a concept which is relatable to whatever object it is, which is surrounded. Environment is a polycentric and multifaceted problem affecting the human existence.

Today protection of 'environment' is a global issue as it concerns all countries irrespective of their size, stage or development or ideology. Today, the interaction between society and nature is so extensive that the question of environment has assumed large proportions, affecting humanity at large.

**INTEXT QUESTIONS 24.1**

1. Define the term 'Environment'.
2. Give the definition of 'Environment' as given by the Supreme Court of India.

24.2 ENVIRONMENTAL POLLUTION

The term 'pollution' refers to unfavourable alteration to our surroundings, wholly or largely as a by-product of human's action through direct and indirect effects of changes in energy pattern, chemical and physical construction and abundance of organisms. Thus, it is the addition of any foreign material to water, air or soil, which may change immediately or after some time, the natural properties of these basic constituents further causing some unfavourable change by making them unfit and injurious. Industrialization, poverty, population-explosion, urbanization, over-exploitation of resources, etc. are some of the factors which have contributed to environmental deterioration.

24.2.1 Water Pollution

Water pollution is the contamination of water bodies (e.g. lakes, rivers, oceans, aquifers and groundwater). Water pollution occurs when pollutants are discharged

directly or indirectly into water bodies without adequate treatment to remove harmful compounds.



Figure 24.1: Various Sources of Water pollution

24.2.2 Air Pollution

Air contains a mixture of various gases like oxygen, nitrogen, carbon dioxide, argon etc. Air pollution is the introduction into the atmosphere of chemicals, particles, or biological materials that cause discomfort, disease, or death to humans, damage to other living organisms such as food crops, natural environment or built environment.

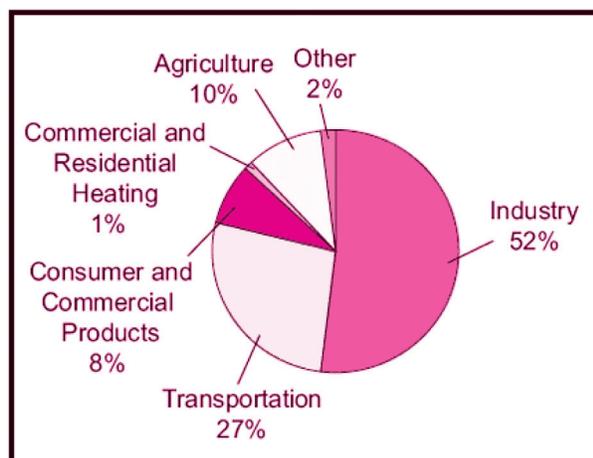


Figure 24.2: Percentage Contribution of Air Pollution



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**Notes**

The major sources of air pollution are:

- Industrial emissions
- Vehicular emissions
- Domestic emissions

The most common air pollutants in urban areas include Sulphur dioxide (SO₂), Nitrogen oxides (NO & NO₂), Carbon monoxide (CO), etc. Apart from this, the gases discharged from refrigerators, air conditioners etc. are responsible for depletion of the Ozone layer.



Figure 24.3: Smoke coming out of Chimneys

24.2.3 Noise Pollution

The word ‘noise’ originated from the Latin word ‘nausea’ meaning sea-sickness. ‘Noise’ is any unwanted sound that disrupts environmental equilibrium. Noise is measured in decibels. A major source of ‘noise’ is by motor vehicles, aircrafts, fire-crackers, sirens, loud speakers and machinery.

According to a survey conducted by the National Physical Laboratory, Delhi, Mumbai and Kolkata are amongst the noisiest cities in the world. Noise pollution has harmful effects on the environment, humans and animals. Some adverse effects of noise pollution on human health are:

- Hearing loss or hearing impairment;
- Rise in blood pressure;
- Cardio-vascular health effects;
- Increase in stress level; and
- Decrease in efficiency and concentration

Noise pollution is excessively displeasing to humans, animals, or we can say that machine-created environmental noise disrupts the activity or balance of human or animal life. The source of most outdoor noise worldwide is mainly construction and transportation systems, including noise from motor vehicles, noise from aircrafts, and noise from trains and engines. Poor urban planning may give rise to noise pollution, since industrial and residential buildings constructed side-by-side can result in noise pollution in the residential areas.

24.2.4 Land Pollution

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

24.2.5 Solid Wastes Pollution

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

24.2.6 Food Pollution (Food Adulteration)

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

24.2.7 Thermal Pollution

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

24.2.8 Nuclear (Radioactive) Pollution

One of the most important and dangerous types of pollution is 'nuclear pollution'. 'Nuclear pollution' is produced by nuclear explosion which are



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carried out for performing nuclear tests and which is further used for making nuclear weapons. Due to these explosions about 15 to 25% of the radioactive particles enter into the atmosphere. Once they enter into the atmosphere they continue to fall on the earth for several years. The best example is the Hiroshima Atomic Bombings.



ACTIVITY 24.1

Make a list of sources of ‘air pollution’, ‘water pollution’ and ‘noise pollution’:

Air Pollution	Water Pollution	Noise Pollution



INTEXT QUESTIONS 24.2

1. Define the following terms:
 - a. Water Pollution
 - b. Air Pollution
 - c. Noise Pollution
2. Identify the major sources of Air pollution.
3. Find out some adverse effects of noise pollution on human health.

24.3 ENVIRONMENT PROTECTION

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

Academic institutions now offer courses such as environmental laws, environmental studies, environmental management and environmental engineering, that teach the history and methods of environment protection. Waste production, air pollution, and loss of biodiversity (resulting from the introduction of invasive species and species extinction) are some of the issues related to environmental protection.

Environmental protection is influenced by three interwoven factors: environmental legislation, ethics and education. Each of this factor plays its part in influencing national-level environmental decisions and personal-level environmental values and behaviors. For environmental protection to become a reality, it is important for societies to develop each of these areas.

**Notes****INTEXT QUESTIONS 24.3**

1. Define the term 'Environmental Protection'.
2. List the factors which influences 'Environmental Protection'.

24.4 NEED FOR PROTECTION OF ENVIRONMENT

The need for protection of environment can easily be understood from the following facts:

- One billion people in the world have no clean water
- Two billion people have inadequate facilities of sanitation
- One and a half billion people (mostly in large cities of newly industrialized countries) breathe air that is dangerously unhealthy and so on.

The human beings as well as animals need clean food and water, and in order to have clean food and water, it is necessary to protect the ecosystem that make survival possible. If we do not stop pollution, it is sure that the world will come to an end.

**INTEXT QUESTIONS 24.4****Fill in the Blanks**

1. The human beings need clean food and water for _____.
2. If we do not stop pollutin, it is sure that the world will come to an _____.

24.5 LEGAL MECHANISM IN RELATION TO ENVIRONMENT PROTECTION**Notes**

‘Environmental Law’ is an instrument to protect and improve the environment and to control or prevent any act or omission polluting or likely to pollute the environment. An environmental legal system is essentially a set of laws and administrative rules which regulate the relationships and conflicts between all the people concerned with the environment, as well as defining the relationships between people and the environment itself. The Honourable Supreme Court in *K. M. Chinnappa v. Union of India* defined “**Environmental Law**” as an instrument to protect and improve the environment and control or prevent any act or omission polluting or likely to pollute the environment.

In the Constitution of India, it is clearly stated that it is the duty of the State to “protect and improve the environment and to safeguard the forests and wildlife of the country”. It imposes a duty on every citizen “to protect and improve the natural environment including forests, lakes, rivers, and wildlife”. Reference to the environment has also been made in the Directive Principles of State Policy (Part IV) as well as the Fundamental Rights (Part III). The Department of Environment was established in India in 1980 to ensure a healthy environment for the country. This later became the Ministry of Environment and Forests in 1985.

24.5.1 Ministry of Environment and Forests (MoEF)

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

The broad objectives of the Ministry are:

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

24.5.2 The Constitution of India

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

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

Article-48A of the Constitution requires the State to adopt the Protectionist policy as well as Improvinistic Policy. **Protectionist policy** imposes ban on those things which lead to environmental degradation, e.g. ban on use of leaded petrol, ban on use of plastic bags etc. **Improvinistic policy** refers to alternatives that can be used for improvement of environment, e.g. use of CNG or low sulphur fuel, tree plantation in industrial areas etc.



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Article-48A of the Constitution declares “The State shall endeavour to protect and improve the environment and safeguard forests and wildlife of the country.”

Article-51A(g) of the Indian Constitution says: “It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”

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

The Water (Prevention and Control of Pollution) Act was enacted in 1974 to provide for the prevention and control of water pollution, and for maintaining or restoring of wholesomeness of water in the country.

This is the first law passed in India whose objective was to ensure that the domestic and industrial pollutants are not discharged into rivers, and lakes without adequate treatment. The reason is that such a discharge renders the water unsuitable as a source of drinking water as well as for the purposes of irrigation and support marine life.

In order to achieve its objectives, the Pollution Control Boards at Central and State levels were created to establish and enforce standards for factories discharging pollutants into water bodies.

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

The Air (Prevention and Control of Pollution) Act, 1981 was enacted to provide for the prevention, control and abatement of air pollution in India. It is a specialised piece of legislation which was enacted to take appropriate steps for the preservation of natural resources of the earth, which among other things include the preservation of the quality of air and control of air pollution.

The prime objectives of the Act are the following:

- Prevention, control and abatement of air pollution;
- Establishment of central and state pollution control boards to implement the aforesaid purpose; and
- To maintain the quality of air.



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24.5.5 The Environment Protection Act, 1986

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

The objective of the Environment Protection Act is to protect and improve the environment in the country.

BHOPAL DISASTER

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

24.5.6 The Noise Pollution (Regulation and Control) Rules, 2000

There was no direct provision for ‘noise pollution’ under the Environment Protection Act, 1986 or any other legislation. The increasing ambient noise levels in public places from various sources like industrial activity, generator sets, loud speakers, vehicular horns etc. have harmful effects on human health. It was the need of the hour to come with a law which would regulate and control noise producing sounds with the objective of maintaining the ambient air quality standards in respect of noise. Therefore, the Central Government framed ‘The Noise Pollution (Regulation and Control) Rules, 2000’.

These rules have been laid down by the government to reduce environmental noise pollution. Certain standards, such as the ambient air quality standards, have been set by the government. The permissible levels of noise are different for

different areas, such as industrial, commercial, residential areas and silence zones (area within the vicinity of hospitals, educational institutions or courts).

24.5.7 The Public Liability Insurance Act, 1981

This Act aims to provide immediate relief to the persons affected by accident occurring while handling any hazardous substance. It provides that every owner shall take out, before he starts handling any hazardous substance, one or more insurance policies providing for contracts of insurance. The objective of taking insurance is that the compensation resulting from the possible future accident is guaranteed.

The collector of the area has been empowered to verify the occurrence of any accident at any place within his jurisdiction and also cause publicity to be given for inviting applications from the victims for any compensation.

Apart from the insurance contract, the funding for the purpose of compensation is also generated by the Central Government by the establishment of "Environment Relief Fund." This fund may be utilized by the collector for paying the compensation.

24.5.8 The National Environment Tribunal Act, 1995

This Act is aimed to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected with it.

The beauty of this Act lies in the fact that the liability of the owner of hazardous substance has been made strict in case of any accident and the resultant injury to public. In any claim for the compensation, the claimant is not required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. So, the burden of proof does not rest upon the claimant of compensation which is a big relief for the victims.

24.5.9 The National Environment Appellate Authority (NEAA) Act, 1997

The National Environment Appellate Authority (NEAA) was set up by the Ministry of Environment and Forests to address cases in which environment clearance is required in certain restricted areas. It was established by the National Environment Appellate Authority Act 1997 to hear appeals with respect to restriction of areas in which any industries, operations, processes or class of industries, operations or processes shall or shall not be carried out, subject to certain safeguards under the Environment Protection Act, 1986.



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**Notes****24.5.10 The Ozone Depleting Substances (Regulation and Control) Rules, 2000**

The Ozone Depleting Substances (Regulation and Control) Rules have been laid down for the regulation of production and consumption of ozone depleting substances. The main objective of this rule is protection of the Ozone layer. The rule restricts unauthorized sale, purchase, import, export and use of ozone depleting substance.

‘Ozone Depleting Substances’ (ODS) are the products which lead to the depletion of ozone layer. CFC (CHLOROFLUOROCARBON) is an example of ODS.

**INTEXT QUESTIONS 24.5**

Write True/False.

1. The Ministry of environment and Forests (MOEF) is the nodal agency for planning, promotion, cooperations and overseeing the implementation of India’s environmental and forestry policies and programmes. (True/False)
2. The Water (Prevention and Control of Pollution) Act, 1974 was enacted to provide for the prevention and control of water pollution. (True/False)
3. The Air (Prevention and Control of Pollution) Act, 1981 was enacted to provide for the prevention, control and abatement of air pollution in India. (True/False)
4. The objective of the Environment Protection Act, 1986 is to protect and improve the environment in the country. (True/False)
5. The Noise Pollution (Regulation and Control) Rules, 2000 lays down rules to reduce environmental noise pollution. (True/False)
6. The Public Liability Insurance Act, 1981 aims to provide immediate, relief to the persons affected by accident occurring while handling any hazardous substance. (True/False)
7. The main objective of the ‘Ozone Depleting Substances (Regulation and Control) (ODS) Rules, 2000’ is protection of ozone layer. (True/False)

24.6 POLLUTION CONTROL BOARD

The Pollution Control Boards are statutory bodies constituted with an objective to protect and promote the atmosphere and to control pollution.

24.6.1 The Central Pollution Control Board

The Central Pollution Control Board (CPCB) a statutory organisation, was constituted in September, 1974 under the Water (Prevention and Control of Pollution) Act, 1974 to deal with the rise in pollution. Further, CPCB was

entrusted with the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981.

Principal functions of the CPCB:

- (i) to promote cleanliness of streams and wells in different areas of the States by 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.

**Notes**

Other Functions of the Central Board

- Advise the Central Government on any matter concerning prevention and control of water and air pollution and improvement of the quality of air.
- Plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water and air pollution.
- Provide technical assistance and guidance to the State Boards, carry out and sponsor investigation and research relating to problems of water and air pollution, and for their prevention, control or abatement.
- Prepare manuals, codes and guidelines relating to treatment and disposal of sewage and trade effluents as well as for stack gas cleaning devices, stacks and ducts.
- Lay down or modify (in consultation of the State Governments), the standards for streams or wells and lay down standards for the quality of air.

24.6.2 The State Pollution Control Boards

The State Governments also have their Pollution Control Boards for example, UPPCB (Uttar Pradesh Pollution Control Board), DPCC (Delhi Pollution Control Board), HPCB (Haryana State Pollution Control Board), RPCB (Rajasthan Pollution Control Board), etc.

Functions of State Boards

- To advise the State Government on matter relating to pollution and on 'siting' of industries;
- To plan programmes for pollution control;
- To collect and disseminate information;
- To carry out inspection of polluting industries and areas;
- To lay down effluent and emission standards; and
- To issue consent to industries and other activities for compliance of prescribed emission and effluent standards

**Notes****INTEXT QUESTIONS 24.6**

1. Describe two main functions of Central Pollution Control Board.
2. List any two functions of State Pollution Control Board.

**WHAT YOU HAVE LEARNT**

The environment is a place or surrounding where we live and to keep it clean is an essential requirement for the survival of human beings. Pollution is an unfavourable alteration of a surrounding. It is the addition of any foreign material to air, water or soil. Urbanisation, industrialisation, over-population, over-exploitation of resources are some of the factors which have contributed to environmental deterioration.

Pollution is categorized in the following areas: Water pollution; Air pollution; Noise pollution; Land pollution; Solid Water pollution; Food pollution; Thermal pollution; Nuclear pollution

Every human being or animal requires food, clean water and clean air to make its survival possible. The various legislations, rules with respect to the protection and promotion of environment are:

- a. The Water (Prevention and Control of Pollution) Act, 1974;
- b. The Air (Prevention and Control of Pollution) Act, 1981;
- c. The Environment Protection Act, 1986;
- d. The National Environmental Act, 1995;
- e. The Noise Pollution (Regulation and Control) Rules, 2000;
- f. The Public Liability Insurance Act, 1981;
- g. The National Environment Appellate Authority (NEAA), 1997; and
- h. The Ozone Depleting Substances (Regulation and Control) Rules, 2000.

The Central Pollution Control Boards are constituted under the Water (Prevention and Control of Pollution) Act, 1974, to deal with rise in pollution.

**TERMINAL EXERCISES**

1. Define the term 'Environmental Pollution'.
2. Explain the following terms
 - (a) Air Pollution
 - (b) Water Pollution
 - (c) Noise Pollution

3. Environment Protection Act is an umbrella legislation that consolidated the provisions of the Water (Prevention and Control of Pollution) Act of 1974 and the Air (Prevention and Control of Pollution) Act of 1981. Explain.
4. Describe the main functions of Central & State Pollution Control Boards.
5. Visit the river Yamuna, observe the activities going on there. Check the pollution causing activities. Write a report in five hundred words on the causes of pollution of Yamuna and the measures required to check it.
6. The levels of air-pollution are very high in Delhi these days. Taking help from the lesson, check out the causes of air pollution and the remedial measures to check further pollution. Write a report of about five hundred words.
7. Visit five major government hospitals of Delhi and collect data on the number of patients who come to the OPD with complaints of respiratory problems caused due to air pollution. Write your report in five hundred words referring to the relevant promises of law.
8. Assuming you are living in a residential area which also has two hospitals. The city airport which is located close to your colony works for 24 hours with flights landing and taking off. Incidentally, the colony already existed, but the airport authorities have started using a newly constructed runway recently. The day somehow passes off but at night, the deafening sound of landing and taking-off of aeroplanes traumatises the in-patients and contribute to them increasing stress levels which can be dangerous at times.
9. Draft a letter to the concerned authority stating the problem of these patients while referring to the applicable laws on noise pollution. Request them to close the airport atleast at night to give some respite to the patients in the hospitals.

**Notes****ANSWER TO INTEXT QUESTIONS****24.1**

1. 'Environment' is the sum total of water, air and land and the interrelationships that exist among them with human beings, other living organisms and materials.
2. "Environment" is a difficult word to define. Its normal meaning relates to the surroundings, but obviously that is a concept which is relatable to whatever object which is surrounded. Environment is a polycentric and multi-faceted problem affecting human existence.

**Notes****24.2**

1. (a) 'Water pollution' is the contamination of water bodies (e. g. Lakes, rivers, oceans, aquifers and ground water).
(b) 'Air Pollution' is the introduction into atmosphere of chemicals particals, or biological materials that cause discomfort, disease, or death to humans, damage to other living organisms such as good crops, natural environment, of built environment.
(c) Noise Pollution is any unwanted sound that disrupts environmental equilibrium and has harmful effects on environment, humans and animals
2. Industrial emissions; Vehicular emissions; and Domestic emissions
3. (a) Hearing loss or hearing impairment;
(b) Rise in blood pressure;
(c) Increase in stress level;
(d) Cardio–vascular health effects and
(e) Decrease in efficiency and concentration

24.3.

1. Environmental protection is a practice of protecting the natural environment at individual organization or governmental levels, for the benefit of natural environment and humans.
2. Environmental protection is influenced by three interwoven factors : environmental, legislation, ethics and education.

24.4.

1. Survival
2. End

24.5.

1. True
2. True
3. True
4. True
5. True

6. True
7. True

24.6.

1. The two main functions of Central Pollution Control Board are: (i) to promote cleanliness of streams and wells in different areas of the states by 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.
2. The two main functions of State Pollution Boards are : (i) to advise the state government on matters relating to pollution and on siting of industries; and (ii) to plan programmes for pollution control.



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SUSTAINABLE DEVELOPMENT

Today there is a serious concern about the earth's growing fragility. The earth's increasing population is perceived as a threat. Man with his thoughtless acts has had an adverse effect on the earth's ecological system. As global citizens we have to recognise that our actions have consequences for the entire world. Economic development cannot be viewed in isolation from social and ecological development. We have to ensure that the path of development that we follow ensures the welfare of the earth's ecology and that of its inhabitants. This is only possible if there is cooperation amongst the nations of the world.

'Sustainable Development' is concerned with the rate of consumption and use of natural resources. The focus is on ensuring that we do not consume the resources at a rate that makes it difficult for us to substitute or replace them. If we use cars then we have to make sure that we use eco-friendly fuel and technology that minimises air pollution. If we use ground water then we also have a responsibility of recharging it through various techniques like rain water harvesting.

'Sustainable Development' is thus, responsible development. It is economic development that keeps in mind the needs of the society and environment. It is development that is inclusive development that reaches all sections of society. It is development that benefits all sections of society and is not at the cost of the earth's ecology.



OBJECTIVES

After completing the lesson you will be able to:

- state the meaning of 'Sustainable Development';
- appreciate the importance and need for 'Sustainable Development';
- comprehend the evolution of 'Sustainable Development' at the National and International levels;
- identify the laws on 'Sustainable Development' in India; and
- appreciate the role of the judiciary in ensuring Sustainable Development

25.1 CONCEPT AND MEANING OF SUSTAINABLE DEVELOPMENT

25.1.1 What is Sustainable Development?

In 1987, the United Nations released the Brundtland Report, which included what is now one of the most widely recognised definitions: “Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs (from the World Commission on Environment and Development’s (the Brundtland Commission) Report ‘Our Common Future’”.

According to the same Report, the above definition contains within it two key concepts:

- the concept of ‘needs’, in particular the essential needs of the world’s poor; and
- the idea of limitations imposed by the state on technology and social organization on the environment’s ability to meet present and future needs

This means we have to meet the needs of all sections of society particularly the underprivileged. While meeting the needs we have to make sure that what we take from nature does not increase the degradation of the earth’s natural resources and threatens biodiversity. Nature is finite and we need to set a limit to our consumption of natural resources. There is a need for a strategic approach to maintaining a balance between social, economic and environmental challenges.

Sustainability recognises an integrated view of the world that links a community’s economy, environment and society. This recognises the fact that an economy exists within the society which in turn exists within the environment of the earth’s ecosystem. The view emphasises the fact that humans are a part of nature.

Figure 1 illustrates the relationship between Sustainable Development and Society, Economy and Environment.

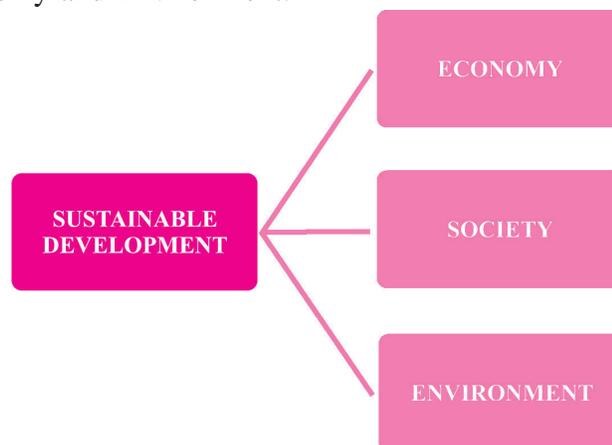


Figure 25.1: Relationship between Sustainable Development, Society, Economy and Environment



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**Notes****What leads to unsustainability?**

Let us try and understand the threats to ‘Sustainable Development’.

Economic disparity, social inequality and environmental degradation are threats to sustainability.

Some of the causes of unsustainability are as follows:

- increasing human population;
- over exploitation of resources to meet human needs like fuel, fodder and shelter;
- activities like fishing, agriculture, overuse of fresh water, deforestation and industrialisation;
- land clearing leads to problems like soil degradation, pollution, loss of biodiversity, deforestation, desertification, climate change; and
- social degradation due to factors like increasing unemployment, health crisis, armed conflict, urbanisation, poverty, income inequity

**INTEXT QUESTIONS 25.1.1**

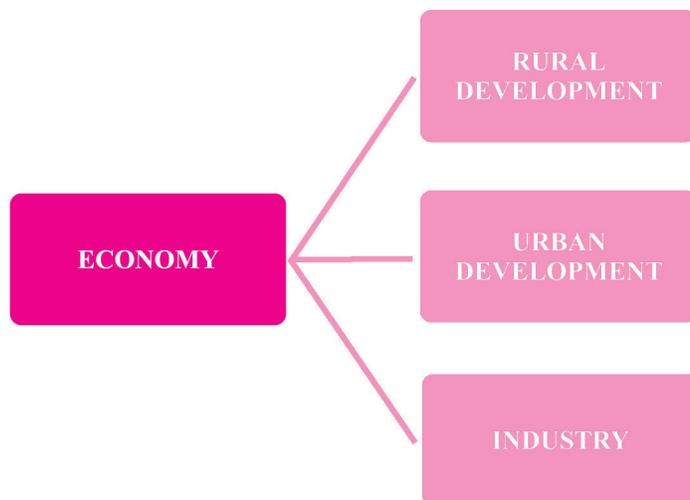
1. Define ‘Sustainable Development’
2. What are the threats to Sustainable Development?

25.1.2 What are the components of Sustainable Development?

The various components of sustainability can be included under three headings—economy, society and environment. In order to attain ‘Sustainable Development’ the government has to ensure that there are institutional mechanisms in place to achieve sustainable development in all three areas. These institutional mechanisms make certain that there is a sustained, organised and coordinated effort at all levels to bring about socio economic development and environmental sustainability. These include the various ministries and departments at the central as well as state level.

The diagrams in the following sections broadly illustrate the various parts of the economy, society and environment that are targeted for sustainable development.

Figure 2 shows the broad components of the economy. Figure 3 shows the broad components of society and Figure 4 shows the broad components of the environment.



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Figure 25.2: Some Targeted areas of Sustainable Development for the Economy

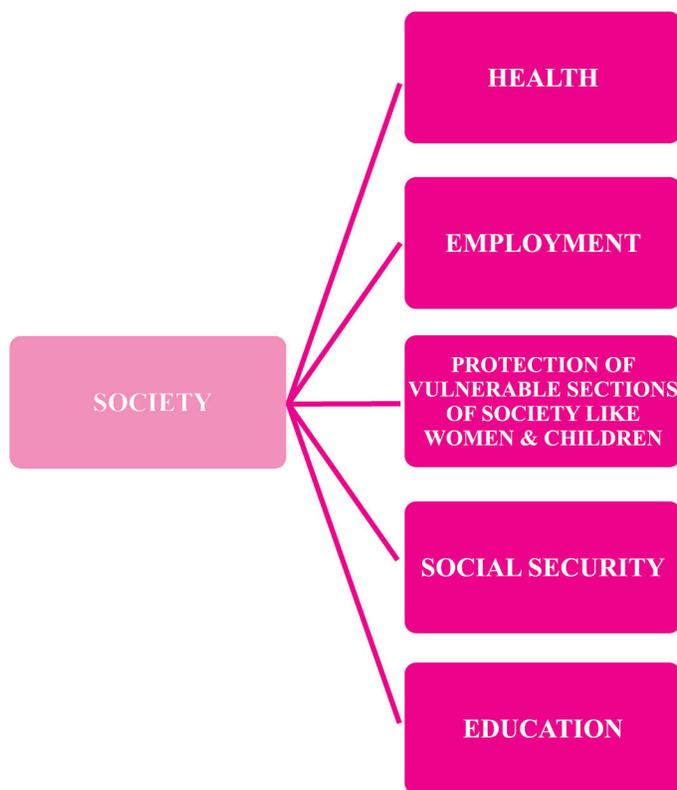


Figure 25.3: Some Targeted areas of Sustainable development in Society

MODULE - VIIA

Environmental Law and Sustainable Development



Notes

Sustainable Development

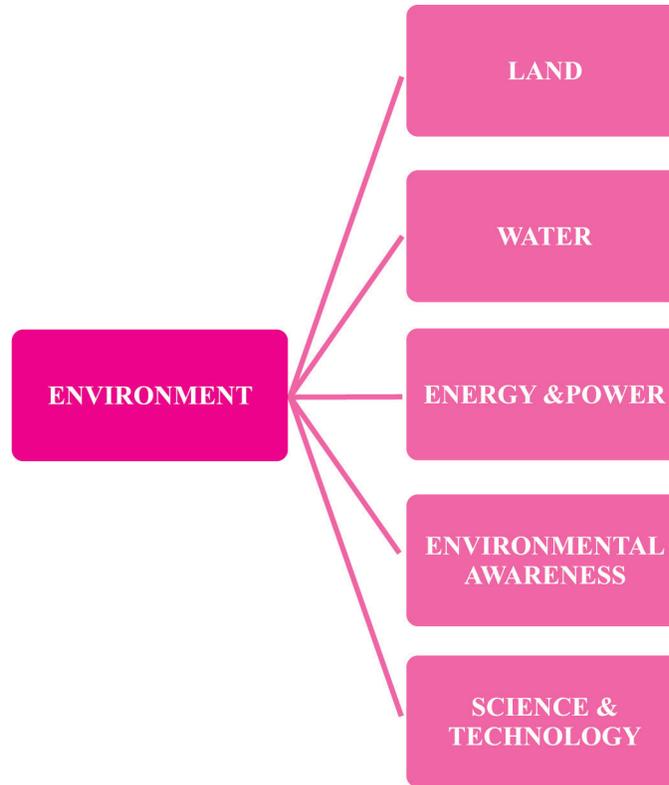


Figure 25.4: Some Targeted Areas of Environmental Sustainability



INTEXT QUESTIONS 25.1.2

1. What are the components of ‘Sustainable Development’?
2. Can you tell the name of some targeted areas for ‘Sustainable Development’ in the economy?
3. Which Ministry looks after the health of the people?
4. Give an example of how environmental degradation can be reduced?

25.2 ORIGIN AND DEVELOPMENT (STOCKHOLM TO RIO)

25.2.1 Stockholm Declaration, 1972

Global inter-governmental action began with the United Nations Conference on the Human Environment in Stockholm in 1972. This led to the ‘Stockholm Declaration’ and an action plan with over 100 recommendations on environmental assessment, management, and support measures. The Stockholm slogan was “Only One Earth”. The environmental debate centred around the Club of Rome Report on the “Limits to Growth”, and talk of economic development (the

precursor of Sustainable Development). The Report highlights the consequences of unrestrained growth and the linkages between several global problems.

Brundtland Commission 1983

Post Stockholm concerns for the environment continued to grow. There was widespread deforestation, industrial pollution and environmental degradation. The ozone hole, the warming of the earth, increased carbon dioxide in the environment all added to the growing environmental concerns.

A need was felt to link environmental concerns with industrial development and growth. With this in mind, the United Nations, in 1983, established the “World Commission on the Environment and Development” or as it is commonly referred to as the “Brundtland Commission”. The Brundtland Commission Report – ‘*Our Common Future*’ in 1987 defined ‘Sustainable Development’. As we have discussed in the earlier sections -“development that meets the needs of the present without compromising the ability of future generations to meet their own needs”.

Rio Declaration 1992- Agenda 21

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

Agenda 21 was geared towards achieving Sustainable Development in the 21st century. The ‘Rio Concept’ can be summarised as:

- Equal consideration of environment, society and economy;
- Intergenerational solidarity keeping in mind the needs of the future generations;
- A global consensus and political commitment at the national and international levels;
- Involvement of the Non-Government Organisations (NGOs);
- Provides a blueprint for the governments to attain a balance between the environment and the needs of the population; and
- A Commission on Sustainable Development (CSD) was established to follow up the Rio agreements, and it monitors the agreements of the Earth Summit at the local, national, regional and international levels

The Rio Summit Follow up

The Rio Summit was followed by several other Conferences to focus on ‘Sustainable Development’. These include conferences like the “Global Conference



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on Sustainable Development of Small Island Developing States” in Barbados in 1994; “The World Summit on Social Development” in Copenhagen in 1995; “The Fourth World Conference on Women”, Beijing 1995; and the “Second UN Conference on Human Settlements, Habitat II”, Istanbul in 1996.

The focus was on following the path of ‘Sustainable Development’ in all countries in all parts of the ecosystem whether on land, water or air. The effort has also been an all-inclusive development that reaches all sections of the population with a special focus on the vulnerable sections like women, children or the marginalised.

A five year review of the progress of the ‘Earth Summit’ was held in **1997** by the United Nations General Assembly. This was followed by a ten year review in **2002** by the World Summit on Sustainable Development (WSSD). The WSSD was held in **Johannesburg, South Africa**. It urged the Nations to make progress in the formulation and implementation of strategies for sustainable development and to begin implementing them by 2005.



IN TEXT QUESTIONS 25.2.1

1. What was the main theme of Stockholm Declaration?
2. Why was the Commission on Sustainable Development (CSD) established?
3. What does WSSD stand for and what is its agenda?

25.2.2 Millennium Development Goals

In 2000, the largest-ever gathering of world leaders agreed to a set of time-bound and measurable goals for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women, to be achieved by 2015. These are called the Millennium Development Goals.

The following is a brief overview of some significant decisions and agreements that were reached by the various countries:

In 2004, **Delhi Mandates** the use of compressed natural gas in city buses and auto rickshaws, responding to rising civil society pressure over air pollution.

In 2005, **Kyoto Protocol** enters into agreement which legally bound the developed countries to go for greenhouse gas emission reductions, and establishing the Clean Development Mechanism for developing countries.

In 2007, **Montreal Protocol** was signed on Substances that deplete the ‘Ozone Layer’. Countries agreed to an accelerated phase-out schedule for hydrochlorofluorocarbons (HCFCs). NASA has reported that the ‘ozone layer’ is

recovering, in part due to reduced concentrations of CFCs, phased out under the '**Montreal Protocol**'.

In 2008, **Green Economy** ideas enter the mainstream. National Governments allocate more funds to further stimulate environmental actions and green growth becomes the new objectives for the future economy. Also in 2008, scientist's document says that the oceans are growing more acidic due to increasing levels of atmospheric carbon dioxide. This they predict, would have disastrous consequences for the earth's ecosystem.

In 2009, **Copenhagen** climate negotiations were held. However, the participating countries failed to reach an agreement on new emissions reductions commitments beyond 2012 (the end of the 'Kyoto Protocol' time frame). An important outcome was that thrust now shifted towards national and regional efforts to reduce emissions.

In 2009, the **G20 Pittsburgh Summit** was held. Leaders called for making fossil fuel like petrol and diesel more expensive in order to phase them out. They also agreed to provide a targeted support for the poorest people.

In 2011, climate change negotiations were held in **Durban**. The negotiations' outcome was a step forward in establishing an international agreement beyond Kyoto. It was agreed to cut carbon emissions in all countries, including developed countries and several major developing countries.

In 2012, one of the first of the Millennium Development Goal targets is achieved, in advance of the 2015 deadline. The percentage of the world's people without access to safe drinking water is cut in half.

The 2012 **United Nations Climate Change Conference was held in Doha**. It was agreed to extend the 'Kyoto Protocol' that was to end in 2012 to 2020. It was also agreed to renegotiate the agreement reached in Durban by 2015 and to implement it by 2020.

From the 'Stockholm Declaration' of 1972 to the latest Conference held in Doha in 2012, more than forty years have passed. We are actively involved in greening the planet and in developing clean energy solutions. The world as a whole is committed towards combating hunger, disease, illiteracy, poverty, reducing inequalities and so on. The target is to ensure that the benefits of development accrue to all sections of society and not at the cost of the future generations.



INTEXT QUESTIONS 25.2.2

1. What does the term 'Millennium Development Goals' mean?
2. What is the 'Kyoto Protocol'?



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3. Under which Protocol did countries agree to phase out hydrochlorofluorocarbons (HCFCs)?
4. Where and when did various countries agree to extend the 'Kyoto Protocol' that was to end in 2012 to 2020?

25.3 NEED FOR SUSTAINABLE DEVELOPMENT

The world as a whole is steadfast in its commitment towards achieving a balance between the environmental, economic and social development. The agenda of 'Sustainable Development' is also an all-inclusive growth. That means a pattern of development that involves all sections of the community – the well off, the poor, men and women. Such a pattern of growth is based on the need to preserve the diversity of the eco-system. Sustainable Development involves:

- Preservation of biological diversity in terrestrial, freshwater and marine systems;
- Sustainable use of resources and minimising the depletion of resources;
- Caring for the environment;
- Improving the quality of life including social and economic concerns;
- Conservation of natural capital **both** for renewable and non-renewable resources;
- Conservation of natural and cultural diversity;
- Limits on natural resource utilisation and assimilation of wastes;
- Efficiency of resource utilisation by all societies;
- Social equity through poverty reduction and gender equity;
- Reduction of emission of greenhouse gases;
- Reduction in use of ozone depleting substances;
- Reduction in air pollution;
- Reduction in use of chemical fertilisers;
- Stopping desertification; and
- Stopping deforestation



INTEXT QUESTIONS 25.3

1. What is the need for 'Sustainable Development'? List any two factors that are important for attaining 'Sustainable Development'.
2. What is the Agenda of 'Sustainable Development'.

25.4 SUSTAINABLE DEVELOPMENT IN INDIAN LAW

Post Stockholm and post Rio, Nations across the world have adopted a number of laws pertaining to the three pillars of sustainable development. India too has implemented a plethora of laws. However, as far as the implementation of the laws is concerned the State often falters in the implementation of laws. The Supreme Court of India has upheld in a number of instances that the Indian law is bound by international treaties and conventions of which India is a signatory.

The judiciary in India has often taken the lead in implementing the laws. Indian laws on Sustainable Development can broadly be seen to have developed in four distinct but overlapping phases. These are as follows:

25.4.1 First Phase (1972-1983)

The focus in this phase was to protect the environment. This phase came largely in the wake of the Stockholm Conference of 1972 which required all signatories to adopt measures to protect the environment. The highlights were the constitutional amendments and the enactment of legislations to protect the wildlife and to arrest water and air pollution.

There are certain important constitutional provisions which give the citizens the right to approach the High Courts as well as the Supreme Court of India to protect their fundamental rights. **Article 226** of the Constitution gives the right to citizens to approach the High Court to enforce their fundamental rights and the High Courts are given the power to issue various writs. **Article 32** of the Indian Constitution could be invoked by the citizens for enforcement of the Fundamental Rights. **Article 21** of the Constitution guarantees one of the important Fundamental Right to the citizens and says that no person shall be deprived of his life and personal liberty, except according to procedure established by law. This “right to life” contained in Article 21 has been given a very wide interpretation by the Supreme Court of India. **Article 48-A**, which is one of the Directive Principles of State Policy, states that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

India implemented the **42nd amendment to the Constitution** in 1976. Through this amendment **Article 48-A** was implemented through which protection and promotion of the environment, forests and wildlife became a part of the Directive Principles of State Policy. Through **Article 51A (g)** protection of the environment was made a fundamental duty of all citizens.

In addition, several Acts pertaining to the environment were formulated namely the Wildlife (Protection) Act of 1972, the Water (Prevention and Control of



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Pollution) Act of 1974, the Forest Conservation Act of 1980 and the Air (Prevention and Control of Pollution) Act of 1981.

25.4.2 The Second Phase (1984-1997)

The focus in this phase was on ensuring social equity and justice. In response to the '**Bhopal Gas Disaster**' in 1984, there was a growth in 'judicial activism' which led to a reinterpretation of existing laws and legislations.

The **Air (Prevention and Control of Pollution) Act of 1981** underwent a major modification in 1987. In 1991 the **Public Liability Insurance Act**, was enacted to provide for immediate relief to persons affected by accidents from handling of notified hazardous substance, on a '**no fault basis**'. Under this Act it is mandatory for all industries handling hazardous material to take Public Liability Insurance cover for immediate relief to victims or damage to property.

In response to the 'Rio Declaration' that called upon Nations to develop laws regarding liabilities and compensation to victims of pollution and other environmental damages two Acts were formulated the National Environment Tribunal Act, 1995 (Repealed) and the National Environment Appellate Authority Act. These have been subsequently repealed and replaced by the new **National Green Tribunal Act of 2010**.

The **Environment (Protection) Act (EPA) was enacted in 1986**. The scope of this Act is very wide and it operates on the principle of arresting pollution at the source, polluter pays and also focusses on involvement of the public in decision making. Under the EPA, Environmental Impact Assessment (EIA) Notification was introduced in 1994, it was modified in 2006 and the latest amendment was in 2009. Under the EIA it has become mandatory to seek environmental clearance for several activities and industries with the involvement of the public as per procedure. Significantly after 'Rio' many of these environmental principles have been accepted as a part of Article 21 (Right to Life).

Other legislations that have been introduced for the protection of the environment and prevention of pollution are the Motor Vehicles Act, 1988, to control air pollution due to vehicles.



INTEXT QUESTIONS 25.4.1 AND 25.4.2

1. What was the focus in the First phase on Environmental Law in India?
2. Point out the importance of Article 51-A (g)?
3. When did the 'Bhopal Gas Tragedy' occur?
4. What was the response of the Indian law makers to the 'Rio Declaration'?

25.4.3 Third Phase (1998-2004)

The third phase coincides with India's membership of the WTO in 1998. The focus is on combining economic development with social and environmental issues. Legislations and amendments to the existing legislations have been done to achieve compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) keeping in mind the principles of the 'Convention on Biological Diversity' (CBD).

The **Biological Diversity Act 2002** was framed keeping in mind the principles of CBD. The legislations are directed towards ensuring the sovereign rights of countries over their genetic and biological resources and the acceptance of the need to share benefits flowing from the commercial utilization of biological resources with holders of indigenous knowledge.

The **Patents (Amendment) Act of 2005** has a provision to prevent misappropriation of indigenous knowledge of communities by making it non-patentable. The **Geographical Indications of Goods (Registration and Protection) Act, 1999** facilitates protection of the collective rights of the rural and indigenous communities in their unique products.

In this phase under the EPA several secondary legislations dealing with waste management and recycling of substances like plastics were also formulated. These include:

- Municipal Solid Wastes (Management and Handling) Rules, 2000;
- Recycled Plastics Manufacture and Usage Rules, 1999;
- Manufacture, Storage and Import of Hazardous Chemical (Amendment) Rules, 2000;
- Batteries (Management and Handling) Rules, 2001;
- Ozone Depleting Substances (Regulation and Control) Rules, 2000;
- A series of notifications delegating power to State, River Conservation Authorities to deal with water pollution; and
- The Noise Pollution (Regulation and Control) Rules, 2000

The emphasis in this phase was also on energy conservation and use of renewable sources of energy. Consequently the **Energy Conservation Act, 2001** was enacted, which also set up the Bureau of Energy Efficiency. The **Electricity Act of 2003** has tried to ensure better development in the power sector and also emphasise the use of renewable energy.

Under the orders of the Supreme Court, **Compensatory Afforestation Management and Planning Agency (CAMPA), was set up in 2004**, to compensate for deforestation for development work through afforestation.



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**Notes****25.4.4 Fourth Phase (2005 and beyond)**

This phase is marked by a proactive rights based approach. A rights based approach is one in which the focus is on ensuring the rights of all sections of community particularly the marginalised. These include legislations like the Human Rights Act 1993 with Amendment Act, 2006; The Right of Children to Free and Compulsory Education Act, 2009 and Commission for the Protection of Child Rights Act, 2005; Maintenance and Welfare of Parents and Senior Citizens Act, 2007; People with Disabilities Act, 1995.

For instance the rights of the traditional forest dwellers have been codified in the Forest Rights Act, 2006. The Act seeks to reconcile the needs of the forest dwellers with the need to conserve wildlife and forests. The Wildlife (Protection) Act of 1972 was amended in, 2002 and it seeks to provide for participatory management of the buffers around the National Parks and Sanctuaries and introduces the concept of 'Community Reserves'.

This phase also continued to focus on the environment through the Environment Impact Assessment

Notification of 2006 and the Hazardous was notified Wastes (Management, Handling and Transboundary Movement) Rules, 2008. In 2011, the E-Waste (Management and Handling) Rules, for environmentally sound practices for management of electronic waste were notified.

The National Green Tribunal Act of 2010 seeks to give effect to the promise made at Rio and to provide for the effective and expeditious disposal of cases related to environmental protection, forests and natural resources and provide relief and compensation for damages. The Judiciary in India has had to take on the role of the interpretation and implementation of the law through public interest litigations.

Indian Judiciary in general have relied on the public trust doctrine, precautionary principle, polluter pays principle, the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land.

**INTEXT QUESTIONS 25.4.3 AND 25.4.4**

1. What is the focus of the Indian Laws in the Third Phase?
2. Explain the main purpose or object of Biological Diversity Act, 2002.
3. Under which Act can we prevent misappropriation of indigenous knowledge of communities?
4. What does the term 'Rights Based Approach' mean?



WHAT YOU HAVE LEARNT

‘Sustainable Development’ is concerned with the rate of consumption and use of natural resources. The focus is on ensuring that we do not consume the resources at a rate that makes it difficult for us to substitute or replace them.

Sustainability recognises an integrated view of the world that links a community’s economy, environment and society. This recognises the fact that an economy exists within the society which in turn exists within the environment of the earth’s ecosystem.

The genesis of ‘Sustainable Development’ began with the United Nation Conference on ‘Human Environment’ Stockholm in 1972 and continued upto Doha in 2012.

The laws on Sustainable Development evolved in 1972 onwards in Four Phases. First phase 1972-1983, Second phase 1984-1997, Third Phase 1998-2007, Fourth Phase 2005 and beyond.

The importance of structured institutions like the various Ministries and departments in attaining sustainability can not be denied.

The role of Judiciary in India in environmental protection and in ensuring the compliancance of Environmental Law by the Government, State Governments and other concerned Agencies has, no doubt, been quite appreciable.



TERMINAL EXERCISES

1. Explain the concept of ‘Sustainable Development’.
2. What is the ‘Brundtland Report’? How does it define sustainability?
3. Describe ‘Sustainable Development’ through examples highlighting the three components of sustainability.
4. Identify the causes of ‘Unsustainability’?
5. Why do we need ‘Sustainable Development’?
6. What is the importance of institutional mechanisms in achieving ‘Sustainability’? Explain with the help of an example.
7. Discuss the importance of the ‘Stockholm Declaration’ highlighting its main features?
8. Enumerate the main features of the ‘Rio Declaration- Agenda 21’.
9. Discuss the significance of the ‘World Summit on Sustainable Development (WSSD)’.



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**Notes**

10. Discuss the important features of the First Phase of Indian environmental laws.
11. Show the impact of the 'Bhopal Gas Tragedy' on the formation of laws on the environment enacted in the second phase from 1984- 1997.
12. What are the significant features of the Third and Fourth Phases of Indian Environmental Laws?

**ANSWERS TO INTEXT QUESTIONS****25.1.1**

1. 'Sustainable Development' is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

'Sustainable Development' is concerned with the rate of consumption and use of natural resources. The focus is on ensuring that we do not consume the resources at a rate that makes it difficult for us to substitute or replace them.

2. Threats to sustainability are:
 - i. increasing human population;
 - ii. over exploitation of resources to meet human needs like fuel, fodder and shelter;
 - iii. activities like fishing, agriculture, overuse of fresh water, deforestation and industrialisation;
 - iv. land clearing leads to problems like soil degradation, pollution, loss of biodiversity, deforestation, desertification, climate change; and
 - v. social degradation due to factors like increasing unemployment, health crisis, armed conflict, urbanisation, poverty, income inequity

25.1.2

1. The components of sustainability are economy, environment and society.
2. Some of the targeted areas for economic development are Rural Development, Urban Development and Industry.
3. The Ministry of Health and Family Welfare looks after the health of the people.
4. In order to prevent 'Environmental Degradation' we can introduce farmers to eco-friendly agricultural practices like crop rotation, natural fertilisers and pesticides.

25.2.1

1. The 'Stockholm Declaration' of 1972 highlights the consequences of unrestrained growth and the linkages between several global problems.
2. A 'Commission on Sustainable Development' (CSD) was established to follow up the Rio agreements of 1992, and it monitors the agreements of the 'Earth Summit' at the local, National, Regional and International levels
3. 'WSSD' stands for 'World Summit on Sustainable Development'. This was a ten year review in 2002 of the Earth Summit (Rio Summit 1992). The WSSD was held in Johannesburg, South Africa. It urged the Nations to make progress in the formulation and implementation of strategies for 'Sustainable Development' and to begin implementing them by 2005.

**Notes****25.2.2**

1. In the year 2000, the largest-ever gathering of world leaders agreed to a set of time-bound and measurable goals for combating poverty, hunger, disease, illiteracy, environmental degradation and discrimination against women, to be achieved by 2015. These are called the 'Millennium Development Goals'.
2. The 'Kyoto Protocol' entered into force in 2005 and it legally binds developed country to goals for greenhouse gas emission reductions. It also binds developing Countries to establish Clean Development Mechanisms.
3. It was in 2007 under the 'Montreal Protocol', on Substances that Deplete the Ozone Layer, Countries agreed to an accelerated phase-out schedule for hydro chlorofluorocarbons (HCFCs).
4. In 2012, at the United Nations's 'Climate Change Conference' in Doha, Countries agreed to extend the 'Kyoto Protocol' that was to end in 2012 to 2020.

25.3

1. 'Sustainable Development' is needed to preserve the diversity of the eco system. Two factors important for attaining sustainable development are:
 - i. Preservation of biological diversity in terrestrial, freshwater and marine systems.
 - ii. Sustainable use of resources and minimising the depletion of resources.
2. The Agenda of 'Sustainable Development' is an inclusive growth. That means a pattern of a development that involves all sectionis of Community– the well off, the poor men and women. Such a pattern of growth is based on the need to preseve the diversity of the eco-system.



Notes

25.4.1 and 25.4.2

1. The focus in the first phase was to protect the environment. This phase came largely in the wake of 'Stockholm Conference' of 1972 which required all signatories to adopt measures to protect the environment. The highlights were constitutional amendments and the enactment of legislations to protect the wildlife and to arrest water and air pollution.
2. Through **Article-51A (g)** protection of the environment was made a Fundamental Duty of all citizens.
3. The Bhopal Gas Disaster happened in 1984.
4. In response to the 'Rio Declaration' that called upon Nations to develop laws regarding liabilities and compensation to victims of pollution and other environmental damages two Acts were formulated the National Environment Tribunal Act, 1995 (Repealed) and the National Environment Appellate Authority Act. These have been subsequently repealed and replaced by the new **National Green Tribunal Act of 2010**.

25.4.3 and 25.4.4

1. The focus in the Third Phase was on combining economic development with social and environmental issues. Legislations and amendments to the existing legislations were enacted to achieve compliance with the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) keeping in mind the principles of the Convention on Biological Diversity (CBD).
2. The Biological Diversity Act, 2002 was framed keeping in mind the Principles of CBD. The legislations are directed towards ensuring the sovereign rights of countries over their genetic and biological resources and the acceptance of the need to share benefits flowing from commercial utilization of biological resources with holders of indigenous knowledge.
3. The Patents (Amendment) Act of 2005 has a provision to prevent misappropriation of indigenous knowledge of communities by making it non-patentable.
4. A 'Rights Based Approach' is one in which the focus is on ensuring the rights of all sections of community particularly the marginalised. These include legislations like the Human Rights Act 1993; Right of Children to Free and Compulsory Education Act, 2009 and Commissions for the Protection of Child Rights Act, 2005; The Maintenance and Welfare of Parents and Senior Citizens Act, 2007; The People with Disabilities Act, 1995. This was adopted in the fourth phase.

GENERAL PRINCIPLES OF ENVIRONMENTAL LAW



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The protection of environment is a global issue as it concerns all countries irrespective of their size, stage, development or ideology. With the development of science and technology and with the increase in population, tremendous changes in the environment have taken place and this ultimately changes the eco system of the world.

In order to balance ecology and economy and its sustainability, two main international conferences on the development of environmental law have been held. The first was Stockholm Conference, 1972 which is known as 'Earth Summit' and the Second International Conference was 'R10 Conference' on sustainable development popularly known as 'R10 Declaration' was held in the year 1992. The main object of 'R10 Conference' was to strike a balance between ecology and economy and its sustainability.

In India, laws have been enacted to check water and air pollution and also for the safety and protection of forests and wild life. These Law are to prevent and control Water Pollution, Air pollution and the Environment Protection.

Global environmental crisis has questioned the modernity and its values. The very existence and survival of man and other forms of life have become a matter of deep concern. The basic environmental principle that follow is "the blessings of the environment should be enjoyed by the present generation and succeeded to the future generations, a sustainable society should be created where environmental pressure by human activities are minimized.



OBJECTIVES

After completing this lesson you will be able to:

- know the meaning of 'Environment';
- understand the meaning of 'Pollution';
- describe the the 'Polluter Pays Principle';



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- list the main provisions of the (Prevention and control of Water Pollution) Act, 1974
- list the main provisions of the (Prevention and control Air Pollution) Act, 1981
- list the main provisions of the Environment (Protection) Act, 1986;
- understand the meaning of the term ‘Two-Fold Liability’;
- define the ‘Precautionary Principle’;
- describe the concept of Public Trust Principle’; and
- explain the ‘Public Trust Doctrine’

26.1 ENVIRONMENT

The term ‘Environment’ is a sum total of water, air and land and the interrelationships that exist among them with the human beings, other living organisms and materials. The dictionary defines ‘Environment’ as “*anything, everything surrounding us*”.

Pollution

Pollution is the introduction of contaminants into the natural environment that cause adverse changes. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances or naturally occurring contaminants.

According to the Supreme Court, in the case of *M.C. Mehta v. Union of India*, pollution is a civil wrong, by its very nature it is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to compensate for the restoration of damage caused to the environment and ecology.



INTEXT QUESTIONS 26.1

1. Define the term ‘Environment’.
2. What do you understand by the term ‘Pollution’?

26.3 THE POLLUTER PAYS PRINCIPLE

In environmental law, ‘the Polluter Pays Principle’ has been enacted to make the party responsible for producing ‘pollution’ to pay for the damage done to the natural environment. In simple words “The Polluter Pays Principle is the commonly accepted practice that those who produce pollution should bear the

costs of managing it to prevent damage to human health or the environment.” For instance, a factory that produces a potentially poisonous substance as a by-product of its activities is usually held responsible for its safe disposal.

‘Polluter Pays Principle’ is also known as ‘Extended Producer Responsibility’ (EPR). This is a concept that was described by *Thomas Lindqvist* for the Swedish Government in 1990.

The credit for popularizing the ‘Polluter Pays Principle’ for the first time goes to **Organisation for Economic Co-operation and Development** (OECD). The OECD defines EPR as “a concept where manufacturers and importers of products should bear a significant degree of responsibility for the environmental impacts of their products throughout the product life-cycle, including upstream impacts inherent in the selection of materials for the products, impacts from manufacturers’ production processes itself, and downstream impacts from the use and disposal of the products.”

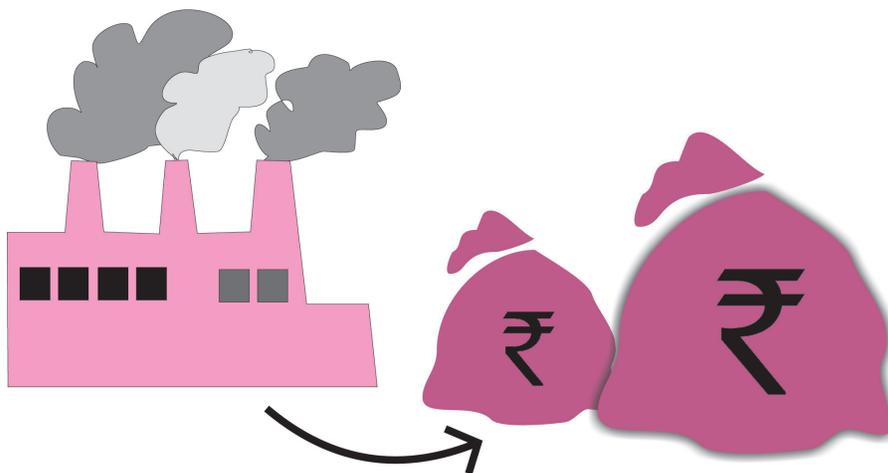


Figure 26.1: Polluter to pay

The Supreme Court of India interpreted ‘**Polluter Pays principle**’ as the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

The **Environment Protection Act, 1986** expressly empowers the government “to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of environment”.

Thus, it includes environmental costs as well as direct costs to the people or property. So, it means that polluter should bear the cost of pollution as the polluter is responsible for it.



Notes



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The 'Polluter Pays Principle' has been incorporated into the **European Community Treaty**. Article 102 Rule 2 of the Treaty states that environmental considerations are to play a part in all the policies of the community, and that action is to be based on three principles:

- i. The need for preventive action;
- ii. The need for environmental damage to be rectified at source; and
- iii. That the polluter should pay

The 'Polluter Pays Principle' finds prominent place in the '**Rio Declaration of 1992**'. Principle 16 of the Declaration proclaims that national authorities should endeavour to promote the internationalization of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.



INTEXT QUESTIONS 26.2

1. Explain the 'Polluter Pays Principle'?
2. Discuss Principle 16 of 'RIO Declaration of 1992'.

26.3 TWO-FOLD LIABILITY

The 'Polluter Pays Principle' exposes the polluter to two fold liability namely:

- (i) Compensation to the victims of pollution; and
- (ii) Ecological restoration

But despite its different impact on pollution, the doctrine of Polluter Pays Principle is limited in the sense that it can be applied only at the remedial stage i.e. after the pollution has already taken place. It means one may "pay and pollute".



INTEXT QUESTIONS 26.3

1. The 'Polluter Pays Principle' exposes the polluter to two fold liability. (True/False)
2. 'The Polluter Pays Principle' can be applied only after the pollution has already taken place. (True/False)

26.4 THE PRECAUTIONARY PRINCIPLE

'Precautionary Principle' plays a significant role in determining whether the development process is sustainable or not. Precautionary Principle underlies

sustainable development which requires that the developmental activity must be stopped and prevented if it causes serious and irreversible environmental damage.



ENVIRONMENT PROTECTION

Figure 26.2: Protect Environment

The Precautionary Principle ensures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.

Inadequacies of science are the real basis that has led to the emergence of Precautionary Principle. The Principle is based on the theory that it is better to be on the side of caution and prevent environmental harm which may indeed become irreversible.

The Precautionary Principle has been given utmost importance in the **United Nation's Conference on Environment and Development** held at Rio in 1992. Principle 15 of the '**Rio Declaration**' states:

"In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities, where there are threats as serious as of irreversible environmental degradation."

The Supreme Court of India in case of **Vellore Citizens' Forum v. Union of India**, held that the Precautionary Principle is a part of the environmental law of the country.

Precautionary Principle

The essential ingredients of Precautionary Principle are:

- Environmental measures by the State Government & the statutory authorities like state pollution boards must anticipate, prevent and attack the causes of environment degradation.



Notes



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- Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.



INTEXT QUESTIONS 26.4

1. Define 'The Precautionary Principle'.
2. Identify the two essential ingredients of the Precautionary Principle.

26.5 THE PUBLIC TRUST DOCTRINE

The 'Public Trust Doctrine' is the principle that certain resources are preserved for public use, and that the government is required to maintain them for the reasonable use of the public.

The ancient Roman Empire developed a legal theory known as '**The Doctrine of Public Trust**', which was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by government in trusteeship for the free and unrestricted use of the general public.

The Public Trust Doctrine primarily rests on the principle that certain resources like air, sea water and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being gifts of nature, they should be made freely available to everyone, irrespective of the status in life. The doctrine enjoins upon the government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or for commercial purposes.

The State is the 'Trustee' of all natural resources, which are by nature meant for public use and enjoyment. Public at large is the beneficiary of the sea-shore, running waters, air, forests and ecologically fragile lands. The State as 'Trustee' is under a legal duty to protect the natural resources. These resources meant for public use cannot be converted into private ownership. As rivers, forests, minerals and such other resources constitute a nation's natural wealth, these resources are not to be frittered away and exhausted by any one generation. Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nations in the best possible way. This is in the interest of the nation as well as in the interest of the mankind. Thus, the Public Trust Doctrine is a part of the law of the land. The court also ruled that there is no any justifiable reason to rule out the application of the Public Trust Doctrine to all eco systems in India.

The Doctrine was first mentioned by the Honourable Supreme Court applied the 'Doctrine of Public Trust' with regard to the protection and preservation

of natural resources. The Supreme Court stated that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and forests have such great importance to the people as a whole that it would not be justified to make these resources a subject of private ownership .

The Honourable Supreme Court held that the Mahapalika, as a ‘trustee’ for the proper management of the park, has to be more cautious in dealing with its properties. The maintenance of the park because of its historical importance and environmental necessity was in itself a public purpose. If the true nature of the park, as it existed is destroyed, it would be violative of the ‘Doctrine of Public Trust’.

**Notes**

Restrictions imposed by the Public Trust Doctrine

This Doctrine imposes three kinds of restrictions on the State:

- the property must not only be used for a public purpose, it must be available for use by the general public;
- the property must not be sold, even for fair cash equivalent; and
- the property must be maintained for particular kind of uses, such as navigation, recreation, or fishery

Ultimately, under this Doctrine, the State has a duty as a ‘Trustee’ under Article 48A of the Constitution of India to protect and improve the environment and safeguard the forests and wildlife of the country. While applying Article 21 of the Constitution of India (right to life), the State is obliged to take account of Article 48A of Directive Principle of State Policy. The State’s trusteeship duties have been expanded to include a right to ‘a healthy environment’.



INTEXT QUESTIONS 26.5

1. Define the ‘Public Trust Doctrine/Principle’.
2. List the restrictions imposed on State by the Public Trust Doctrine.



WHAT YOU HAVE LEARNT

The protection of environment is a global issue as it concerns all countries irrespective of their size, stage, development or ideology. With the development of science and technology and with the increase in population, tremendous changes in the environment have taken place. The very existence and survival of human being and other forms of life have become a matter of deep concern.



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Anything, everything surrounding us is 'Environment'. The 'Environment' is a sum total of water, air and land and the interrelationship that exists among them with the human beings, other living organisms and materials;

'Pollution' is the introduction of contaminants into the natural environment that cause adverse changes. 'Pollution' is a civil wrong. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances/energies or naturally occurring contaminants.

In environmental law, the 'Polluter Pays Principle' means that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment. This for the damage done to the natural environment. 'Polluter Pays Principle' is also known as 'Extended Producer Responsibility (EPR)'.

The 'Polluter Pays Principle' exposes the polluter to 'two-fold liability' –(i) compensation to the victims of pollution, and (ii) ecological restoration. This is known as 'Two-fold Liability'.

The 'Precautionary Principle' insures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.

The 'Public Trust Doctrine' is the principle that certain resources are preserved for public use and that the government is required to maintain them for the reasonable use of the public. State is the 'Trustee' of all natural resources, which are by nature meant for public use and enjoyment.



TERMINAL EXERCISES

1. Define the following terms :
 - (a) Environment
 - (b) Pollution
2. Describe 'the' Polluter Pays Principle'.
3. Explain principle 16 of the 'R10 Declaration of 1992;.
4. Define 'The Precautionary Principle'.
5. What is the 'Two-Fold Liability' in the 'Polluter Pays Principle'?
6. Describe the essential ingredients of the Precautionary Principle.

7. Discuss the Public Trust Doctrine.
8. List the three kinds of restrictions imposed on State by the 'Doctrine of Public Trust'.



ANSWERS TO INTEXT QUESTIONS



Notes

26.1

1. The 'Environment' is the sum total of water, air and land and the interrelationships that exist among them with the human beings, other living organisms and materials.
2. 'Pollution' is a civil wrong, by its very nature it is a tort committed against the community as whole. Pollution can take the form of chemical substances or energy, such as noise, heat or light. Pollutants, the components of pollution, can be either foreign substances or naturally occurring Contaminants

26.2

1. 'Polluter Pays Principle' makes the party responsible for producing pollution to pay for the damage done to the natural environment. In simple words the polluter pays principle is commonly accepted practice that those who produce pollution should bear the costs of managing it to prevent damage to human health or the environment.
2. Principle 16 of the RIO 'RIO Declaration' of 1992 proclaims that national authorities should endeavour to promote the internationalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment.

26.3

1. True
2. True

26.4

1. The Precautionary Principle is that Principle which ensures that a substance or activity posing a threat to the environment is prevented from adversely affecting it, even if there is no conclusive scientific proof linking that particular substance or activity to the environmental damage.
2. The two essential ingredients of Precautionary Principle are :



Notes

- (i) Environmental measures by the State Environment and the Statutory authorities must anticipate, prevent and attack the causes of environmental degradation
- (ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should may be used as a reason for postponing measures to prevent environmental degradation.

26.5

1. 'Public Trust Doctrine' is the principle that certain resources are preserved for public use, and that the Environment is required to maintain them for the reasonable use of the public. State is the 'Trustee' of all natural resources which are by nature meant for public use and enjoyment.
2. The 'Doctrine of Public Trust' imposes the following three kinds of restrictions on the state :
 - (a) The property must not only be used for a public purpose, it must be available for use by the general public;
 - (b) The property must not be sold, even for fair cash equivalent; and
 - (c) The property must be maintained for particular kind of uses, such as navigation, recreation, or fishery.



CONTEMPORARY DEVELOPMENTS

As the field of environment is an emerging and evolving area both at the national and international level, it becomes important to keep oneself abreast with the new developments. Establishment of National Green Tribunal (NGT), Regulation of Hazardous Wastes at the National level and Kyoto Protocol and few other international instruments at the International level are some of the key contemporary developments. Apart from Kyoto Protocol there are several other initiatives which have also been undertaken at the International level and which have contributed towards the cause of global environment protection.

Around 1980, the Indian legal system, particularly the field of environmental law, underwent a sea change in terms of discarding its traditional approach and it was marked by not only administrative and legislative activism but also judicial activism. 'Judicial Activism' refers to the active role played by the Courts in India by adopting new and innovative interpretations of the constitutional rights expanding their ambit. In determining the scope of the powers and functions of administrative agencies and in striking a balance between the environment and development, the Courts have played a crucial role and will continue to have this role. This activism of Courts have been strengthened by the tool of Public Interest Litigation (PIL), which has enabled the Courts to entertain cases from public spirited individuals and Non-Governmental Organisations active in the area of environmental protection. The Indian Courts, in this regard, have given some landmark judgements which have established the roots of environmental jurisprudence in India. This lesson aims to discuss the active role played by the Courts in India and the contribution which the Public Interest Litigation has made in this regard. The lesson will highlight all these important issues relating to environmental protection.



OBJECTIVES

After studying this lesson, you will be able to:

- explain the functions and role of National Green Tribunal (NGT);
- comprehend the Law relating to regulating of hazardous wastes;



- identify the main objectives of 'Kyoto Protocol';
- list some other International Instruments directed at curbing environmental degradation;
- appreciate the role of Courts in environmental protection;
- explain the role of Public Interest Litigation (PIL) in environmental protection;
- understand the concept of 'Judicial Activism' and
- appreciate the role of some leading Judgements to protect environment.

27.1 NATIONAL GREEN TRIBUNAL (NGT)

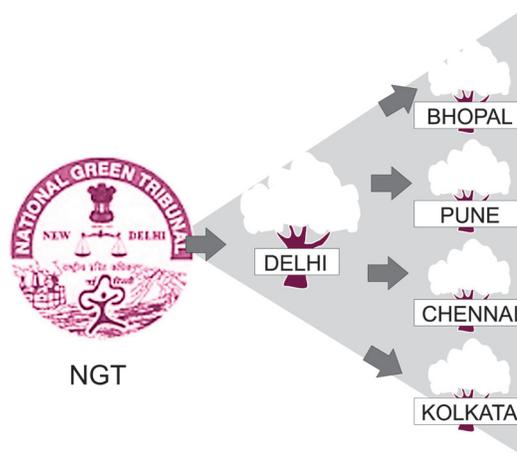
A Tribunal has trappings of a Court. Every Court is Tribunal but Tribunals are not Courts. A Tribunal is established for the adjudication of disputes related to some specific areas, whereas courts exist for the adjudication of all kinds of disputes regardless of any specific area. Rules of natural justice ensure fairness in any adjudicatory process. Final judgement of Tribunal is generally called 'award'.

The National Green Tribunal was established on 18th October, 2010 under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to 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 is to make efforts for disposal of applications or appeals finally within six months of filing of the same. Initially, the NGT was proposed to be set up at five places of sittings and follow circuit procedure for making itself more accessible. New Delhi is the principal place of sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai are the other four place of sitting of the Tribunal.

27.1.1 Composition of National Green Tribunal (NGT)

NGT comprises of both judicial and expert members as adjudicators. The Chairman of NGT is a judicial member and must be or has been a judge of the Supreme Court of India or Chief Justice of a High Court. The Chairman is appointed by the Central Government in consultation with the Chief Justice of India. Other judicial



members of the NGT must be or has been a judge of the High Court. For an expert member a person must have a doctorate degree in life sciences or physical sciences with fifteen years experience in the relevant field including five years practical experience in the field of environment and forest in a reputed national level institution or an administrative experience of fifteen years including experience of five years in dealing with environmental matters in the Central or State Governments or in a reputed National or State level institution. The Judicial and expert members are appointed by the Central Government on the recommendation of a Selection Committee.



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27.1.2 Jurisdiction and Powers of NGT

Jurisdiction means authority of any Court or Tribunal to accept a matter for hearing and decision. NGT has the jurisdiction over all civil cases where a substantial question relating to environment (including enforcement of any legal right relating to environment), is involved and such question arises out of the implementation of the enactments specified in Schedule I of the National Green Tribunal Act, 2010. Schedule I of the Act lists following legislations:

- (i) The Water (Prevention and Control of Pollution) Act, 1974;
- (ii) The Water (Prevention and Control of Pollution) Cess Act, 1977;
- (iii) The Forest (Conservation) Act, 1980;
- (iv) The Air (Prevention and Control of Pollution) Act, 1981;
- (v) The Environment (Protection) Act, 1986;
- (vi) The Public Liability Insurance Act, 1981;
- (vii) The Biological Diversity Act, 2002.

This explains the importance of NGT, as the above mentioned legislations together stands for what we know as the 'Environmental Law'. So now on for the enforcement of Environmental Law, be it matters related to Water Pollution, Air Pollution, Forest Conservation, Environment Protection or Biological Diversity, we have NGT.

NGT is empowered to provide by an order:

- Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance) of the Act.
- For restitution of property damaged
- For restitution of the environment for such area or areas

The above mentioned remedies must be claimed by the persons aggrieved within 5 years from the date when the cause of action arose. Cause of action means the happening of the very reason which enables the person to approach NGT. Though, in exceptional cases the Tribunal may give sixty more days for filing

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of the application before it, if the Tribunal is satisfied that the applicant was prevented by a sufficient cause to file the application within 5 years.

The Act mandates that in case of accident, the Tribunal shall, apply the principle of 'no fault'. 'No fault principle' stipulates that in case of accident the owner or the employer cannot take the defence of him/her having committed no fault. If accident occurs and as a consequence of it damage is caused to any person or environment, the owner or the employer is liable, only because of the fact that accident occurred in his/her enterprise. Apart from this principle, NGT has to also apply the principles of 'Sustainable Development', 'precautionary principle' and 'polluter pays principle', while giving an order or decision or award.

27.1.3 Procedure

NGT is not bound to follow the procedures laid down in the Code of Civil Procedure, 1908; or the Indian Evidence Act, 1872; rather it has to be guided by the principles of natural justice. It has for the purposes of discharge of its functions all the powers of the Civil Court for trying a suit as given under the Code of Civil Procedure, 1908. Any decision, order or 'award' of the Tribunal is executable by the Tribunal as a 'decree' of the Civil Court and, therefore, for this purpose the 'Tribunal' will have all the powers of a Civil Court. The Tribunal can also if it deems fit transmit its order or award for execution to a Civil Court having local jurisdiction as if it were the 'decree' of that Civil Court. Minimum number of members who must together hear and decide a case is two, out of which one must be a judicial member and other an expert member. The decision of Tribunal by majority is binding. In case the opinion of the bench is equally divided then the matter is to be heard and decided by the Chairman of NGT if he/she was not part of the equally divided bench. In cases, where the Chairman himself/herself is part of the equally divided bench then he/she shall refer the matter to other member of the Tribunal not part of that equally divided bench to hear the case and decide.

27.1.4 Penalty

Whoever fails to comply with any order, decision or award of the NGT under the National Green Tribunal Act, 2010, commits a cognizable offence and shall be punishable with an imprisonment for a term which may extend to three years or with fine which may extend to 10 Crore rupees (25 Crore in case of a company) or with both and in case the failure or contravention continues, with additional fine which may extend to 25,000 Crore (1 Lakh Crore in case of a company) for every day during which such failure or contravention continues after conviction for first such failure or contravention.

Where any Department of the Government fails to comply with any order or 'award' or decision of the tribunal under this Act, the Head of the Department

shall be guilty of such failure and shall be liable to be proceeded against for having committed an offence and punished accordingly. Provided that if such Head of the Department proves that he/she exercised due diligence and that he had no knowledge about the commission of the offence he shall not be punished. Apart from this any other Government officer may also be punished accordingly for such offence if it can be proved that the offence was committed with the consent or connivance of such officer or is attributable to his/her neglect.



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27.1.5 Appeal

In an appeal the person who has lost the case can again challenge the decision made by the NGT before the Supreme Court. Any person aggrieved by any decision, order or award of the Tribunal, may file an appeal before the Supreme Court within 90 days from the date of communication of such decision, order or award. Though, the Supreme Court may allow a person to file such appeal even after 90 days if the Court is satisfied that the person appealing was prevented to do so for sufficient cause.



INTEXT QUESTIONS 27.1

1. What is main reason for the establishment of Tribunals?
2. What was the main purpose for the establishment of National Green Tribunal (NGT)?
3. Explain 'No Fault Principle'.
4. Where a person aggrieved by any order, decision or award of NGT can go in appeal?
5. What is the minimum number of members needed to constitute a bench of NGT, which can hear and decide a case?

27.2 REGULATION OF HAZARDOUS WASTES

Disaster occur both due to natural and man-made activities. The adverse impact caused due to the indiscriminate disposal of hazardous wastes comes under the category of environment disasters. For example the release of Methyl Isocyanate (MIC) gas in Bhopal from the Union Carbide factory in the year 1984 caused severe disaster taking thousands of human lives and adversely affecting the health of even the future generations of the people affected it.

Control and regulation of hazardous substances has always been the main concern in the exercise of environment protection. The issue has been specifically addressed under the Environment Protection Act, 1986 by way of delegated legislations. A delegated legislation refers to the legislative function of the executive organ of the government. This takes place under the legislation enacted by the legislatures which authorises the executive to frame rules for the

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actual implementation of the legislation enacted. The name delegated refers to the delegation of the power to legislate under the legislation by the legislature to the executive after laying down the broad policy objectives in the legislation. The Delegated legislation under the Environment Protection Act, 1986 includes the Hazardous Wastes (Management and Handling) Rules, {HW (M&H) Rules} 1989 made by the Government of India through the Ministry of Environment and Forests (MoEF). In order to encourage the implementation of these rules the MoEF has further brought out guidelines for HW (M&H) Rules in the year 1991. These rules provide for a regulatory framework for the handling of hazardous wastes.

27.2.1 Definition of Hazardous Substance

A 'hazardous substance' is defined not only as a substance, but also as a preparation, which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

This definition explains the nature of what may be considered a hazardous substance. These are present in our surroundings which may harm our environment and hence there needs to be some guidelines for dealing with such substances, so as to protect our environment from the potential harm. An example of hazardous waste can be industrial waste, which is waste collected from a factory meant for manufacturing certain goods.

27.2.2 Procedure for the Regulation of Hazardous Wastes under HW (M&H) Rules

A. Identification of Hazardous Waste Generation - Identification of the hazardous waste generating industries is the first step.

B. Data Collection - After identifying the 'hazardous waste' generating industries, the inventory of data pertaining to hazardous waste generation can be prepared by conducting surveys in each of the identified industries.

C. Waste Characterisation - The 'hazardous waste' that is generated from the study region should be characterized. This can be done in the laboratory. Detailed hazardous waste characterisation pertaining to physical, chemical and general characteristics, and properties pertaining to ignitability, corrosivity, reactivity & toxicity is to be taken.

D. Identification of site for disposal - After quantifying the 'hazardous waste' and assessing the probable area requirements for its treatment, storage and disposal, the sites are to be identified.

E. Conducting Environmental Impact Assessment (EIA) - The impacts from the project should be identified and public acceptance should be obtained for clearing the site for Treatment, Storage and Disposal facility.

F. Implementing Treatment, Storage and Disposal Facility - The treatment, storage and disposal facility programme should be implemented at the final designated site. The site should contain adequate provisions for storage, treatment and final disposal. The site should have laboratory facilities to monitor these functions.

The above mentioned steps need to be followed carefully for guarding our environment from the dangers which the existence of hazardous waste may cause to it. Proper treatment, storage and disposal of hazardous wastes are the need of the hour for a pollution free environment.



INTEXT QUESTIONS 27.2

1. Define 'Hazardous Waste'?
2. How a 'Hazardous Waste' may impact us?
3. What was the main objective behind the making of Hazardous Wastes (Management and Handling) Rules, 1989?
4. How do you define by EIA in relation to the management and handling of hazardous waste?

27.3 KYOTO PROTOCOL

Environment protection is not territorial but a global concern and therefore, the effort to protect the environment is going on also at the international level as the environmental policy of any country does not only affects the environment of that country, rather it affects in whatever extent possible, the global environment. 'Kyoto Protocol' is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases (Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons) by the industrialised countries, which adversely impacts the global environment.

'Kyoto Protocol' is the part of the United Nations Framework Convention on Climate Change (UNFCCC). UNFCCC sets an overall framework for inter-governmental efforts aimed at tackling the challenges of climate change. Climate Change refers to the fact that due to developmental human activities the original climate of the world is changing and the average temperature of



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world is rising every year and this will result in climate change which may have very serious consequences for present and future generations. The increase in temperature is primarily because of the emission of greenhouse gases, which are emitted mainly from industries. This also adds to the depletion of the ozone layer which prevents the harmful effects of the sun from reaching the Earth. Therefore, this is a movement to protect the world inhabited by us from becoming a world unsuitable for human existence.

The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases. The Protocol was adopted on 11 December 1997 in Kyoto, Japan and entered into force on 16 February 2005. More than 190 countries are the members of the Protocol, significantly though the United States of America is not the member of the Protocol. India is also a member of the Protocol.

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

- Under the Protocol 37 industrialised countries and European Union made up of 15 European countries (called Annexure 1 countries) have committed themselves to binding obligations to reduce emission of greenhouse gases.
- In order to meet the objectives of the Protocol, Annex I, Parties are required to prepare policies and measures for the reduction of greenhouse gases in their respective countries. In addition, they are required to increase the absorption of these gases.
- Accounting, Reporting and Review in order to ensure the implementation of the Protocol.
- Establishing a Compliance Committee to enforce compliance with the commitments under the Protocol.

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

**INTEXT QUESTIONS 27.3**

1. Identify the gases that are called the 'greenhouse gases'?
2. What is the impact of 'greenhouse gases' on our environment?

3. Define the main aim or objective of 'Kyoto Protocol'?
4. How will the reduction in the emission of greenhouse gases protect our environment?

27.4 OTHER INTERNATIONAL INSTRUMENTS

International Instruments are like legislations and rules drafted by the different countries coming together at the international level to make laws applicable to them. Kyoto Protocol is not the only instrument directed at curbing environmental degradation, in fact there are several such measures that have been undertaken at the international level. These international instruments collectively constitute what is known as International Environmental Law. These laws have affected the growth of environmental law in many countries to a great extent. India's main environmental legislation the Environment Protection Act, 1986 was also enacted in order to give effect to the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972.

Some of the important International Instruments are -

1. The Stockholm Declaration, 1972

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

2. The Vienna Convention for the Protection of the Ozone Layer, 1985

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

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

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



**Notes****4. The Report of the World Commission on Environment and Development (“The Brundtland Commission”), 1987**

- Milestone in the development of international environmental jurisprudence and policy
- Established the doctrine of “Sustainable Development”

5. The Rio Declaration on Environment & Development, 1992

- Builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration.
- Expands the concept of sustainable development.
- Reaffirms, amongst others, the importance and centrality of:
 - The Precautionary Principle,
 - The Polluter Pays Principle, and
 - Environmental Impact Assessment

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

Three main goals:

1. The conservation of biological diversity;
2. The sustainable use of its components; and
3. The fair and equitable sharing of the benefits from the use of genetic resources.

In 2000, a supplementary agreement - the Cartagena Protocol on Biosafety - sought to protect biological diversity of states against risks from living, modified organisms created by biotechnology.

In April 2002, the parties to the Convention committed themselves to achieving the target of “a significant reduction in the current rate of biodiversity loss at the global, regional and national level,” by 2010.

7. Agenda 21, 1992

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

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

This sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change. Under the Convention, governments:

- gather and share information on greenhouse gas emissions, national policies and best practices

- launch national strategies for addressing greenhouse gas emissions and adapting to expected impacts, including the provision of financial and technological support to developing countries
- cooperate in preparing for adaptation to the impacts of climate change

The Convention entered into force on 21 March 1994.

These international instruments clearly reflect the fact that the issue of environment protection has been a matter of grave concern which has attracted international attention. All these instruments also acknowledge the fact that for environmental protection there cannot be a one stop solution; this is a continuous process which must continue incessantly.



INTEXT QUESTIONS 27.4

1. Name any two International Instruments in the field of environment protection other than the 'Kyoto Protocol'.
2. What is the main objective of UNFCCC?
3. Explain the three main objective of U. N. Convention on Biological Diversity (1992)?
4. What is stated in the U. N. Declaration for Environment & Development, 1992 (The RIO Declaration on Environment and Development)?

ROLE OF JUDICIAL ACTIVISM IN ENVIRONMENTAL PROTECTION

27.5 ROLE OF COURTS IN ENVIRONMENTAL PROTECTION

The concept 'the right to life' under Article 21 of the Constitution of India was not given an expansive dimension in the beginning but gradually Courts in India started expanding the meaning of this term by playing an active role. The question, how to bring about a balance between the environment and development, poses a great dilemma. **The Rural Litigation and Entitlement Kendra v. State of U.P.** is the first case where the Supreme Court of India made an attempt to look into this question. In this case, the petitioners, a voluntary organisation, feared that mining activities of the lessees caused ecological disturbance. The lessees had rights given by the Government and on conditions laid down under a specific law. According to a committee of experts, appointed by the Supreme Court, mining of limestone in certain areas was found dangerous and damaging ecological balance. The Supreme Court ordered to close the mining operations in these areas, though it allowed mining operations in certain areas reported as not dangerous. The Court considered the hardship caused to the lessee but thought that 'it is a price that has to be paid for protecting and safeguarding





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the right of the people to live in healthy environment with minimal disturbance to ecological balance'. What is important is that the case was filed under Article 32 of the Constitution of India and orders were given with emphasis on the need to protect environment. Under Article-32 the Supreme Court of India can only be approached for the violation of fundamental rights and there is no specific fundamental right to environment mentioned as fundamental rights in our Constitution. This means that the Supreme Court treated the right to clean environment as a fundamental right and this can only be done by expanding the meaning of 'the right to life' as it appears in Article 21 of the Indian Constitution as one of the fundamental rights.

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

Although the second *M. C. Mehta* case, (**M. C. Mehta v. Union of India**) the Court modified some of the conditions, the third **M. C. Mehta** case, (**M. C. Mehta v. Union of India**) posed an important question concerning the amount of compensation payable to the victims affected by leakage of Oleum gas from the factory. The Court held that it could entertain a petition under Article 32 of the Constitution, and laid down the principles on which the quantum of compensation could be computed and paid. This case is significant as it evolved a new jurisprudence of liability to the victims of pollution caused by an industry engaged in hazardous and inherently dangerous activity. Although it did not specifically declare the existence of the right to a clean and healthy environment in Article 21, the Court evolved the principle of 'absolute liability' of compensation through interpretation of the constitutional provisions relating to the right to live and to the remedy under Article 32 for violation of fundamental rights. The basis for this decision is clear and unambiguous – the fundamental right to a clean and healthy environment.

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

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

Justice K. N. Singh in *Subhash Kumar* case observed:

“Right to live.....includes the right to enjoyment of pollution free water and air for full enjoyment of life.”

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



Notes



INTEXT QUESTIONS 27.5

1. Whether expanding the dimensions of Article 21 of the Constitution can be termed as an example of ‘judicial activism’?
2. Whether Article-32 of the Constitution of India can be used by approaching the Supreme Court in case of violation of the right to clean environment?
3. Identify the nature of liability of an industry engaged in inherently dangerous and hazardous activity towards the victim of pollution caused by it?
4. Whether right to clean environment is a fundamental right specifically given by the Constitution of India?

27.6 ROLE OF PUBLIC INTEREST LITIGATION (PIL)

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



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

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

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



INTEXT QUESTIONS 27.6

1. Whether PIL is an example of the dilution of the strict principle of *‘locus standi’*?
2. Who can file a PIL?
3. What are the kinds of issues that can be raised in a PIL?
4. What do you understand by an Adversarial System of Justice Delivery?

27.7 TECHNIQUES OF ISSUING DIRECTIONS

The powers of the Supreme Court to issue directions under Article-32 and that of the High Courts to issue directions under Article-226 have attained great significance in environmental litigation. There are several such directions which have resulted as milestones in the path of environmental protection.

1. Evolution of doctrines in environmental jurisprudence

The formulation of certain principles to develop a better regime for protecting the environment is a remarkable achievement of PILs. In *‘M. C. Mehta v. Union of India’*, the Supreme Court formulated the doctrine of ‘absolute

liability' for harm caused by hazardous and inherently dangerous industries. In *Sludge's case* ('*Indian Council for Enviro- Legal Action v. Union of India*'), when the people in a village suffering from lethal waste left behind by a group of chemical industries were asked to be given the compensation by such industries by the Supreme Court, the Court applied the 'Polluter's Pay Principle'.

The 'Precautionary Principle' came to be directly applied in *M. C. Mehta v. Union of India*, for protecting the Taj Mahal in Agra from air pollution. Expert studies proved that emissions from coke/coal based industries in the vicinity of Taj Mahal had damaging effect on Taj Mahal. The Supreme Court ordered that the potential polluters had to change over to natural gas as an industrial fuel and those that were not in a position to obtain gas connections-for any reason-should stop functioning in the vicinity of Taj Mahal and relocate themselves in alternative plots outside the demarcated area within a stipulated time.

The Supreme Court has also applied the principle of 'Sustainable Development' in several cases to balance the developmental concerns with the ecological balance. The **Rural Litigation and Entitlement Kendra v. State of U.P.** can be cited as an example here.

2. Protection of Social Environment

The rights to livelihood and clean environment are of grave concern to the courts whenever they issue a direction in an environmental case. Labourers engaged in the asbestos industry were declared to be entitled to medical benefits and compensation for health hazards which were detected after retirement by the Honourable Supreme Court in '**CERC v. Union of India**'.

3. Filling gaps in law and lacunae in administration

In most cases courts have issued directions to remind Government authorities of their responsibility to protect the environment. Thus, directions were given to local bodies, especially municipal authorities, to remove garbage and waste and clean towns and cities.

4. Environmental awareness and education

The directives of the Supreme Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education not only at the school level, but also at the college level. In *M. C. Mehta v. Union of India*, the Supreme Court emphasised the need for the awareness of environmental protection. The Court also required every State Government and Education Boards to take steps for environmental education.

Thus, it is clear from the above discussion that the PIL has played a very important role in the field of environment protection by empowering the courts in India to do whatever it can for this noble cause.



Notes

**INTEXT QUESTIONS 27.7****Notes**

1. What do you mean by EPCA?
2. What do you mean by CNG?
3. What kind of pollution will be caused by vehicles?
4. What kind of pollution will be caused by industries putting their industrial waste into rivers?

27.8 LEADING JUDGEMENTS TO PROTECT ENVIRONMENT

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

1. The Delhi Vehicular Pollution Case

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

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

In January 1998, the Supreme Court endorsed the Central Government's proposal to create an expert authority, to be known as the Environment Pollution (Prevention and Control) Authority (EPCA).

However, in July 1998, the Court passed an 'historic' order which became the public battleground for the various stakeholders over an issue which claims more victims than the terrorists' guns. It included the phasing out of all commercial vehicles and taxis which were more than 15 years old as of October 1998; a ban on the supply of 2T oils at petrol stations by December 1998; the increase of public transport to 10,000 buses by April 2001, the stoppage of leaded petrol within NCT Delhi by September 1998; replacement of all pre-1990 auto rickshaws and taxis to new vehicles on clean fuel by 31 March 2000; no eight-year-old buses to ply except on CNG (Compressed Natural Gas) or other clean fuel by 1 April 2000; entire city bus fleet (DTC and private) be steadily converted to single fuel mode on CNG by 31 March 2001. The Court further stressed and directed that the authorities must take effective and adequate steps to bring to the notice of the public, both through print and electronic media, the directions issued by the judiciary from time to time. The July 1998 order provided time lines to be adhered to for bringing the change in the city. The judges, while delivering the order, stated: 'This timeframe, as given by EPCA and today by this Court, in consultation with the learned counsel for the parties, shall be strictly adhered by all the authorities. We administer a strong caution to all the concerned that failure to abide by any of the direction would invite action under the Contempt of Court Act against the defaulters.'

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



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From 2000-2003, the focus of the Supreme Court was on the implementation of its orders. The Court applied the 'precautionary principle' to the auto fuel policy. The auto fuel policy focused upon the measures to anticipate, prevent and attack the cause of environmental degradation. These efforts eventually meant that all buses now run on CNG. The transport sector, including private vehicles, was given priority over the industrial sector with regard to the allocation of CNG. Thus, the mission embarked upon by the Supreme Court was successfully accomplished.

The '*Delhi Vehicular Pollution*' case reflects the commitment and dedication shown by the Supreme Court of India to protect the lives of the citizens. Judicial progress was slow, as was the implementation of its directions, but as a consequence of PIL actions Delhi's atmosphere is now relatively clean.

2. M. C. Mehta v. Union of India, Ganga Pollution case (AIR 1998 SC 1037)

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

3. Indian Council for Enviro-legal Action v. Union of India, The Bichhri Village Case

Bichhri is a little-known village in the Udaipur district of Rajasthan. However, in 1988, a group of chemical industries established plants to produce hydrochloric acid and related chemicals for export. Although the production of this acid is prohibited in European countries, there remains a need for it. Thus, a remote village in India became a site for the production of this lethal chemical. 'Rogue Industries' commenced production of these chemicals without obtaining the appropriate 'no objection certificates' from the pollution control authorities. The factories' waste products amounted to between 2,400 and 2,500 metric tonnes that were highly toxic. At least 400 farmers and their families in eleven villages were directly affected by the groundwater pollution.

However, in October 1989, a PIL was filed in the Supreme Court by a Delhi-based NGO, the Indian Council for Enviro-Legal Action, led by Mr M.C. Mehta. The NGO presented the subhuman living conditions being experienced by the

villagers and requested remedial action by the court. The Supreme Court accepted the petition and thus began the legal struggle which continues to this day. Between 1989 and 1994, Orders were passed by the court. They included a request to establish an expert committee to examine the situation in and around the affected area and thereafter provide recommendations for both short- and long-term remedial action.

In February 1996, the Court declared the final order. It stated that ‘absolute liability’ rested with the rogue industries to compensate for the harm caused by them to the villagers in the affected area, to the soil and underground water and that they were bound to take all necessary measures to remove the sludge and other pollutants and defray the costs of remedial measures required to restore the land and underground water. The Court invoked the ‘polluter pays’ principle and empowered the central Government to determine and recover the cost of remedial measures from the industries. The Court ordered the closure of all chemical plants located in the Bichhri area. It is noteworthy that the Court suggested the establishment of dedicated environmental courts for the adjudication of such matters and the establishment of the National Green Tribunal fulfils this long standing demand made by the Court.

In November 1997, the Court required the industries to pay Rupees 37.38 Crores towards the cost of environmental remediation and Rupees 34.28 Lakhs to the villagers, which were not immediately complied with. Finally, in 2011, the Supreme Court imposed a compound interest of 12 per cent on the remedial amount of Rupees 37.38 Crores on the polluter for the 15-year delay in making the payment. The polluters were given two months to make the payment; failure to do so would result in the recovery being made as arrears. The polluting industries had no other option but to comply with the orders of the Court this time.

The importance of the *Bichhri* case is that it allowed the villagers’ grievances to be heard via PIL. The application of Article 21, ‘absolute liability’ and the ‘Polluter Pays Principle’ makes the case a landmark judgment in India’s emerging environmental jurisprudence.

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

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

- Mining license in forest area without proper approval by the Government is violative of the Forest (Conservation) Act. All on-going activities under



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such invalid license must cease. The State Governments have to take necessary remedial measures.

- Running saw mills of any kind is a non-forest activity. All saw mills within a distance of 100 kilometres from the border of the State of Arunachal Pradesh are to be wound up.
- Responsibility was imposed on each State Government to report on the number of saw mills, actual capacity of mills, proximity to the nearest forest and their sources of timber.
- Complete ban on felling of trees in the forests of Arunachal Pradesh. Felling of forests in other States also suspended except in accordance with working plans.
- Movement of cut trees and timber banned.
- Each State Government to constitute expert committees to identify forest areas and forests covered by plantation trees and to assess the sustainable capacity of the forest in relation to saw mills.
- In State of Jammu & Kashmir, no private agencies should deal in felled trees or in timber.
- In Tamil Nadu the tribals who are residing in the forest area to continue to grow and cut trees according to the Government scheme and in accordance with the law applicable.

The case came back within four months for review of the follow up action as directed by the Court. Interestingly, the Court proceeded to constitute a committee to oversee the implementation of its orders in the north-eastern region of India. Unlicensed saw mills and veneer and plywood industries in the States of Maharashtra and Uttar Pradesh were directed to be closed. All trees felled in the janman areas of Tamil Nadu were ordered to be delivered by the plantations to the State Government.

The orders passed by the Supreme Court clearly demonstrates the failure of executive to ensure compliance with the forest laws of India, so much so that even for the supervision of the implementation of the Court orders, the Court had to constitute a committee, a work which otherwise should have been done by the executive.

Many developing countries look to India as a country where human rights are championed by an independent judiciary and certainly in the area of environmental protection through the means of PIL, the Indian judiciary has led by some landmark examples which aptly shows the commitment of the Courts in India towards this cause.

**INTEXT QUESTION 27.8**

1. Name four leading cases relating to protection of Environment.

**WHAT HAVE YOU LEARNT**

A Tribunal is established for the adjudication of disputes related to some specific areas, whereas courts exist for the adjudication of all kinds of disputes regardless of any specific area. Whenever a Tribunal is created by law the jurisdiction of courts to adjudicate the disputes related to that area for which the Tribunal is created is taken away from it and given to the Tribunals.

The National Green Tribunal was established under the National Green Tribunal Act, 2010 for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

National Green Tribunal is empowered to provide by an order:

- Relief and compensation to the victims of pollution and other environmental damage arising under the enactments specified in Schedule I (including accident occurring while handling any hazardous substance) of the Act.
- For restitution of property damaged
- For restitution of the environment for such area or areas

A 'hazardous substance' is defined under the Hazardous Wastes (Management and Handling) Rules, 1989, not only as a substance, but also as a preparation, which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

The 'Kyoto Protocol' sets binding obligations on industrialised countries to reduce emission of Greenhouse gases.

International Instruments are like legislations and rules drafted by the different countries coming together at the international level to make laws applicable to them. There are several such International Instruments which collectively constitute what is known as International Environmental Law.

The clean air people in Delhi breathe is largely because of the PIL which was heard by the Supreme Court highlighting the dangers of the air pollution caused



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**Notes**

by the vehicles causing pollution by emitting dangerous smoke as a result of the use of diesel and petrol. It took several years for the Court to ensure that the public transport vehicles plying on the roads of Delhi must use CNG as fuel and not petrol and diesel. All this could be realised through the means of PIL.

Through the means of PIL, the Supreme Court has also undertaken the task of pollution in the river Ganga. Supreme Court in 'Bichhri village case' applied the 'Polluters Pays Principle' and asked the polluting industries to compensate for the environmental damage caused by it. This case also reached the Supreme Court through the means of PIL.

Supreme Court has also undertaken the task of forest preservation very actively through the means of PIL in *T. N. Godavarman Tirumulkpad* case.

**TERMINAL QUESTIONS**

1. What were the reasons for the establishment of National Green Tribunal?
2. What is the composition of National Green Tribunal?
3. Describe the jurisdiction of National Green Tribunal?
4. What can be the impact if the Hazardous Wastes are not properly treated, stored or disposed off?
5. What are the different steps in the handling and management of Hazardous Wastes?
6. What are the Greenhouse Gases?
7. Define the 'International Environmental Law'?
8. Define the 'Judicial Activism' especially as applied in the field of environmental protection?
9. Discuss briefly the role of Public Interest Litigation (PIL).
10. Name the four leading Judgements of the Supreme Court relating to Environment Protection.
11. Under which provisions of the Constitution of India a PIL can be filed in the Supreme Court and the High Courts in India?
12. Define 'PIL'? Explain the basic features of PIL.
13. What do you understand by the Adversarial System of Dispute Resolution by the Courts?
14. Explain briefly the '*Delhi Vehicular Pollution* case'.

15. How and why did the Supreme Court of India apply the 'Polluters Pay Principle' in the *Bichhari Village* case?



ANSWER TO INTEXT QUESTIONS

27.1

1. The main reason behind the establishment of Tribunal is to ensure expeditious adjudication of disputes by including experts from the area concerned as adjudicators along with the judicial members.
2. The National Green Tribunal was established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matter connected there with or incidental thereto.
3. 'No Fault' principle stipulates that in case of accident the owner or the employer cannot take the defence of him having committed no fault. If accident occurs and as a consequence of it damage is caused to any person or environment, the owner or the employer is liable, only because of the fact that accident occurred in his enterprise.
4. In an appeal the person who has lost the case can again challenge the decision made by the NGT before the Honourable Supreme Court.
5. Minimum number of members who must together hear and decide a case is two, out of which one must be a judicial member and other an expert member.

27.2

1. The substance or preparation which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment is called 'Hazardous Waste'.
2. Hazardous Waste if unattended and simply dumped can give rise to serious health and environmental issues.
3. The objective behind the making of Hazardous Wastes (Management and Handling) Rules, 1989 is the control and management of Hazardous Waste.
4. EIA implies that the impacts from the project of treatment, storage and disposal of hazardous waste should be identified and public acceptance should be obtained for clearing the site for such use. This is the needed EIA in relation to the management and handling of Hazardous Wastes.



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27.3

1. Carbon Dioxide, Methane, Nitrous Oxide, Sulphur Hexafluoride and two groups of gases hydro fluorocarbons & per fluorocarbons.
2. Greenhouse gases are responsible for the climate change which includes rise in average temperature of the Earth and depletion of the ozone layer.
3. Kyoto Protocol is the example of a measure undertaken at the international level under the aegis of the United Nations aimed at curbing the emission of Greenhouse gases.
4. Because the emission of greenhouse gases is responsible for climate change, hence its reduction will automatically stop the extent of damage caused to the environment.

27.4

1. The RIO Declaration on Environment and Development or the Convention on Environment and Development at Rio de Janeiro in the year 1992 & United Nations Framework Convention on Climate Change (UNFCCC).
2. UNFCCC sets an overall framework for intergovernmental efforts to tackle the challenge posed by climate change.
3. The three main objectives are:
 - i. The conservation of biological diversity;
 - ii. The sustainable use of its components; and
 - iii. The fair and equitable sharing of the benefits from the use of genetic resources.
4. The 'RIO Declaration' on Environment Development, 1992 builds on the principles of sustainable development, inter-generational equity, and sovereign rights in the Stockholm Declaration, expands the concept of sustainable development and reaffirms, amongst others, the importance and centrality of the Precautionary Principle, Polluters Pay Principal and the Environmental Impact Assessment.

27.5

1. Yes
2. Yes
3. Absolute Liability
4. No

27.6

1. Yes
2. Today a person acting bona-fide and having sufficient interest can move the Courts under PIL for redressing public injury, enforcing public duty or for protecting social and collective rights and interests. . The cause of environment has been taken up before courts through PIL by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centres dedicated to environment protection and forest conservation, welfare forums, consumer research centres have successfully agitated environmental issues before Courts.
3. The range of issues in PILs has been very broad. It extends from compassion to animals and privileges of tribal people and fishermen, to the eco-system of the Himalayas and forests, eco-tourism, land use patterns and problems facing a village due to ecological damage.
4. Adversial System of Justice Delivery means that the two parties to the case fight the case between each other and the judge simply sits as a neutral umpire or referee to decide who has a better case.

27.7

1. Environment Pollution (Prevention and Control) Authority
2. Compressed Natural Gas
3. Air Pollution
4. Water Pollution

27.8

1. (i) The Delhi Vehicular Pollution Case.
 (ii) M. C. Mehta vs. Union of India, Ganga Pollution Case.
 (iii) Indian Council for Enviro-Legal action vs. Union of India–The Bichhri Village Case.
 (iv) T. N. Godavarman Triumulpad vs. Union of India (AIR 1997 S.C. 1228).



Notes

MODULE - VIIB
LAW RELATING TO CONSUMER
PROTECTION AND RIGHT TO
INFORMATION

- | | |
|-----------|-----------------------------|
| Lesson 28 | Consumer Protection |
| Lesson 29 | Unfair Trade Practices |
| Lesson 30 | Consumer Redressal Agencies |
| Lesson 31 | Consumer Activism |



CONSUMER PROTECTION

Little Alia saved some money to buy a small gift for her brother on his birthday. She went with her mother to a nearby store and bought a very basic phone for him. Her brother was going to the nearby big city for a job, so they wanted to keep in touch with him on the phone. Gopal was very delighted to receive the phone as a birthday present, but this happiness did not last for many days. Just as he reached the city, his phone stopped working, and he had to use another phone to talk to his family. What should Alia and Gopal do? They are consumers and they have “CONSUMER RIGHTS”. The following text talks about the right of consumers and consumer law.

So, in this lesson we will study about the evolution of Consumers Law in India, the main provision of Consumer Protection Act, 1986 and the meaning of the terms Consumer; ‘Consumer Service’, ‘Consumers Protection’s and ‘Consumers’s Rights’.



OBJECTIVES

After reading this lesson you will able to:

- know HISTORY AND EVOLUTION OF CONSUMER LAW;
- understand the meaning of the term ‘CONSUMER’;
- describe the term CONSUMER PROTECTION;
- discuss the main provisions of THE CONSUMER PROTECTION ACT, 1986; and
- identify RECENT AMENDMENTS in the Consumer Protection Act, 1986.

28.1 HISTORY AND EVOLUTION OF CONSUMER LAW

We will try to understand the definition and meaning of a ‘Consumer’ in the next section of this lesson but before that a brief understanding of how ‘Consumer Law’ evolved in India.



Notes

Earlier the doctrine of “Caveat Captor ” punailed that is “Buyer should be aware” before buying a product, and that once goods are sold, the seller is under ‘no liability’ if the consumer had not checked them before buying. This was prevalent in India.

So the buyer had to be very cautious before buying a product.

Although there were some legislations to protect the consumer’s right like those given below, but they were not adequate.

- The Prevention of Food Adulteration Act
- The Essential Commodities Act
- The MRTP Act

The Consumer Protection Act, 1986, was a very unique and highly progressive piece of legislation and is called the ‘MAGNA CARTA’ of Indian Consumers.

People like you, Alia and Gopal have now become aware of Consumer’s Rights and the sellers cannot escape their liability. When the goods are defective or the remices are deficient, the Consumer has rights which help him.



INTEXT QUESTIONS 28.1

1. Who is Alia ?
2. Alia’s mother buys a packet of sweets. What should she be called ?
3. Does Gopal have a right as a Consumer ?



Do you know

A person who has used a product, not bought by him/her, is also a Consumer if he/she has the permission to use it from the person who bought it !

28.2 WHO IS A CONSUMER ?

To put it simply, a ‘Consumer’ is a person who

- buys ‘goods’; or
- hires ‘Services’.

But there is more to the meaning of ‘Consumer’. As per the definition of Consumer Protection Act, 1986; A consumer’s definition is in two parts. The

* Liability means the responsibility to pay compensation or replace a product in consumer law.

first part says that a ‘Consumer’ is a person who pays a price for the goods he/she buys. [So, a ‘Buyer’ is a ‘Consumer’] The second part says that a ‘Consumer’ is a person who pays for the ‘Services’ he/she hires. [So, a HIRER of ‘Services’ is a ‘Consumer’]. However, goods bought for business or commercial purposes are not covered by the Act

(a) BUYER – Eg. a buyer of a TV Set.

HIRER – Eg. a higher of a Taxi Service.

(b) Ramanujan pays a sum of Rs 100/- for a hair cut to a hair dresser. Is he a Consumer?

(c) Karishma goes to a Government Hospital for a check-up. Is she a ‘Consumer’*?

(d) Preeti goes to a Mall and buys a beautiful new dress. After wearing it once, she washes it and the dress tears off while doing so. Can she return the dress?

**Notes****INTEXT QUESTIONS 28.2**

1. Who is a consumer?
2. Is a ‘Hirer’ of services a consumer?

28.3 CONSUMER RIGHTS

We all know and have heard about ‘Rights’. But we don’t know how to recognise them and enjoy them. You must have heard of Consumer’s Rights. Yes, you also see some advertisements on TV about Consumer awareness. Have you seen “Jaago Grahak Jaago” ? Let us see what are Consumer Rights.

Consumer Rights are those rights which a buyer of a product or hirer of a service, has against the seller.

The following are Consumer Rights Listed by the United Nations:

1. Right to safety;
2. Right to be informed;
3. Right to choose;
4. Right to be heard;
5. Right to redress;
6. Right to consumer education;
7. Right to healthy environment; and
8. Right to basic needs.

* Since Government services are free services, they are not covered under the Consumer Protection Act, in spite of the taxes which we pay.

**Do you know**

A Consumer's biggest and strongest right is to refuse to buy because by that the seller loses his customers and loses business too !

Every year 15th March is observed as the 'Consumer Right Day'.

**INTEXT QUESTIONS 28.3**

1. Define Consumer Rights.
2. Name any Two Rights of consumer under the Consumer Protection Act (C.P.A.), 1986.

**28.4 THE CONSUMER PROTECTION ACT, 1986 (C. P. A.)
IN SHORT)**

We know about Consumer's Rights. But the Act which identifies and provides protection to the rights of 'Consumer' is the Consumer Protection Act, 1986.

Like every 'Act' this 'Act' also has various Sections, Sub-Sections and Clauses. For example, Section 2, Sub-Section (1) and Clause (d) of the Sub-section (1), will be represented as under S.2 (1) (d).

Now this Section 2 (1) (d) of the Consumer Protection Act, defines a 'Consumer', which we discussed earlier.

The Consumer Protection Act, (CPA), 1986 aims at providing simple, quick and cheaper protection to the Consumer under a 'three-tier' quasi-judicial redressal regime at the District Level, State Level, and National Level,

'Redressal' means a Remedy to a 'Consumers' dispute, under the CPA, 1986.

So, these are the places one goes to when a Consumer's right is violated. The main object of this Act is the protection of the Consumer, which we will discuss in the following part of this lesson.

The following are the main objects of the CPA, 1986.

1. Protection of interests of Consumers.
2. Protection of rights of Consumers.

Which include:

- (a) Protection against dangerous goods and services which are hazardous to life and property;.
- (b) Right to information about the quality, quantity, potency, purity, standard, and price of goods or services to so as to protect him against unfair trade practices like false discrediting exaggerated claims etc.;
- (c) Right to be heard;
- (d) Right to access to variety of goods;
- (e) Right to seek redressal; and
- (f) Right to consumer education



Notes



Do you know

It is the responsibility of the Central Consumer Protection Council (CCPC) to educate the Customers !



INTEXT QUESTIONS 28.4

1. Name the 'Act' in India, which protects the Consumers rights and provides redressal to Consumer disputes?
2. Name any two rights of 'Consumer' under the Consumer Protection Act, 1986?
3. Whose responsibility is it to educate the Consumers ?
4. Which day is celebrated as the Consumer Rights Day ?
5. Where do you go to when a Consumer right is violated ?
6. Preeti goes to a Cosmetic shop to buy some nail polish bottles. Does she have a right to choose

28.5 THE FORMAL DEFINITIONS OF CONSUMER AND SERVICE

“Consumer”

Section 2 (i)(d) of the Consumer Protection Act, 1986 defines a Consumer. It says –

‘Consumer’ means any person who buys any goods for consideration which has been paid or promised, or partly paid and partly promised, or under buy deferred payment and includes any use of such goods other than the person who buys

**Notes**

such goods for consideration, when such goods are is used with the approval of such person, but does not include a person who obtains such goods for resale or for any commercial purpose; or hires or avails of any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment, the includes the beneficiary of such services of her than the person who hires or avails of the services for consideration. When such services are availed of with the approval of the first mentioned person”.

You do not have to mug up this definition. It is only for reference. The meaning of ‘Consumer’ has already been explained in the previous section. [Section 1.2 of the Lesson]

“Service”

Sectoin – 2 (i) of CPA, 1986 defines ‘Service’–

‘Service’ means service of any description which is made available to potential users and includes the provision of facilities in connection with *banking, financing, insurance, transport, processing, supply of electrical or other energy, board or lodging or both, housing construction, entertainment, amusement or the purveying of news or other information.*”

Free services are excluded; so they are not ‘Services’ within the meaning of Consumer Protection Act, 1986. So, free government services are also excluded.

**Do you know**

So, if a courier reaches after the promised date, there is “deficiency” in service!

**INTEXT QUESTIONS 28.5**

Answer the following

1. Define the term ‘Service’ as defined by CPA, 1986.
2. Which Section of the CPA defines ‘Service’?
3. Rupa went to a bank to open an account, and the bank offered an interest of 9% on her savings. But eventually, when she opened the account, it was reduced to 8%, although the prevailing rate was 9%. Is the bank liable under the Consumer Protection Act 1986?

28.6 LANDMARK CASES**1. Lucknow Development Authority v. M. K. Gupta**

Ratio : A person who applies for an allotment of a flat, is a ‘Consumer’ and is protected under the CPA, 1986.

2. Indian Medical Assoc. v. V. P. Shanta

Ratio : ‘Services’ rendered by medical Practitioners are ‘services’ under the CPA, 1986. However, hospital giving free service are excluded.

3. Transasia Bio Medicals Hd. v. Dr. D. J. Desonga [22nd Jan 2013]

A defective second hand auto analyser was returned and money returned to the consumer.



Notes

28.7 RECENT AMENDMENT BILL

The Forums established under CPA, 1986 have become clogged with pendency of cases, effective compliance is difficult to monitor and very low. The amendment bill seeks to change this and addresses these issues in a variety of ways.

For instance, the Bill allows for–

- Filing of Consumer Complaints on line
- non-compliance of orders of the power are now punishable by a time of five hundred rupees or one half per cent of award amount for each day of non-compliance.
- Award of the Consumer Forum is now like a ‘Decree’ of the Civil Court of competent jurisdiction
- The definition of the terms “*deficiency*”, “*defect*” and “*unfair trade practice*”, is being provided for by the Amendment Bill.

**Do you know**

A ‘Forum’ under the Consumer Act, consists of judge and two members, and is called quasi-judicial, which means it decides like a Court !

**INTEXT QUESTIONS 28.6**

1. What is a Consumer Complaint ?
2. Is the ‘Award’ of the Consumer Forum like a ‘Decree’ of a Civil Court?



Notes



WHAT YOU HAVE LEARNT

- The Consumer Protection Act 1986 is the ‘Magna Carta’ of the Consumer’s Rights in India. A ‘Consumer’ is a person as defined in 5 2(1) (d) of the Consumer Protection Act, 1986. A ‘Service’ is explained in 5 2(1) (0) of the Consumer Protection Act (CPA), 1986.
- ‘Service’ includes banking, insurance financing, transport, processing, supply of electrical or other energy, boarding or lodging or both, housing, construction, entertainment, Government, or the purveying of news or other information. Free services are excluded from the purview of ‘Service’.
- Goods/Services taken without ‘Consideration’ do not make you a consumer. Goods/Services taken for business or commercial purposes, are not covered by the Act, and, therefore, do not make you a ‘Consumer’. A ‘Consideration’ is money paid or a value given for goods or services. See the Section 2(1) (d) is defined in two parts. The first part defines a ‘Consumer’ as a person who has bought goods, and the second part defines a ‘Consumer’ as a person who has hired services.
- The Consumers have certain rights. The Consumer Protection Act, 1986 provides forums for redressal, as all Consumer have a right to redressal. These forums are at the District, State and National Level. It is the responsibility of the CONSUMER PROTECTION COUNCIL to educate the Customers. Some landmark Cases are ‘Transasies Bio Medicals Ltd. v. D. J. Desouzar’, ‘Lucknow Development Authority v. M. K. Gupta’ and ‘Indian Medical Association v. V. P. Shantar’
- Consumer Laws are important for the protection of the rights of Consumers for a healthy environment for both the Consumers and business.



TERMINAL QUESTIONS

1. List any two rights of a Consumer.
2. Which body is responsible for educating the Consumers in India ?
3. Which day is celebrated as the Consumer Rights Day ?
4. List any two services included in the Section 2 (1) (0) of the CPA, 1986.
5. What Kinds of goods/services are excluded from the CPA, 1986?
6. What is ‘Consideration’ ?
7. Define a ‘Consumer’ in your own words.
8. What are the rights of Consumer under the Consumer Protection Act, 1986?

9. Sheela's car's air conditioner stopped working within one month of its purchase. The showroom sales person was approached but he/she refused to repair it free of cost. What can Sheela do ?

Write True or False

1. 'Liability' means the responsibility to pay Compensation or replace a product.
(True/False)
2. The Consumer Protection Act, 1986 is a very unique and highly progressive piece of legislation and is called the "Magna Carta" of Indian Consumers.
(True/False)
3. A person who has used a product, not bought by him/her, is also a 'Consumer' is he/she has no permission to use it from the person who bought it.
(True/False)
4. A person is not a 'Consumer' if he/she buys the goods for business or commercial purpose.
(True/False)
5. Government Services or free services are considered as 'services' under the Consumer Protection Act, 1986.
(True/False)
6. Consumer rights are available against the buyer.
(True/False)
7. Definition of the word 'Consumer' is provided under Section 2 (1) (d) of the Consumer Protection Act 1986.
(True/False)
8. 'Redressal' means a 'remedy' to a consumer under the Consumer Protection Act, 1986.
(True/False)
9. It is not the responsibility of the Central Consumer Protection Council to educate the Customers.
(True/False)
10. Consumer has no right to access to variety of goods.
(True/False)
11. A Forum under the Consumer Act, consists of a judge and is called 'Quasi-judicial', which means it decides like a regular Court.
(True/False)
12. Amendment Bill Provides Award of the Consumer Forum is now like a 'Decree' of the Civil Court of competent jurisdiction.
(True/False)
13. A 'Service' is explained in sec 2 (1) (0) of the C. P. A., 1986. (True/False)
14. Unfair Trade Practices affect the small businessmen who can't sustain by reduction of prices below the manufacturing cost. (True or False)

**Notes**

**ANSWERS TO INTEXT QUESTIONS****Notes****28.1**

1. Alia is a 'Customer'
2. 'Consumer'
3. Yes

28.2

1. A 'Consumer' is a person who pays a price for the goods he/she buys. So, a 'Buyer' is a 'Consumer'.
2. Yes

28.3

1. Consumer's Rights are those rights which a 'Buyer' of a 'Product' or 'Higher' of a 'Service' has against the seller or service provider.
2. (i) Right to redress
(ii) Right to be informed.

28.4

1. Consumer Protection Act 1986
2. (i) Right to choose
(ii) Right to be heard
3. Central Consumer Protection Council (CCPC)
4. 15th March is observed as the 'Consumer Right Day'
5. Consumers Dispute Redressal Court
6. Yes

28.5

1. 'Service means service of any description which is made available to potential users.
2. Sec - 2(i) of C.P.A defines 'Service'
3. Yes

28.6

1. Any complaint against any defective and deficiency in services filed by a consumer is called a consumer's complaint.
2. Yes



UNFAIR TRADE PRACTICES

Akshay was a small businessman manufacturing shampoo by the name of 'Mehak'. The people in the village started liking the shampoo as it was a good product for a *small price*. The big company branded shampoo 'Khushboo' lost its customers to 'Mehak'. The big company started selling their shampoo at a price lesser than 'Mehak'. They did not bother if they suffered temporary losses in profits as long as 'Mehak' was completely taken over by 'Khushboo'. Akshay, on the other hand could not reduce the price because if he reduced the price any further he would have suffered heavy losses. In sometime 'Khushboo' took over 'Mehak' and Akshay had to close down his business. Eventually 'Khushboo' shampoo rates were increased. The villagers had no choice but to buy the costly shampoo.

Do you think this is FAIR? Of course, not, It is neither fair for Akshay nor the villagers. Unfair Trade Practices affect the small businessmen who can't sustain by reduction of prices below the manufacturing cost.

Competition is good but only as long as it is fair, healthy and within the prescribed standards. There are also laws to protect small businessmen like Akshay. The Competition Act, 2002 is one of them.

Methods employed by the various businessmen to increase profits by cheating customers or employing other means like price reduction and giving free gifts to customers by including the cost of the gift in the goods sold are very commonly seen and an alert consumer will always report such practices to the appropriate Forum, Let's see how any of us can be a victim of Unfair Trade Practices.

**Notes****OBJECTIVES**

After studying this lesson you will be able to:

- define the term ‘Unfair Trade Practice’;
- know the meaning of terms ‘Monopoly’ and ‘Competition’;
- understand the process of redressal against Unfair Trade Practice; and
- appreciate the role of the Competition Commission of India.

29.1 UNFAIR TRADE PRACTICE

UNFAIR TRADE PRACTICE means a trade practice or a business practice which, for the purpose of promoting the sale, use or supply of any goods or for the provision of any service, adopts any unfair method or unfair or deceptive practice.

Unfair Trade Practices may be categorized as under:

False Representation

The practice of making any oral or written statement or representation which:

- Falsely suggests that the goods are of a particular **standard quality**, quantity, grade, composition, style or model;
- Falsely suggests that the services are of a particular **standard, quantity or grade**;
- Falsely suggests any re-built, second-hand renovated, reconditioned or **old** goods as new goods;
- Represents that the goods or services have sponsorship, approval, performance, characteristics, accessories, uses or benefits which they do not have;
- Represents that the seller or the supplier has a sponsorship or approval or affiliation which it does not have;
- Makes a false or misleading representation concerning the need for, or the usefulness of, any goods or services;
- Gives any warranty or **guarantee** of the performance, efficacy or length of life of the goods, that is not **based on an adequate or proper test**;
- Makes to the public a representation in the form that purports to be a warranty or guarantee of the goods or services;

- A promise to replace, maintain or repair the goods until it has achieved a specified result,
If such promise is **materially misleading** or there is no reasonable prospect that such warranty, guarantee or promise will be fulfilled
- Materially **misleads about the prices** at which such goods or services are available in the market; or
- Gives false or misleading facts disparaging the goods, services or trade of another person.

False Offer of 'Bargain Price'

Where an advertisement is published in a newspaper or otherwise, whereby goods or services are offered at a bargain price when in fact there is no intention that the same may be offered at that price, for a reasonable period or reasonable quantity, it shall amount to an Unfair Trade Practice. The 'Bargain Price', for this purpose means –

- the price stated in the advertisement in such manner as suggests that it is lesser than the ordinary price, or
- the price which any person coming across the advertisement would believe to be better than the price at which such goods are ordinarily sold.

Free 'Gift Offer' and 'Prize Scheme'

The unfair trade practices under this category are:

- Offering any gifts, prizes or other items along with the goods when the real intention is different, or
- Creating impression that something is being offered free along with the goods, when in fact the price is wholly or partly covered by the price of the article sold, or
- Offering some prizes to the buyers by the conduct of any contest, lottery or game of chance or skill, with real intention to promote sales or business.

Non-compliance of Prescribed Standards

Any sale or supply of goods, for use by consumers, knowing or having reason to believe that the goods do not comply with the standards prescribed by some competent authority, in relation to their performance, composition, contents, design, construction, finishing or packing, as are necessary to prevent or reduce the risk of injury to the person using such goods, shall amount to an 'Unfair Trade Practice'.





Hoarding, Destruction

Any practice that permits the hoarding or destruction of goods, or refusal to sell the goods or provide any services, with an intention to raise the cost of those or other similar goods or services, shall be an 'Unfair Trade Practice'.



INTEXT QUESTIONS 29.1

State true or false:

1. Any practice that permits the hoarding or destruction of goods, or refusal to sell the goods or provide any services, with an intention to raise the cost of those or other similar goods or services, shall be an 'Unfair Trade Practice'.
2. Offering any gifts, prizes or other items along with the goods when the real intention is different and is not an 'Unfair Trade Practice'.
3. The practice of making any oral or written statement or representation which falsely suggests that the goods are of a particular **standard quality**, quantity, grade, composition, style or model is called unfair trade practice.
4. Selling any re-built, second-hand renovated, reconditioned or **old goods as new goods** is acceptable to the consumer and is not an 'Unfair Trade Practice'.

29.2 MONOPOLY AND COMPETITION

When a specific person or enterprise is the only supplier of a particular commodity a monopoly exists. 'Monopolies' are thus characterized by a lack of economic competition to produce goods or services and a lack of similar goods. The verb "monopolize" refers to the process by which a company gains the ability to raise prices or exclude competitors. In economics, a monopoly is a single seller. In law, a monopoly is a business entity that has significant market power, that is, the power, to charge high prices. Although 'Monopolies' may be big businesses, size is not a characteristic of a monopoly. A small business may still have the power to raise prices in a small industry.

Holding a dominant position or a monopoly of a market is not illegal in itself. However certain categories of behavior can, when a business is dominant, be considered abusive and therefore incur legal sanctions. A government granted monopoly or *legal monopoly*, by contrast, is sanctioned by the State, often to provide an incentive to invest in a risky venture or enrich a domestic interest group. Patents, copyright and trademarks, are sometimes used as examples of government granted monopolies, but they rarely provide market power. The government may also reserve the venture for itself, thus forming a government monopoly.



Do you know

Monopoly in itself is not illegal.

Do and Learn

Find about from your grandparents which BRAND of biscuit they ate as kids. Do you think they had many choices?



INTEXT QUESTIONS 29.2

1. What is 'Monopoly'? Give any one example.
2. Sanjana started a business of selling cakes. Varun started the same business and started selling cakes at a much lower price than the total cost of production of cakes. Eventually Sanjana had to close down her business and all her customers went to Varun. Do you call this an 'Unfair Trade Practice' by Varun?
3. Name one Act which checks 'Trade Monopoly'.

29.3 REDRESSAL AGAINST UNFAIR TRADE PRACTICES

29.3.1 The Consumer Protection Act, 1986

The Consumer Protection Act, 1986 is an Act to provide for better protection of the interests of consumers and for that purpose to make provision for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for matters connected therewith.

While consumers are protected under this Act the small businessmen are protected under the Competition Act mentioned below.

29.3.2 The Competition Act, 2002

The Competition Act 2002 has been enacted to promote competition in India. The ultimate aim of competition law is to protect consumer welfare as competition in a market ensures that market players are looking to find the most efficient means of production (resulting in good quality services and goods at lower prices). However, unlike the previous Indian competition law, the Monopolies and Restrictive Trade Practices Act (commonly called the MRTP Act), the Competition Act 2002 does not apply to all "unfair trade practices". So, while many consumer disputes would have come under the MRTP Act, the new Competition Act will not always apply to such cases.



Notes



Notes

The Competition Act basically does three things. It prohibits:

1. **Anti Competitive Agreements** - Anti-competitive practices are practices that prevent or reduce competition in the market.

Agreements in respect of Production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements.

2. **The Abuse of Dominant Position** - Abuse of a dominant position occurs when a dominant firm in a market, or a dominant group of firms, engages in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially.
3. **Competition Commission of India** is a body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition in India. It was established on 14 October 2003. It became fully functional in May, 2009.



INTEXT QUESTIONS 29.3

1. Name any two Acts which provide redressal in Unfair Trade Practices.
2. What are anti-competitive agreements?

29.4 COMPETITION COMMISSION OF INDIA

Competition Commission of India is a body of the Government of India responsible for enforcing The Competition Act, 2002 throughout India and to prevent activities that have an adverse effect on competition in India. It was established on 14 October 2003. It became fully functional in May, 2009

The Competition Commission of India performs the following functions:

- Make the markets work for the benefit and welfare of consumers.
- Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.
- Implement competition policies with an aim to effectuate the most efficient utilization of economic resources.
- Develop and nurture effective relations and interactions with sectoral regulators to ensure smooth alignment of sectoral regulatory laws in tandem with the competition law.

- Effectively carry out competition advocacy and spread the information on benefits of competition among all stakeholders to establish and nurture competition culture in Indian economy.



INTEXT QUESTIONS 29.4

1. Who is responsible for enforcing the Competition Act, 2002?
2. Mention any two functions of the Competition Commission of India.



Do you know

The Competition Act, 2002 has repealed the MRTP Act!!!



WHAT YOU HAVE LEARNT

- Unfair practices may be categorized as under:
 - False representation;
 - False offer of bargain price;
 - Non-compliance of prescribed standards;
 - Free gifts offer and prize schemes; and
 - Hoarding, destruction, etc.
- **Anti Competitive Agreements** - Anti-competitive practices are practices that prevent or reduce competition in the market. *Agreements in respect of Production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements.*
- **The Abuse of Dominant Position** - Abuse of a dominant position occurs when a dominant firm in a market, or a dominant group of firms, engages in conduct that is intended to eliminate or discipline a competitor or to deter future entry by new competitors, with the result that competition is prevented or lessened substantially.



TERMINAL QUESTIONS

1. What is the full form of MRTP Act?
2. Is it true that the Competition Commission of India is a body of the Government?



Notes



3. Define Unfair Trade Practice?
4. When did the Competition Act become fully functional?
5. Describe the main functions of the Competition Commission of India.

**ANSWERS TO INTEXT QUESTIONS****29.1**

1. True
2. False
3. True
4. False

29.2

1. When a specific person or enterprise is the only supplier of a particular commodity a 'Monopoly' exists
2. Yes. This is an unfair trade practice.
3. The Competition Act, 2002

29.3

1. The Consumer Protection Act, 1986 and the Competition Act, 2002.
2. Agreements in respect of Production, supply, distribution, storage, acquisition or control of goods or provision of services that cause or are likely to cause appreciable adverse effects on competition within India are anti-competitive agreements.

29.4

1. The Competition Commission of India (CCI)
2. Two functions of the Competition Commission of India
 - a) Make the markets work for the benefit and welfare of consumers, and
 - b) Ensure fair and healthy competition in economic activities in the country for faster and inclusive growth and development of economy.



CONSUMER DISPUTES REDRESSAL AGENCIES

When we have any complaint regarding the goods or things we buy we approach the Consumer Courts for ‘redressal’. These are the Courts for filing complaints against the traders and companies which have supplied either a wrong or faulty product like a mobile phone or air conditioner or have given a bad or deficient service like delaying that important courier which did not reach in time.

The Consumers Protection Act, 1986 enacted by Parliament, protects the interests of consumers in India. It makes provisions for the establishment of Consumer Councils and other authorities for the settlement of consumers’ disputes and matters connected therewith.

Consumer Dispute Redressal Agencies have been established at three different levels. At the district level, there is a District Consumer Disputes Redressal Forum (DCDRF), which is also known as ‘District Forum’. At the State level there is a State Consumer Disputes Redressal Commission (SCDRC), which is also known as ‘State Commission’. At the National level, a ‘National Consumer Disputes Redressal Commission (NCDRC) has been established by the Central Government. It is also known as ‘National Commission’. It is a National level Court that works for the whole country and entertains complaints where the value of the goods or services and compensation, if any, claimed, exceeds one crore. It also hears and decides appeals against the orders or ‘award’ of State Commissions.



OBJECTIVES

After studying this lesson you will be able to:

- understand the meaning of term ‘Redressal’;
- ‘define ‘Consumer Courts’;

MODULE - VIIB

Law Relating to Consumer Protection and Right to Information



Notes

Consumer Disputes Redressal Agencies

- identify the various types of Consumers Disputes Redressal Agencies;
- explain the Jurisdiction of District Forum, State Commission and National Commission; and
- Discuss New Developments in the field of Consumers Dispute Redressal.

30.1 WHAT IS CONSUMER REDRESSAL?

‘Redressal’ means a remedy for the loss suffered by consumers like us.

The word ‘REDRESSAL’ means a ‘REMEDY’. These Forums (Courts) award compensation to the consumer if the manufacturer or the trader or the service giver is at fault. So, anyone who has suffered a loss can claim compensation, i.e., some amount of money based on the loss incurred by the consumer. For example, if the manufacturer does not give a new handset, the manufacturer can be compelled to repay the money and also in some cases special amount of money for the inconvenience caused due to the faulty product.

The Consumer Protection Act, 1986 has provision for establishing these Redressal Agencies/Courts. There can be more than one ‘District Forum’ in a District if the State Government notifies about it. These Courts are presided over by the judge and there are two other members. The number of members and the appointment of Judge as the President of the Forum is slightly different for District, State and National Forums.

One more interesting thing about these Courts is they can file a complaint as per the value of the product and this is generally *called pecuniary value in legal language*.



INTEXT QUESTIONS 30.1

1. Define the term ‘Consumer Redressal’.
2. Give one word for ‘Redressal’.
3. Which Act provides for Consumer Redressal?
4. Can there be more than one District Forum in a District?
5. Who presides over the District Consumer Forums?

30.2 WHAT ARE CONSUMER COURTS?

Do you know what are ‘Consumer Courts’? They are Courts for filing complaints against the traders and companies which have given either a wrong or faulty product like a mobile phone, or have given a bad service like delaying that important courier which did not reach in time.

Three Types/Levels of Consumer Courts

These Courts (*Consumer Disputes Redressal Agencies*) are of three types/levels:

- ***National Consumer Disputes Redressal Commission (NCDRC): A National Level Court***
- ***State Consumer Disputes Redressal Commission (SCDRC): A state level court***
- ***District Consumer Disputes Redressal Forum (DCDRF): A district level court***

Let us call these as ‘National Commission’, ‘State Commission’ and ‘District Forum’ respectively, in short.

For a person who is buying a TV right now at some shop or mall, these special type of Courts provide protection in case of any problem in the item or good/product/service. The process of filing a Complaint in a Consumer Court is very simple and extremely cheap as even common people like us can do it without any need of a lawyer or paying heavy fee.

**INTEXT QUESTIONS 30.2**

1. Define a ‘Consumer Court’.
2. Name the Consumer Court at District level.
3. Name the Consumer Court at National level.

**Do you know**

These Forums are nothing but Courts and have judges to decide disputes relating to consumers.

30.3 CONSUMER DISPUTES REDRESSAL AGENCIES – DISTRICT, STATE AND NATIONAL LEVEL

You know that our country is divided into areas based on the geographical location. There are three types or levels of consumer courts in the country. These are – District Consumer Disputes Redressal Forum (DCDRF), State Consumer Disputes Redressal Commission (SCDRC) and National Consumer Disputes Redressal Commission (NCDRC). Every Court can take a complaint only upto

**Notes**



Notes

a certain value. For example **the District Forum can take a complaint of upto 20 lakhs**. It means the **pecuniary jurisdiction** of the District Forum is upto 20 lakh rupees. The next level (State Commission) takes a higher value and the next level (National Commission) takes even higher without any limit.

It is worth mentioning here that 'Forum' and 'Commission' referred to above are nothing but Courts for the purposes of consumer complaints.

So it flows like this:



So, based on location and the pecuniary value one can file a complaint at the appropriate 'Forum'. Apart from that, the next higher 'Forum'/'Commission' takes appeals from the lower 'Forum'.

District, State and National Level

District Consumer Disputes Redressal Forum (DCDRF): The District Consumer disputes Redressal Forum (DCDRF) which is also known as the 'District Forum', is established by the concerned State Government in each District of the State. The State Government may establish more than one District Forum in a district. It is a district level Court that deals with cases valuing upto twenty lakhs.

State Consumer disputes Redressal Commission (SCDRC): The State Consumer Disputes Redressal Commission (SCDRC) which is also known as 'State Commission', is established by the State Government concerned in the State. It is a State level Court for the redressal of consumer's disputes. It decides cases exceeding rupees twenty lakhs but not exceeding rupees one crore.

National Consumer Disputes Redressal Commission (NCDRC): The National Consumer Disputes Redressal Commission (NCDRC) which is also known as 'National Commission' is established by the Central Government. Consumer's disputes exceeding rupees one crore.



INTEXT QUESTIONS 30.3

1. What is the pecuniary jurisdiction of District Forum?
2. For filing a complaint against the mobile company which of the following will you go to?

1. District Forum
 2. State Commission
 3. National Commission
3. Mention the three levels at which these Forums/Commissions work.
 4. Where does appeal from State Commission go to?
 5. Where does appeal from District Forum go to?

30.4 NEW DEVELOPMENTS IN THE FIELD

‘Mercedes’ Benz fined

One of the world’s oldest and leading luxury car manufacturer, ‘Mercedes Benz’ has been slapped a fine of Rs 2 lakhs for selling a used demo car as new to a customer in Chennai.

According to the National Consumer Disputes Redressal Commission, “Selling of used demo car without the knowledge of the customer amounts to an unfair trade practice within the Consumer Protection (CP) Act.”

Justice R K Batta, NCDRC Bench said,

“Any false representation of rebuilt, second- hand, renovated, reconditioned or old goods as new goods, for the purposes of promoting sale thereof, amounts to an unfair trade practice and the victim deserves to be compensated.”

30.4.1 Airtel asked to Pay

Airtel was directed to pay Rs 10,000 as compensation to one of its customers for providing faulty Internet connection. The East District Consumer Disputes Redressal Forum said the telecom company had provided deficient service to its customer, a Delhi-based lawyer.

30.4.2 Cadbury ordered to pay Rs 30,000 to man who found a pin in chocolate

A consumer court in Tripura has ordered **Cadbury India Ltd** to pay a compensation of Rs 30,000 to a complainant who found an iron pin inside a chocolate bar made by the company.

“A man purchased a ‘Cadbury Chocolate’ on Dec 16, 2011, for his three-year-old daughter and found an iron pin inside the bar when the girl tried to eat it. Subsequently, he filed a complaint before a Consumer Forum,” a food department official told reporters here.





Notes

“After conducting a hearing, the West Tripura District Consumer Disputes Redressal Forum last week ordered Cadbury India Ltd to pay a compensation of Rs 30,000 to the complainant within a month.”

The ‘Forum’, which in its judgment said the chocolate was hazardous, also asked the chocolate company to pay Rs 1,000 to the complainant towards the cost of litigation.



INTEXT QUESTIONS 30.4

1. Can you think of any one product which you bought in the last few months which was defective? If yes, name it.
2. Give two cases in which the Consumer Courts directed to pay compensation for supplying faulty goods or articles.



WHAT HAVE YOU LEARNT

- The word ‘Redressal’ means a ‘Remedy’ for the loss suffered by consumer. There are ‘Consumer Disputes Redressal Agencies at District, State and National Level. These are called District Consumer Disputes Redressal Forum (DCDRF), State Consumer disputes Redressal Commission (SCDRC), and the National Consumer Disputes Redressal Commission (NCDRC) respectively.
- The District Consumer Disputes Redressal Forum (DCDRF), which is commonly known as ‘District Forum’ has the jurisdiction to entertain consumer’s complaints where the value of the goods or services and the compensation, if any claimed, does not exceed rupees twenty lakhs.
- The State Consumer Disputes Redressal Commission (SCDRC), which is also known as State Commission, has the jurisdiction to entertain complaints where the value of the goods or the services and the compensation, if any, claimed does not exceed rupees one crore. The ‘State Commission’ can hear and decide the appeal against the orders of District Forum within the district.
- The National Consumer Disputes Redressal Commission (NCDRC) which is commonly known as ‘National Commission’, has the jurisdiction to entertain complaints where the value of the goods or services and compensation, if any exceeds rupees one crore. The ‘National Commission’ has also the jurisdiction to hear and decide the appeals against the ‘award’ or orders of the ‘State Commission’.

- There have been some new developments in this field. One of the world's oldest leading luxury car manufacturer 'Mercedes Benz' has been slapped a fine of two lakhs for selling a used demo car as new to a customer in Chennai (Tamilnadu). The National Commission' observed this amounts to unfair trade practice and the victim deserves to be compensated.

Similarly, 'Airtel' was directed to pay Rs 10,000 as compensation to a customer for providing faulty Internet connection.



TERMINAL QUESTIONS

1. Define the term 'Consumer Redressal'.
2. What is the 'remedy' for a 'faulty product' which is not replaced?
3. Name the three levels of Consumer Redressal Agencies provided in Consumer Protection Act, 1986.
4. Discuss the main provisions of Consumer Protection Act, 1986.
5. Explain in brief the various redressal agencies provided in the Consumer Protection Act, 1986.
6. Discuss any two cases which have been decided in favour of the consumers.



ANSWERS TO INTEXT QUESTIONS

30.1

1. 'Redressal' means a 'Remedy' for the loss suffered by consumers like us and this is provided by Consumer Forums/Commissions.
2. 'Remedy'
3. Consumer Protection Act, 1986
4. Yes
5. Judge

30.2

1. These are the Courts for filing complaints against the traders and companies which have supplied a wrong or faulty product like a mobile phone or have given a bad or deficient service like delaying an important courier which did not reach in time..



Notes



Notes

2. District Consumer Disputes Redressal Forum (DCDRF)
3. National Consumer Disputes Redressal Commission (NCDRC)

30.3

1. 20 lakh rupees (upto)
2. District Forum
3. (i) District Forum (ii) State Commission (iii) National Commission
4. National Consumer Disputes Redressal Commission (NCDRC)
5. State Consumer Disputes Redressal Commission (SCDRC)

30.4

1. Air Conditioner (LG) 1.5 Ton capacity
2. (i) One of world's oldest and leading luxury car manufacturer, 'Mercedes Bens' has been slapped a fine of two lakhs for selling a used demo car.
(ii) 'Airtel' was directed to pay Rs 10,000 as compensation to a customer as compensation for providing faulty intrnet connection.

**31****CONSUMER ACTIVISM**

We have, so far, learnt that there are three different Forums, one each at the National, State and District level and these are classified on the basis of territory and pecuniary value of the complaint.

Alia lives in East Delhi and therefore, she can file a complaint in the Delhi Consumer Court situated in East Delhi. If she is not satisfied with the judgement, she can go to the next higher level i.e., State Commission located in Delhi. The next appeal can go to the National Forum. Most of the small cases are decided at the district level itself and, therefore, preferring an appeal may not be required. All the awareness about consumer goods and services creates a check on the unscrupulous tradesmen and the defective products which we do not want and which we never purchased.

**OBJECTIVES**

After studying this lesson, you will be able to:

- understand the meaning of the term ‘Consumer Activism’;
- appreciate the significance of Consumer Movement in India;
- define the Objectives, Goals and Tactics of Consumer Movement in India;
- learn how to file a Complaint Petition for defective goods; and
- know how to file a Complaint Petition for deficient services;

31.1 WHAT IS CONSUMER ACTIVISM?

The ‘Consumer Movement’ in India as a social force originated with the necessity of protecting and promoting the interests of consumers against unethical and ‘unfair trade practices’. Rampant food shortages, hoarding and the like gave birth to the ‘Consumer Movement’ in an organised form in the year 1960.



The movement succeeded in bringing pressure on the Government. A major step in this direction was taken in 1986 with the enactment of the 'Consumer Protection Act, 1986'.

Consumer Activism is activism undertaken on behalf of consumers, to assert consumer rights.

**INTEXT QUESTION 31.1**

1. Define 'Consumer Activism'.
2. In which year the Consumer Protection Act was enacted?
3. Whom does the CPA, 1986 protect?

31.2 CONSUMER MOVEMENT IN INDIA

Three elements are necessary for the ideology of a Consumer Movement. These are: identity, opposition and totality. Identity is the self and collective identity of the members of the Consumer Movement. Opposition is the identification and description of the adversary. Totality is the indication that the objectives will be achieved through struggle.

Consumer activists are those leading the consumers in the conflicts with producers, selling agencies etc. Consumers Activists do not only target producers and selling agencies, but also seek to elevate the awareness of consumers collectively with the purpose of altering consumer culture.

The 'Consumer Movement', as a social force, originated in India with the necessity of protecting and promoting the interests of consumers against unethical and unfair trade practices. Rampant food shortages, hoarding and the like gave birth to the Consumer Movement in an organised form in the year, 1960. The movement succeed in bringing pressure on the Government. A major step was taken in 1986.

The Parliament of India passed the Consumer Protection Act (CPA) 1986 with the aim to protect the interest of consumers in India. This Act makes provisions for the establishment of consumer councils and other authorities for the settlement of consumers' disputes and for such other matters connected therewith.

Under the Consumer Protection Act, 1986, consumer protection councils have been established at National State and District level with the object to increase consumer awareness.

Consumer Disputes Redressal Agencies i.e. District Consumer Disputes Redressal Forum (DCDRF), State Consumer Disputes Redressal Commission (SCDRC), also known as 'State Commission' and the National Consumer Disputes Redressal Commission (NCDRC) have been established under the provisions of the Consumer Protection Act, (CPA) 1986 for the redressal of consumers' disputes and for matters connected therewith.

**Notes****INTEXT QUESTION 31.2**

1. List the main reasons for the origin of Consumer Movement in India.

31.3 CONSUMER ACTIVISM – OBJECTIVES, GOALS AND TACTICS

The main aim of 'Consumer Activism' is that the State should protect the interests of consumers against unethical and unfair trade practices.

Goals include making quality goods and better services available to consumers. The ideal goal is to protect consumer's right to question the quality and standards of purchased goods.

Consumer activists tactics may include boycotts, petitioning the producer and seller of goods, government, media activism and organising 'interest groups'.

**INTEXT QUESTION 31.3**

1. Explain the goals, objectives and tactics of Consumer Movement in India.

31.4 COMPLAINT PETITIONS

In Consumer Courts (quasi judicial consumer disputes redressal bodies), formed under the Consumer Protection Act, 1986 a consumer can seek redress for his/her grievance, relating to defective goods or deficient services. Sample complaint petitions for both the cases are given here. These are just for illustration only. The exact contents of the petition will depend on the facts of the case. Assuming that the pecuniary loss suffered is less than Rs. 20 lakhs, these petitions have been made as applicable to a District Forum. In case the value of loss is more, the petition has to be changed accordingly, as applicable to a State Consumer Disputes Redressal Commission or the National Consumer Disputes Redressal Commission.



Notes

31.4.1 Sample Complaint Petition for ‘Defective Goods’

Case Example:Mr. ‘X’ purchases a mixer grinder from ‘M/s Y & Co.’ operating in the same town, in December 2012. Even within the warranty period of 1 year the grinder fails. ‘M/s Y & Co.’ fails to rectify the defect. The manufacturer ‘M/s Z Ltd.,’ was also unable to rectify the mixer grinder. Frustrated, Mr. ‘X’ finally approaches the District Forum.

31.4.2 Sample Complaint Petition for Defective Goods

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL FORUM, <NAME OF THE DISTRICT>

Consumer Dispute Case No/20 <Year of filing>

A Petition under Section-11 of Consumer Protection Act
and

In the matter of

Mr. ‘X’

<Address of Mr. ‘X’> Complainant

vs.

1. Proprietor,
M/s ‘Y & Co.’
<Address of Y & Co.>

2. Managing Director,
M/s ‘Z’ Ltd.,
<Address of Z>Opposite Parties(O.P.)

To

Hon’ble President and
Members of District Forum
<Name of District>

May it please your honours

This complaint petition is being filed on behalf of Mr. ‘X’,<Address of ‘X’>, referred hereafter as Complainant, and is as follows

1.0 That this Complaint Petition is being filed under Sec. 2(1)(b)(i) of the Consumer Protection Act, 1986.

2.1 That the opposite party No. 1 is engaged in the business of selling Consumer **durables** like refrigerator, TV, Mixer Grinder, etc. **to the public for a consideration**, apart from other activities. (Description about the O.P.)

2.2 That the Opposite Party No. 2 is the manufacturer of 'A' brand mixer grinders and other electrical household gadgets and that the mixer grinders of O.P. No. 2 are sold in retail by O.P. No. 1. (Description about the O.P.)

(Narration of the incident)

3.1 That on 26th December 2012 (date of purchase), the complainant purchased one 'A' brand Mixer Grinder, SI. No.....(Details about the equipment purchased) manufactured by O.P. No. 2 from the show room of O.P. No. 1, vide Cash memo No...(Cash memo /Cash receipt No.), a photocopy of the said document is furnished at Arenexure - I.

Annexure

3.2 That the mixer grinder abruptly stopped functioning (Nature of problem encountered) on 8th January 2013 (when)

and the matter was immediately reported to O.P. No. 1. As per his advice the defective mixer grinder was handed over in their Service Centre, on 9th January 2013. A photocopy of the Service Centre receipt is furnished at Annexure - II.

3.3 That the mixer grinder was returned back after rectification on 24th January 2013.

3.4 That the mixer grinder was put to use on 25th January 2013. After running hardly for 5 minutes, the mixer grinder once again totally failed.

3.5 That the Complainant immediately reported the matter to O.P. No. 1 and also complained to O.P. No. 2. Copy of the letter is furnished at Annexure - 111, (Furnish important relevant documents.)

3.6 That as per the advice of O.P. No. 1 the defective Mixer Grinder was once again handed over to their Service Centre on 30th January 2013. There was inordinate delay in rectifying the defect by O.P. No. 1. In April 2013 O.P. No. 2 advised O.P. No. 1 to replace the Mixer Grinder, Copy of the said letter is furnished at Annexure - IV.

3.7 That the O.P. No. 1 did not bother to honour the directive of O.P. No. 2 and till date the Complainant is suffering due to non-availability of the Mixer Grinder.



Notes

**Notes**

4.0 That the O.Ps had supplied defective good and they have to make good the losses suffered by the complainant.

PRAYER

In view of the submissions contained in the preceding paragraphs, the complainant most respectfully prays to the Hon'ble Forum to direct the Opposite Parties to

- (a) refund the cost of the Mixer Grinder, Rs. <Cost> along with 18% interest;
- (b) pay a sum of Rs. 10,000/- towards the physical strain and mental agony suffered by the complainant and his family members (compensation); and
- (c) pay a sum of Rs. 1,000/- towards cost of this petition (Cost);

for which act of kindness, the complainant shall, as is duly bound, ever pray.

Signature

(X) (Name)

Complainant

**INTEXT QUESTIONS 31.4**

1. Draft a complaint petition against the supply of defective goods.

**31.5 SAMPLE COMPLAINT PETITION AGAINST
RENDERING DEFICIENT SERVICES****31.5.1**

CASE Example : Mr. 'X' invests a sum of money with 'M/s Y & Co.', a NBFC (Non Banking Finance Company), operating in the same town, in December 2011. The deposit matures in December 2012, but the Company fails to honour its commitment. It does not pay the dues. Frustrated, Mr. 'X' finally approaches the District Forum.

31.5.2 Sample Complaint Petition against Rendering 'Deficient Services'

BEFORE THE DISTRICT CONSUMER DISPUTES REDRESSAL
FORUM, <NAME OF THE DISTRICT>

Consumer Dispute Case No...../20 <Year of filing>

A petition under Section-11 of Consumer Protection Act, 1986

and

In the matter of

Mr. 'X'

<Address of Mr. 'X'>Complainant

Vs.

Chairman & Managing Director

'M/s Y & Co.'

<Address of 'Y & Co.'> Opposite Party

To

Hon'ble President and

Members of District Forum

<Name of District>

May it please your honour

This complaint petition is being filed on behalf of Mr. X,<Address of X>, referred hereafter as Complainant, and is as follows

1.0 That this Complaint Petition is being filed under Sec. 2 (1)(b)(i) of the Consumer Protection Act, 1986

2.0 That the opposite **party** is a NBFC, engaged in the business of accepting deposits from the public, apart from other activities. (Description about the O.P.)

(Narration of the incident)

3.1 That on 26th December 2011 (date of deposit), the complainant deposited a sum of Rs (amount deposited with the O.P.,) for a period of 1 year, vide Fixed Deposit receipt No....., a photocopy of the said document is furnished at Annexure - I.

3.2 That the F.D. matured on 25th December 2012 and the Complainant approached the office of the O.P., on 26th December 2012, for encashing the FD. But the staff of the Company, on some some pretext or the other delayed making the payment (Nature of problem encountered). Hence the Complainant wrote to the O.P., requesting his immediate intervention. A photocopy of the said letter is furnished at Annexure - II. But the Complainant has not been paid his dues till date.



Notes



Notes

3.3 That the non-payment of the maturity value of FD, by the O.P., on the scheduled date, amounts to deficiency in service as defined under sec. 2(1)(g) of the Consumer Protection Act.

4.0 That the O.P. has inflicted enormous amount of mental agony and financial loss on the Complainant and his family.

PRAYER

In view of the submissions contained in the preceding paragraphs, the complainant most respectfully prays to the Hon'ble Forum to direct the Opposite **Party** to

- (a) pay the maturity value of the fixed deposit, Rs along with 18 % interest;
- (b) pay a sum of Rs. 10,000/- towards the physical strain and mental agony suffered by the complainant and his family members (compensation); and
- (c) pay a sum of Rs. 1,000/- towards cost of this petition (Cost);

for which act of kindness, the complainant shall, as is duty bound, ever pray.

Signature

(X) (Name)

Complainant

AFFIDAVIT

I,..... Son of,

and residing at

do hereby solemnly affirm and declare as under

1. That the facts stated in the complaint petition paras to in Vs. being filed before the Hon'ble (District Consumer Disputes Redressal Forum (, Place) /State Consumer Disputes Redressal Commission(, State)/ National Consumer Disputes Redressal Commission, New Delhi are true to the best of my knowledge and based on the records maintained by me, which I believe to be true.

Deponent

Verification

Verified at <Place>, on this day of <Month> <Year> that the contents of the above affidavit are true and correct to the best of my knowledge and belief.

Deponent**Note:**

1. The Affidavit has to be sworn before the Notary, on a Rs. 10/- non-judicial stamp paper.
2. The details of Place, State, Month, Year are to be filled as per actual.
3. Complainant or Appellant is the Deponent.

**INTEXT QUESTIONS 31.5**

1. Draft a sample complaint petition for rendering 'deficient services'.

**WHAT YOU HAVE LEANT**

- 'Consumer Activism' is activism undertaken on behalf of consumers, to assert consumer rights. The Consumer Protection Act (CPA) was enacted in the year. 1986 to protect the interests of consumers against unethical and unfair trade practices.
- The main reasons for the origin of Consumer Movement in India were rampant food shortages, hoarding and the like. The necessity of protecting and promoting the interests of consumers against unethical and unfair Trade practices were other important reasons for the origin of Consumer Movement in India.
- The Consumer Courts (Quasi-judicial consumer disputes redressal bodies), formed under the Consumer Protection Act, (CPA) 1986. A consumer can seek redress for his/her grievance, relating to 'defective goods' or 'deficient services'.
- The Consumer Protection Act, 1986 is an Act passed by the parliament in 1986 with the aim to protect the interest of consumers in India. It makes provisions for the establishment of Consumer Councils and other authorities for the settlement of consumers disputes and for matters connected

**Notes**

**Notes**

therewith. Under this Act, Consumer Protection Councils have been established at National, State and District level with the object to increase consumer awareness.

- Consumer Disputes Redressal Agencies i.e. District Consumer Dispute Redressal Forum (DCDRF), State Consumer Disputes Redressal Commission (SCDRC) also known as State Commission and National Consumer Disputes Redressal Commission (NCDRC) have been established under the provisions of this Act for the redressal of consumers' disputes and for matters connected therewith.
- Sample Complaint Petitions for the redressal of disputes relating to (i) supply of 'defective goods' and (ii) for rendering 'deficient services' to the consumer have been drafted in this lesson for the benefit of learners.

**TERMINAL QUESTIONS**

1. Define 'Consumer Activism'.
2. Discuss briefly the Objectives, Goals and Tactics of Consumers' Movement in India.
3. Explain the significance of Consumers' Movement in India.
4. Draft a sample Complaint Petition for the supply of 'Defective Goods'.
5. Draft a sample Complaint Petition for 'Deficient Services'.

**ANSWERS TO INTEXT QUESTIONS****31.1**

1. 'Consumer Activism' is activism undertaken on behalf of consumers to assert consumers rights.
2. The Consumer Protection Act was enacted in the year 1986.
3. The Consumer Protection Act (CPA), 1986 protects the interests of consumers against unethical and unfair trade practices.

31.2

1. The main reasons for the origin of consumer movement in India were rampant food shortages, hoarding and the like. The necessity of protecting

and promoting the interests of consumers against unethical and unfair trade practices were the other reasons for the origin of 'Consumer Movement' as a social force.

31.3

1. The goals of consumer movement in India are as follows:
 - (i) providing better goods
 - (ii) providing better services

The main objective is that the state should protect the interests of consumers against the unethical and unfair trade practices.

Consumer activist tactics may include boycotts, petitioning the producers of products government media activism and organising interest groups.

31.4

1. Refer to 'Sample Petition' at 31.4.2

31.5

1. Refer to 'Sample Petition' at 31.5.2

**Notes**

INTRODUCTION TO LAW

SAMPLE QUESTION PAPER

Time: 3 Hours

Maximum Marks: 100

1. 'कानून' की कोई एक परिभाषा लिखिए।
Write any one definition of 'Law'. 2
2. उन परिस्थितियों का परीक्षण कीजिए, जिनके कारण पारसी समुदाय को भारत की स्थानीय प्रथाओं को अपनाना पड़ा।
Examine the circumstances that made "Parsis" to adopt the local Customs of Inda. 2
3. न्याय-पंचायतों में महिलाओं तथा सामाजिक दृष्टि से पिछड़े वर्गों का आरक्षण कहां तक उचित है?
How far is the reservation for women and socially backward classes in the Panchayats justified? 2
4. अधिष्ठायी कानून से क्या अभिप्राय है?
What is meant by Substantive Law? 2
5. 'सार्वजनिक कानून' की परिभाषा लिखिए।
Define Public Law. 2
6. विधिक सेवाएं प्राधिकरण अधिनियम, 1987 के अंतर्गत गठित किन्हीं दो प्राधिकरणों के नाम लिखिए।
Name any two Authorities constituted under the Legal Services Authorities Act, 1987. 2
7. यह कहना कहां तक उचित है कि प्रस्तावना भारतीय संविधान का एक भाग नहीं है?
How far is it correct to say that Preamble is not a part of the Indian Constitution? 2
8. भारतीय संविधान के अनुच्छेद 20 के अंतर्गत 'जीवन तथा निजी स्वतंत्रता का अधिकार' अपराधों के लिए दोषी पाए जाने पर किस प्रकार सुरक्षा प्रदान करता है?
How does Right to life and Personal Liberty under Article 20 provide protection in respect of conviction for offences? 2
9. साधारण विधेयक तथा वित्त (धन) विधेयक में अंतर स्पष्ट कीजिए।
Distinguish between an Ordinary Bill and a Money Bill. 2
10. लोकसभा की कौन-सी दो शक्तियां उसे राज्यसभा से अधिक शक्तिशाली बना देती हैं?
Which two powers of Lok Sabha more powerful than Rajya Sabha? 2

11. पर्यावरण के संरक्षण की आवश्यकता क्यों अनिवार्य है?
 अथवा
 उपभोक्ता अथवा संरक्षण अधिनियम, 1986 में संशोधन क्यों किया गया?
 Why is the need for protection of environment very essential?
 Or
 Why was the Consumer Protection Act, 1986 amended? 2
12. विश्व की विभिन्न न्याय प्रणालियों को वर्गीकृत कीजिए तथा उनमें से किन्हीं दो की व्याख्या कीजिए।
 Classify the different Legal System of the World and explain any two of them. 4
13. संवैधानिक उपचारों के अधिकार के अंतर्गत आने वाले किन्हीं दो 'लेखों' या 'परमादेशों' की, एक-एक उदाहरण देकर व्याख्या कीजिए।
 Explain any two "Writs" under the Right to Constitutional Remedies with an example for each. 4
14. दंड के विभिन्न सिद्धांतों की व्याख्या कीजिए।
 Explain the various theories of punishment. 4
15. "विवाचन को पारंपरिक मुकदमेबाजी से पहले वरीयता दी जाती है।" क्या आप इस कथन से सहमत हैं? किन्हीं दो उपयुक्त तर्कों द्वारा अपने उत्तर की पुष्टि कीजिए।
 "Arbitration is preferred over traditional litigation". Do you agree with this statement? Support your answer with suitable arguments. 4
16. किन्हीं चार उपयुक्त उदाहरणों की सहायता से राज्य के नीति निदेशक सिद्धांतों का आकलन कीजिए।
 Assess the implementation of Directive Principle of State Policy giving any four examples to support your answer. 4
17. "जनहित याचिका (पी.आई.एल.), कानूनी सहायता आंदोलन का एक रणनीतिक हथियार है, जिसका उद्देश्य न्याय को गरीब जनता की पहुंच तक लाना है।" जनहित याचिका के अंतर्गत सर्वोच्च न्यायालय द्वारा किन्हीं दो मामलों में दिए गए निर्णयों के उदाहरण देकर, इस कथन को तर्कसंगत ठहराइए।
 "The Public Interest Litigation (PIL) is a strategic arm of the legal aid movement which is intended to bring justice within the reach of the poor masses." Justify the statement giving examples of any two cases decided by the Supreme Court of India under Public Interest Litigation. 4
18. केंद्रीय प्रदूषण नियंत्रण बोर्ड के किन्हीं चार प्रमुख कार्यों को सूचीबद्ध कीजिए।
 अथवा
 'व्यवसाय अथवा व्यापार में अपनाई जाने वाली अनुचित गतिविधियों' से क्या अभिप्राय है? गतिविधियों की ऐसी अनुचित व्यापारिक किन्हीं तीन श्रेणियों का उल्लेख कीजिए।

Sample Questions

List any four main functions of the Central Pollution Control Board.

Or

What is meant by Unfair Trade Practices? Mention any three categories of Unfair Trade Practices. 4

19. प्रदूषण मुक्त पर्यावरण के लिए खतरनाक कचरे का प्रबंधन कैसे किया जा सकता है?

अथवा

व्यवसाय/ व्यापार में अपनाई जाने वाली किन्हीं दो गलत और अनुचित गतिविधियों के उदाहरण दीजिए, जिनका निदान किसी 'उपभोक्ता विवाद निपटान आयोग/ फोरम' द्वारा किया गया हो। दिए गए निर्णयों का उल्लेख भी कीजिए।

How can the hazardous wastes be handled for a pollution free environment?

Or

Cite any two leading cases of 'Unfair Trade Practice' decided by different Consumer Disputes Redressal Commission/Forums alongwith the verdicts given. 4

20. पारितंत्र को ध्यान में रखते हुए, सतत-पोज़णीय विकास से संबद्ध किन्हीं चार क्षेत्रों को विशेष ध्यान देने की आवश्यकता है और क्यों?

अथवा

भारत में उपभोक्ता आंदोलन को जन्म देने वाली परिस्थितियों का परीक्षण कीजिए।

Keeping into mind the diversity of the eco system, which four areas involved under Sustainable Development need special attention and why?

Or

Examine the circumstances which led to the origin of Consumer Movement in India. 4

21. 'रिवाज' (प्रथा) की परिभाषा लिखिए। इसकी किन्हीं चार अनिवार्यताओं की पहचान कीजिए।

Define 'Custom' and identify any four 'essential' of a 'Custom'. 6

22. प्रत्येक का एक-एक उदाहरण देकर निम्नलिखित शब्दों को स्पष्ट कीजिए-

- (क) आर्थिक पूर्वाग्रह
- (ख) विषय-वस्तु पूर्वाग्रह
- (ग) विभागीय पूर्वाग्रह

Explain the following terms giving at least one example in each case

- (a) Pecuniary Bias
- (b) Subject Matter Bias
- (c) Departmental Bias

6

23. सर्वोच्च विधि-निर्माण तथा अधीनस्थ विधि निर्माण में अंतर स्पष्ट कीजिए। अधीनस्थ विधि-निर्माण के किन्हीं चार रूपों की व्याख्या भी कीजिए।

Differentiate between Supreme Legislation and Subordinate Legislation. Also explain any four forms of Subordinate Legislation. 6

24. शिकायत दाखिल करवाने से लेकर निर्णय सुनाए जाने तक, दीवानी मामलों के विभिन्न चरणों की व्याख्या कीजिए।
Explain the various stages through which a 'Civil Suit' passes starting from its filing to the delivery of Judgement. 6

25. भारतीय राज्य के किन्हीं तीन प्रमुख लक्षणों का वर्णन कीजिए, जो स्वयं इसकी प्रकृति को उजागर करते हैं।
Describe any three main characteristic of the Indian State which highlight the nature of the State itself. 6

26. उन तीन विशिष्ट परिस्थितियों का उल्लेख कीजिए, जिनके चलते भारत के राष्ट्रपति आपातकाल की घोषणा कर सकता है। यह घोषणा प्रत्येक परिस्थिति को कैसे प्रभावित करती है?
Mention the three extra-ordinary situations under which the President of India can proclaim emergency. How does this proclamation affect each situation. 6

27. पर्यावरण की गुणवत्ता के संरक्षण तथा सुधार से संबंधित 'प्रदूषणकर्ता द्वारा क्षतिपूर्ति सिद्धांत' की भूमिका का मूल्यांकन कीजिए।

अथवा

भारत में उपभोक्ताओं के अधिकारों के संरक्षण के लिए 'उपभोक्ता सक्रियतावाद' की भूमिका का मूल्यांकन कीजिए।
Evaluate the role of the 'Polluter Pays Principle' towards protecting and improving of the quality of environment.

Or

Evaluate the role of 'Consumer Activism' in protecting the rights of the consumers in India. 6

MARKING SCHEME

SAMPLE QUESTION PAPER

1. Austin – According to Austin Law is a body of Rules laid down by political superiors to political inferiors. In other words body of command by a sovereign to his inferiors and the sovereign is Supreme.

Salmond – Principles recognized and applied by the State in the administration of Justice.

(Any one)

Or any other definition.

$2 \times 1 = 2$

2. Paris adopted the local 'customs' of India because,
- (i) they were allowed to stay in India, at the time of their first arrival on the condition that they would follow India's local customs of the place where they were allowed to settle.
 - (ii) they were not temporary settlers. So, they adopted local customs due to long settlement in India and gave respect to the local customs.

$1 + 1 = 2$

3. The reservation for women and socially backward classes in the Naya Panchayats will have the path for equal opportunity in every person regardless of their caste and fair dispensation of justice.

$2 \times 1 = 2$

4. Substantive Law deals with the legal relationship between subjects (individuals) or the subject and the State. It is Statutory Law that defines and determines the rights and obligations of the citizens to be protected by law.

$2 \times 1 = 2$

5. The public law deals with societal problems in the broad context.

$2 \times 1 = 2$

Public law governs relationship between the State with its citizens and also relationship between the individuals directly concerning the society.

(Any one)

$2 \times 1 = 2$

6. (i) State Legal Services Authority

(ii) District Legal Services Authority

$2 \times 1 = 2$

7. In the famous Beribari Case, Hon'ble Supreme Court held that the Preamble is not a part of the Constitution.

However, in Keshwanand Bharti case the Supreme Court held that the Preamble was as much a part of the Constitution as any other provision, therein.

$2 \times 1 = 2$

8. Article 20 deals with protection in respect of conviction of offences in the following manner:

(i) No person can be convicted for any offence except for violation of a law in force at the time of the commission of the act.

(ii) No person can be prosecuted for the same offence more than once.

(iii) No person accused of any offence can be compelled to witness against himself.

(Any two)

$2 \times 1 = 2$

9. The Bills that deal with money matters, financial obligations, revenue and expenditure etc. are called Money Bills. On the other hand, all non-money bills are called Ordinary Bills. $2 \times 1 = 2$

10. Lok Sabha is more powerful than Rajya Sabha:

(i) Money Bill can only be introduced in Lok Sabha.

(ii) The No Confidence Motion can be used by Lok Sabha members only and not by Rajya Sabha.

$2 \times 1 = 2$

11. The human beings as well as animals need clean food and water. Therefore, it is essential to protect the ecosystem that makes our survival possible. In case, we do not stop pollution, it is sure that the world will come to an end.

Or

The Forum established under the Consumer Protection Act, 1986 (CPA) had become clogged with pendency of cases, effective compliance was difficult to monitor and very. Hence, the amendment made in CPA addressed these issues. $2 \times 1 = 2$

12. (i) **Common Law System:** 'Common Law' is the name of family of different Legal System of the world which follow common features and Traits albeit with small deviations.

Common Law system has influenced the development of many Legal System of the world such as India, England, U.S.A, Canada and Australia.

(ii) **Continental Legal System:** The Legal System followed by the countries in the mainland of Western Europe which is commonly referred as 'Continent' is known as 'Continental Legal System.

The origin of Continental Legal System can be traced to the old age Roman Empire of the 5th Century A.D. Now you can find this system present in many countries of Southern America and parts of Africa.

(iii) **Social Legal System:** An important Legal System which has influenced the development of many other legal systems of the world is called 'Socialist Legal system'. This legal system was adopted by those countries which have started following Socialist and Marxist philosophy especially after the First World War of 1914. Some other countries which have adopted this system are Cuba, North Korea, Mongolia, Ukraine, Kazakhstan and Uzbekistani.

Socialist Legal System has been influenced by Common Law System and Continental Law System.

(iv) **Legal System among International Institutions and Countries** – Inter-SE or International Legal System: The International Legal System which is a new phenomenon has taken birth in the twentieth century especially after the First World War. You can say that without an International Legal System in place there cannot be possibility of International Peace and Security.

This Legal System which regulates the relations among Community of Nations, can be understood by four specific examples : (a) Role of Treaties (b) United Nations (c) European Union and (d) SAARC.

(Any two systems to be explained)

$2 + 2 = 4$

Sample Questions

13. *Writ of 'Habeas Corpus'*: Habeas Corpus means “to have the body”. It is in the nature of an order calling upon a person who has unlawfully detained another person to produce the latter before the court.

Example – “A” has been unlawfully detained by a person “B”. A writ of ‘Hebeas Corpus’ can be filed under Article–226 in the concerned High Court.

Writ of Mandamus: Mandamus literally means “Command”. It is thus an order of Superior Court commanding a person holding a public office or a public authority (including the Government) to do or not to do something, in the nature of public duty.

Example – A police officer not filing FIR of a victim can be directed by the Superior Court to file a FIR and take suitable action on the complaint so lodged. $2 + 2 = 4$

14. Theories of punishment

- (i) *Deterrent Theory* is commensurate with the gravity or serious nature of the offence.
- (ii) *Preventive Theory*: As per this theory punishment is given to the offender with a view to prevent the repetition of the offence.
- (iii) *Retributive Theory*: Here the punishment is based on the principle of the retribution i.e. life for life or eye for eye or tooth for tooth. It is abort of barbaric punishment.
- (iv) *Reformatory Theory*: It aims at reforming the criminals so that they may be prevented from committing crimes again. $4 \times 1 = 4$

15. Yes, I agree with this statement because of

- (i) Arbitration is less expensive than traditional litigation.
- (ii) It provides faster resolution of disputes.
- (iii) It provides Justice in an expeditious manner. (Any Two Argument) $2 \times 2 = 4$

16. Assesment of DPSP

- (i) Land reforms introduced by the government to abolished the zamindari system and helped in the equal distribution of land.
- (ii) Through 73rd Constitution Amendment 1992, the Constitutional obligation stated in Article 40, was fulfilled by introducing three tier Panchayati Raj System.
- (iii) Central Government sponsored schemes like PMGSY,MRHM etc are being implemented to fulfil the social sector responsibility.
- (iv) Various programme to provide health and nutritional support to the women and children i.e. maternity relief, mid-day meal etc.

Though many DPSP have been implemented still a lot has to be done. $4 \times 1 = 4$

17. *The cases that justify the Statement:*

- (i) The first reported case of PIL in 1979
Focussed on the inhuman conditions of prisons and under trial prisoners

It was filed by an advocate

After the proceedings 40,000 undutrials were released

(ii) Another case was

Bandhna Mukti Morcha v/s Union of India to the cause of release of bonded labourers. After the enquiry was conducted, the Supreme Court ordered the released and rehabilitation of all bonded labourers.

2 + 2 = 4

18. *Functions of Central Pollution Control Board:*

- (i) To promote cleanliness of streams and wells in different areas of the States by prevention, control and abatement of water pollution.
- (ii) To improve the quality of air and to prevent control or abate air pollution.
- (iii) To advise the Central Government any matter concerning prevention and control of water and air pollution.
- (iv) To provide technical assistance and guidance to the State Boards. (Or any other function)

4 × 1 = 4

Or

Unfair Trade Practice means a trade practice or a business practice which, for the purpose of promoting the sale, use or supply of any goods or the provision of any service, adopts any unfair method or unfair or deceptive practice.

Categories:

- (i) False Representation
- (ii) False offer of 'bargain price'
- (iii) Free gift offer and prize scheme.

1 + 3 = 4

19. Any hazardous substance which is present in our surrounding and may harm our environment has to be dealt with carefully:

- (i) First of all it, should be identified along with the generating industry.
- (ii) After data collection through surveys, the hazardous waster should be characterized in the laboratory.
- (iii) Sites should be identified for treatment, storage and disposal of such substances.
- (iv) Implementation of treatment storage and final disposal should be done.

4 × 1 = 4

Or

Mercedes Beaz Case

One of the World's oldest and leading luxury car manufacturers Mercedes Benz was slapped a fine of Rs. 2 lakhs for selling a used a demo car as new to a customer in Chennai.

Verdict

In its verdict, the National Consumer Disputes Redressal Commision said "selling of used demo cars without the knowledge of the customer amounts to an Unfair Trade Practice with the Consumer Protection Act.

Sample Questions

Article

Article was directed to pay Rs 10,000 as compensation to one of its customers for providing faulty interest connection.

Verdict

The East Distt. Consumer Dispute Redressal Forum Delhi, in its Verdict said “The telecom company had provided deficient service to its customer a Delhi-based Lawyer and hence, directed to pay Rs. 10,000 as compensation. 2 + 2 = 4

20. Most important areas

- (i) Preservation of biological diversity in terrestrial, freshwater and marine system.
- (ii) Sustainable use of resources and minimizing the depletion of resources.
- (iii) Conservation of natural capital both for renewable and on-renewable resources.

If special attention is not paid to the above mentioned four areas, the life on earth will be in danger and difficult to survive.

All the area are so interlinked that we cannot afford to neglect them. 2 + 2 = 4

Or

The ‘Consumer Movement’ in India, has a social cause, originated under the following circumstances:

- (i) Necessity of protecting and promoting the interest of consumers against unethical and unfair trade practices.
- (ii) Rampant food shortages
- (iii) Hoarding and artificial scarcity of goods/products
- (iv) Settlement of consumer disputes and any other such matters.

(Or any other relevant point.)

4 × 1 = 4

21. Custom – ‘Custom’ denotes rules of habitual conduct within a community. Uniformity of conduct in like circumstances is the hallmark of a ‘Custom’.

Essentials of a Customs:

- (a) Antiquity
- (b) Continuance
- (c) Reasonableness
- (d) Obligatory character
- (e) Certainty
- (f) Consistency
- (g) Uniformity
- (h) Conformity with Statute Law and Public Policy.

(Any four to be explained)

2 + 4 = 6

22. (i) Pecuniary Bias: The Judicial approach is unanimous and decisive on the point that any financial interest however, small it may be, would vitiate administrative action. The disqualification will not be avoided by non-participation of the biased member in the proceeding if he/she was present.

Example – The Supreme Court in a case of quashed the decision of the ‘Text-Book Selection Committee’ because some of the Members of the committee were also authors of books which were considered for selection when the decision was reached.

- (ii) Subject Matter Bias : Such cases fall within this category where the deciding officer is directly, or otherwise involved in the Subject matter of the case here again mere involved would not vitiate the administrative action unless there is a real likelihood of bias.

Example – In a case of Supreme Court quashed the decision of the Andhra Pradesh Government nationalizing road transport on the ground that the Secretary of the Transport Department who gave hearing was interested in the Subject matter.

- (iii) Departmental Bias: The problem of ‘Departmental Bias’ is something which is inherent in the administrative process, and if it is not effectively checked it may negate the very concept of fairness in the administrative proceedings.

Example – In a case, the Supreme Court quashed the notification of the Government which had conferred powers of a Deputy Commissioner of Police on the General Manager, Haryana Roadways in the matters of inspection of Vehicles on the ground of ‘Departmental Bias.’ $3 \times 2 = 6$

23. *Supreme Legislation* is said to be supreme when it is proceeded from the supreme or sovereign power of the Parliament and State Legislatures.

Subordinate Legislation is that which proceeds from any authority other than the Supreme Authority. It is made under the powers delegated to it.

Forms of Subordinate Legislation

- (i) Executive
- (ii) Judicial
- (iii) Municipal
- (iv) Autonomous
- (v) Colonial

(Any four) $2 + 4 = 6$

24. A Civil suit passes through the following stages:

- (i) Filing of Complaint or case;
- (ii) Issuing Summons to the opposite party;
- (iii) Appearance of ‘defendant’
- (iv) Framing of issues;
- (v) Recording of evidence;
- (vi) Arguments; and
- (vii) Judgement or Delivery of Judgement.

(Any six stages)
 $6 \times 1 = 6$

Sample Questions

25. *Characteristics of Indian State:*

- (i) Liberal Democratic State
- (ii) Federal State
- (iii) A welfare State
- (iv) Caste-ridden Society
- (v) Multi-religious Society

(Any three to be described)

$3 \times 2 = 6$

26. *Extra-ordinary situations* for the proclamation of Emergency

- (i) When the security is threatened by war or external aggression or armed rebellion.
- (ii) When it becomes difficult or not possible for the Govt. of a State to work or function in accordance with the Constitution or breaking down of Constitutional machinery in a State or imposition of President's Rule.
- (iii) When the financial stability of the country is threatened.

Effect

- (i) The federal character of the country becomes Unitary and the power of the Union Government increases.
- (ii) The President/Governor on his/her behalf assumes all the functions of the State Government.
- (iii) The President can ask the State to reduce salaries.

(Or any other effect)

$3 + 3 = 6$

27. The 'Polluter Pays Principle' has been enacted to make the party responsible for producing 'pollution' to pay for the damage done to the natural environment. For example if a factory produces a potentially poisonous substance as a by-product, it should be held responsible for its safe disposal.

But the ground reality is completely different. The case comes to light only after pollution has actually taken place or the damage has already been done. If the 'Polluter Pays Principle' is applied at this stage, its role will prove to be limited in the sense that it can be applied only at the remedial state i.e. after the pollution has already taken place.

It means one may 'pay' and 'pollute' .

(Or any other opinion)

$6 \times 1 = 6$

Or

The 'Consumer Activism' has succeeded in bringing pressure and in applying a check on the unfair trade practices in India.

It has also been successful in protecting and promoting the interest of consumers against unethical and unfair trade practices.

'Consumer Activism' has also helped in creating an awareness about the consumer goods and services.

It has also succeeded in bringing the unscrupulous tradesman to books.

It has also helped the consumer movement in achieving its goals.

$6 \times 1 = 6$

QUESTION PAPER DESIGN

Subject: Introduction to Law

Level: Senior Secondary

Maximum Marks: 100

1. Weightage to Objectives

Objective	Marks	Percentage
Knowledge	24	24
Understanding	50	50
Application	26	26
Total	100	100

2. Weightage to Question

Types of Questions	No. of Questions	Marks of Each Question	Total
Long Answer	7	6	42
Short Answer	9	4	36
Very Short Answer	11	2	22
Total	27		100

3. Weightage to Major Content Areas:

Units	Marks
1. Concept of Law	14
2. Functions and Techniques of Law	12
3. Classification of Law	14
4. Indian Court System and Methods of Resolution of Disputes	12
5. The Constitution of India-I	14
6. The Constitution of India-II	14
7A Environmental Law, Role of Citizens, Police and Administration	
7B Law Relating to Consumer Protection and Right to Information	20
Total	100