

Unit 4

Debt and Environment

- Ecological debt refers to the accumulated debt of wealthier countries (from a defined date in the past until present) for having plundered poorer countries by the exploitation of their resources, the degradation of their natural habitat, the beggaring of local people and/or the free occupation of environmental space for waste discharge.
- Within the ecological debt definition, **two** types of aspects are understood: the ecological damage caused over time by a country in one or other countries or to ecosystems beyond national jurisdiction through its production and consumption patterns; and the exploitation or use of ecosystems over time by a country at the expense of the equitable rights to these ecosystems by other countries.
- Environmental debt refers to the accumulation of past environmental impacts of natural resource depletion and environmental degradation, owed to future generations (OECD 2018). The environmental cost accumulation represents an environmental debt. Environmental debt incurred by past generation indicates the responsibility of the current generations for environmental effects that would have to be borne by future generations.
- The WTO has no specific agreement dealing with the environment. However, the WTO agreements confirm governments' right to protect the environment, provided certain conditions are met, and a number of them include provisions dealing with environmental concerns. The objectives of sustainable development and environmental protection are important enough to be stated in the preamble to the Agreement Establishing the WTO.
- The committee's work is based on two important principles: The WTO is only competent to deal with trade. In other words, in environmental issues its only task is to study questions that arise when environmental policies have a significant impact on trade.
- The WTO is not an environmental agency. Its members do not want it to intervene in national or international environmental policies or to set environmental standards. Other agencies that specialize in environmental issues are better qualified to undertake those tasks.
- If the committee does identify problems, its solutions must continue to uphold the principles of the WTO trading system.

WTO and environmental agreements: how are they related?

- ✓ How do the WTO trading system and "green" trade measures relate to each other? What is the relationship between the WTO agreements and various international environmental agreements and conventions?
- ✓ There are about 200 international agreements (outside the WTO) dealing with various environmental issues currently in force. They are called multilateral environmental agreements (MEAs).
- ✓ About 20 of these include provisions that can affect trade: for example they ban trade in certain products, or allow countries to restrict trade in certain circumstances. Among them are the Montreal Protocol for the protection of the ozone layer, the Basel Convention on the trade or transportation of hazardous waste across international borders, and the Convention on International Trade in Endangered Species (CITES).
- ✓ The WTO's committee says the basic WTO principles of non-discrimination and transparency do not conflict with trade measures needed to protect the environment, including actions taken under the environmental

agreements. It also notes that clauses in the agreements on goods, services and intellectual property allow governments to give priority to their domestic environmental policies.

- ✓ The WTO's committee says the most effective way to deal with international environmental problems is through the environmental agreements. It says this approach complements the WTO's work in seeking internationally agreed solutions for trade problems.
- ✓ In other words, using the provisions of an international environmental agreement is better than one country trying on its own to change other countries' environmental policies.
- ✓ The committee notes that actions taken to protect the environment and having an impact on trade can play an important role in some environmental agreements, particularly when trade is a direct cause of the environmental problems.
- ✓ But it also points out that trade restrictions are not the only actions that can be taken, and they are not necessarily the most effective. Alternatives include: helping countries acquire environmentally-friendly technology, giving them financial assistance, providing training, etc.

Transparency: information without too much paperwork

- ✓ Like non-discrimination, this is an important WTO principle. Here, WTO members should provide as much information as possible about the environmental policies they have adopted or actions they may take, when these can have a significant impact on trade. They should do this by notifying the WTO, but the task should not be more of a burden than is normally required for other policies affecting trade.
- ✓ The Trade and Environment Committee says WTO rules do not need changing for this purpose. The WTO Secretariat is to compile from its Central Registry of Notifications all information on trade-related environmental measures that members have submitted. These are to be put in a single database which all WTO members can access.

Eco-labelling: good, if it doesn't discriminate

- ✓ Labelling environmentally-friendly products is an important environmental policy instrument. For the WTO, the key point is that labelling requirements and practices should not discriminate — either between trading partners (most-favoured nation treatment should apply), or between domestically-produced goods or services and imports (national treatment).
- ✓ One area where the Trade and Environment Committee needs further discussion is how to handle — under the rules of the WTO Technical Barriers to Trade Agreement — labelling used to describe whether for the way a product is produced (as distinct from the product itself) is environmentally-friendly.
- ✓ The Trade and Environment Committee is the standing forum dedicated to dialogue between governments on the impact of trade policies on the environment, and of environment policies on trade. Created in 1995, the Committee has followed a comprehensive work programme.
- ✓ Under the Doha Development Agenda, the regular committee is also looking at the effects of environmental measures on market access, the intellectual property agreement and biodiversity, and labelling for environmental purposes.
- ✓ WTO members can adopt trade-related measures to protect the environment and human health and life as long as such measures comply with GATT rules, or fall under the exceptions to these rules. This right has been affirmed by panels and the Appellate Body time and again.

- ✓ In the first case decided by the new WTO dispute settlement body, US — Gasoline, the Appellate Body asserted WTO members' autonomy to determine their own environmental policies.

Environmental Laws-

- ✓ Environmental law is a collective term encompassing aspects of the law that provide protection to the environment. A related but distinct set of regulatory regimes, now strongly influenced by environmental legal principles, focus on the management of specific natural resources, such as forests, minerals, or fisheries. Other areas, such as environmental impact assessment, may not fit neatly into either category, but are nonetheless important components of environmental law.
- ✓ Environmental law has developed in response to emerging awareness of and concern over issues impacting the entire world. While laws have developed piecemeal and for a variety of reasons, some effort has gone into identifying key concepts and guiding principles common to environmental law as a whole.
- ✓ The need for protection and conservation of environment and sustainable use of natural resources is reflected in the constitutional framework of India and also in the international commitments of India. The Constitution casts a duty on every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.
- ✓ Further, the Constitution of India under Part IV stipulates that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.
- ✓ MoEF was established in 1985, which today is the apex administrative body in the country for regulating and ensuring environmental protection and lays down the legal and regulatory framework for the same.
- ✓ Since the 1970s, a number of environment legislations have been put in place. The MoEF and the pollution control boards ("CPCB", i.e., Central Pollution Control Board and "SPCBs", i.e., State Pollution Control Boards) together form the regulatory and administrative core of the sector.

 Some of the important legislations for environment protection are as follows:

- ✓ The National Green Tribunal Act, 2010
- ✓ The Air (Prevention and Control of Pollution) Act, 1981
- ✓ The Water (Prevention and Control of Pollution) Act, 1974
- ✓ The Environment Protection Act, 1986
- ✓ The Hazardous Waste Management Regulations, etc.

The National Green Tribunal Act, 2010

- ✓ The National Green Tribunal Act, 2010 has been enacted with the objectives to provide for establishment of a National Green Tribunal (NGT) for the effective and expeditious disposal of cases relating to environment 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.
- ✓ The Act received the assent of the President of India on June 2, 2010, and was enforced by the Central Government vide Notification no. S.O. 2569(E) dated October 18, 2010, with effect from October 18, 2010.

- ✓ The Act envisages establishment of NGT in order to deal with all environmental laws relating to air and water pollution, the Environment Protection Act, the Forest Conservation Act and the Biodiversity Act as have been set out in Schedule I of the NGT Act.
- ✓ Consequent to enforcement of the National Green Tribunal Act, 2010, the National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997 stand repealed.

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

- ✓ The Air (Prevention and Control of Pollution) Act, 1981 (the "Air Act") is an act to provide for the prevention, control and abatement of air pollution and for the establishment of Boards at the Central and State levels with a view to carrying out the aforesaid purposes.
- ✓ To counter the problems associated with air pollution, ambient air quality standards were established under the Air Act. The Air Act seeks to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating appliances that give rise to air pollution.
- ✓ The Air Act empowers the State Government, after consultation with the SPCBs, to declare any area or areas within the State as air pollution control area or areas. Under the Act, establishing or operating any industrial plant in the pollution control area requires consent from SPCBs.
- ✓ SPCBs are also expected to test the air in air pollution control areas, inspect pollution control equipment, and manufacturing processes.

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

- ✓ The Water Prevention and Control of Pollution Act, 1974 (the "Water Act") has been enacted to provide for the prevention and control of water pollution and to maintain or restore wholesomeness of water in the country.
- ✓ It further provides for the establishment of Boards for the prevention and control of water pollution with a view to carry out the aforesaid purposes. The Water Act prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance.
- ✓ At the Centre, the Water Act has set up the CPCB which lays down standards for the prevention and control of water pollution. At the State level, SPCBs function under the direction of the CPCB and the State Government.
- ✓ Further, the Water (Prevention and Control of Pollution) Cess Act was enacted in 1977 to provide for the levy and collection of a cess on water consumed by persons operating and carrying on certain types of industrial activities. This cess is collected with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. The Act was last amended in 2003.

The Environment Protection Act, 1986

- ✓ The Environment Protection Act, 1986 (the "Environment Act") provides for the protection and improvement of environment.
- ✓ The Environment Protection Act establishes the framework for studying, planning and implementing long-term requirements of environmental safety and laying down a system of speedy and adequate response to situations threatening the environment.
- ✓ It is an umbrella legislation designed to provide a framework for the coordination of central and state authorities established under the Water Act, 1974 and the Air Act. The term "environment" is understood in a very wide term under s 2(a) of the Environment Act. It includes water, air and land as well as the interrelationship which exists between water, air and land, and human beings, other living creatures, plants, micro-organisms and property.
- ✓ Under the Environment Act, the Central Government is empowered to take measures necessary to protect and improve the quality of environment by setting standards for emissions and discharges of pollution in the atmosphere by any person carrying on an industry or activity; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.
- ✓ From time to time, the Central Government issues notifications under the Environment Act for the protection of ecologically-sensitive areas or issues guidelines for matters under the Environment Act.
- ✓ In case of any non-compliance or contravention of the Environment Act, or of the rules or directions under the said Act, the violator will be punishable with imprisonment up to five years or with fine up to Rs 1,00,000, or with both.
- ✓ In case of continuation of such violation, an additional fine of up to Rs 5,000 for every day during which such failure or contravention continues after the conviction for the first such failure or contravention, will be levied.
- ✓ Further, if the violation continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years.

Hazardous Wastes Management Regulations

- ✓ Hazardous waste means any waste which, by reason of any of its physical, chemical, reactive, toxic, flammable, explosive or corrosive characteristics, causes danger or is likely to cause danger to health or environment, whether alone or when in contact with other wastes or substances.
- ✓ There are several legislations that directly or indirectly deal with hazardous waste management. The relevant legislations are the Factories Act, 1948, the Public Liability Insurance Act, 1991, the National Environment Tribunal Act, 1995 and rules and notifications under the Environmental Act. Some of the rules dealing with hazardous waste management are discussed below:
- ✓ Hazardous Wastes (Management, Handling and Trans boundary) Rules, 2008, brought out a guide for manufacture, storage and import of hazardous chemicals and for management of hazardous wastes.
- ✓ Biomedical Waste (Management and Handling) Rules, 1998, were formulated along parallel lines, for proper disposal, segregation, transport, etc, of infectious wastes.
- ✓ Municipal Solid Wastes (Management and Handling) Rules, 2000, aim at enabling municipalities to dispose municipal solid waste in a scientific manner.
- ✓ In view of the short-comings and overlapping of some categories causing inconvenience in implementation of the Biomedical Waste (Management and Handling) Rules, 1998 as well as the Municipal Solid Wastes

(Management and Handling) Rules, 2000, the Ministry of Environment, Forest and Climate Change has formulated the draft Bio-Medical Waste (Management & Handling) Rules, 2015 (Draft BMW Rules) and the draft Solid Waste Management Rules, 2015 (Draft SWM Rules) and sought comments on the draft Rules.

- ✓ The Draft BMW Rules are to replace the Biomedical Waste (Management and Handling) Rules, 1998, and the Draft SWM Rules are to replace the Municipal Solid Waste (Management and Handling) Rules, 2000.
- ✓ The objective of the Draft BMW Rules is to enable the prescribed authorities to implement the rules more effectively, thereby, reducing the bio- medical waste generation and also for its proper treatment and disposal and to ensure environmentally sound management of these wastes, and the Draft SWM Rules aim at dealing with the management of solid waste including its segregation at source, transportation of waste, treatment and final disposal.
- ✓ E - Waste (Management and Handling) Rules, 2011 have been notified on May 1, 2011 and came into effect from May 1, 2012, with primary objective to reduce the use of hazardous substances in electrical and electronic equipment by specifying threshold for use of hazardous material and to channelize the e-waste generated in the country for environmentally sound recycling.
- ✓ The Rules apply to every producer, consumer or bulk consumer, collection centre, dismantler and recycler of e-waste involved in the manufacture, sale, purchase and processing of electrical and electronic equipment or components as detailed in the Rules.
- ✓ Batteries (Management & Handling) Rules, 2001 deal with the proper and effective management and handling of lead acid batteries waste.
- ✓ The Act requires all manufacturers, assemblers, re-conditioners, importers, dealers, auctioneers, bulk consumers, consumers, involved in manufacture, processing, sale, purchase and use of batteries or components thereof, to comply with the provisions of Batteries (Management & Handling) Rules, 2001.

Other Laws Relating to Environment

- ✓ In addition, there are many other laws relating to environment, namely –

The Wildlife Protection Act, 1972

- ✓ The Wild Life (Protection) Act, 1972 was enacted with the objective of effectively protecting the wild life of this country and to control poaching, smuggling and illegal trade in wildlife and its derivatives.
- ✓ The Act was amended in January 2003 and punishment and penalty for offences under the Act have been made more stringent. The Ministry has proposed further amendments in the law by introducing more rigid measures to strengthen the Act.
- ✓ The objective is to provide protection to the listed endangered flora and fauna and ecologically important protected areas.

The Forest Conservation Act, 1980

- ✓ The Forest Conservation Act, 1980 was enacted to help conserve the country's forests. It strictly restricts and regulates the de-reservation of forests or use of forest land for non-forest purposes without the prior

approval of Central Government. To this end the Act lays down the pre-requisites for the diversion of forest land for non-forest purposes.

- ✓ The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, recognises the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over the forest areas inhabited by them and provides a framework for according the same.
- ✓ The Indian Forest Act, 1927 consolidates the law relating to forests, the transit of forest-produce and the duty leviable on timber and other forest-produce.

Public Liability Insurance Act, 1991

- ✓ The Public Liability Insurance Act, 1991 was enacted with the objectives to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance.
- ✓ The Act applies to all owners associated with the production or handling of any hazardous chemicals.

The Biological Diversity Act, 2002

- ✓ The Biological Diversity Act 2002 was born out of India's attempt to realise the objectives enshrined in the United Nations Convention on Biological Diversity (CBD), 1992 which recognises the sovereign rights of states to use their own Biological Resources.
- ✓ The Act aims at the conservation of biological resources and associated knowledge as well as facilitating access to them in a sustainable manner. The National Biodiversity Authority in Chennai has been established for the purposes of implementing the objects of the Act.

Coastal Regulation Zone Notification

- ✓ The Ministry of Environment and Forests had issued the Coastal Regulation Zone Notification vide Notification no. S O. 19(E), dated January 06, 2011 with an objective to ensure livelihood security to the fishing communities and other local communities living in the coastal areas, to conserve and protect coastal stretches and to promote development in a sustainable manner based on scientific principles, taking into account the dangers of natural hazards in the coastal areas and sea level rise due to global warming.

IPR (Intellectual Property Right)and Environment

- ✓ Intellectual property (IP) is a category of property that includes intangible creations of the human intellect.
- ✓ Intellectual property rules fundamentally affect the quality and availability of innovative ideas and products, and are therefore extremely important in achieving sustainable development, ensuring human health, and protecting the environment.
- ✓ It is a well-established fact that developing countries are rich in the world's flora and fauna and 80 percent of the earth's terrestrial biodiversity is confined to these countries, which is the "raw material" for biotechnology, i.e., genes, folk varieties, land races to develop new varieties by biotechnology.
- ✓ Until the advent of molecular biology and genetic engineering, the success of plant breeding depended on access to genetic variability within a species. The developed countries are not rich in biogenetic resources but are better equipped in research and development.
- ✓ They use the biogenetic resources accessed from the developing countries. As a result, there is a beginning in the unprotected flow of genetic information from the developing countries to the capital-rich west, and a protected flow in the reverse direction mainly through patents and Plant Breeders' Rights (PBR).

- ✓ It has both visible and invisible impacts. Genetic erosion is one of the most important invisible impacts that is in the long run manifested visibly with the loss of biodiversity.
- ✓ Three main views have been expressed in the Trade and Environment Committee. A group of developing countries, with wide support from other developing countries, have reiterated their proposal on amending the TRIPS(Trade related aspects of Intellectual Property rights) Agreement to require patent applications to disclose the source of biological materials (and any traditional knowledge) used in the inventions. The aim is twofold:
 - 1) To avoid patents being issued for inventions that are not genuinely new (“erroneous patents”)
 - 2) To help ensure that inventors have complied with countries’ regulations on receiving permission to access the biological resources and on sharing the benefits with the owners of those resources
- ✓ Some others take the view that the case has not been made and that such a proposal is either necessary or appropriate in achieving the shared objectives in this area, which can be most effectively realized in other ways without involving the patent system.
- ✓ In between these two positions, support has been expressed for a more limited patent disclosure requirement at the international level, restricted to the origin or source of genetic material and related traditional knowledge and without substantive implications for patentability.
- ✓ Plant variety protection is to provide an effective system for protection of Plant varieties and rights of farmers and plant breeders. To recognize the farmers in respect of their contributions.
- ✓ The term of protection:
 - For trees and Vines- 18 Years
 - For Other crops- 15 YearsProvisions are governed by the protection of plant variety and farmers’ rights Act 2001 and Rules 2003 notified by the department of Agriculture.

PIL – Public Interest Litigation

- ✓ Public interest litigation (PIL) refers to litigation undertaken to secure public interest and demonstrates the availability of justice to socially-disadvantaged parties
- ✓ Public interest litigation is the use of the law to advance human rights and equality, or raise issues of broad public concern. It helps advance the cause of minority or disadvantaged groups or individuals.
- ✓ Public interest cases may arise from both public and private law matters. Public law concerns the various rules and regulations that govern the exercise of power by public bodies.
- ✓ Private law concerns those cases in which a public body is not involved, and can be found in areas such as employment law or family law.
- ✓ Public interest litigation is most commonly used to challenge the decisions of public authorities by judicial review. Judicial review is a form of court proceeding in which a judge reviews the lawfulness of a decision or action, or a failure to act, by a public body. Judicial review is concerned with whether the law has been correctly applied, and the right procedures have been followed.
- ✓ The value of public interest litigation. Public interest litigation can:
 - Clarify the law.

- Hold public bodies to account by ensuring that they make appropriate decisions, act fairly and transparently and within the remit of their powers.
- Help develop the law by giving judges the opportunity to interpret legislation.
- Give vulnerable people a voice by highlighting an important issue and providing a platform for advocating for their rights.
- Raise awareness of important issues encouraging public debate and media coverage.

✓ **Who, when and why?**

- The Indian Constitution allows any public-spirited person, NGO or a public interest law firm to file a case on behalf of a group of persons whose rights are affected. The court can also act on its own motion.
- A PIL must be filed against government authorities, but private parties can also be included as co respondents. Cases in which a PIL can be filed include:
 - Environmental degradation;
 - Violation of basic human rights of the poor;
 - Content or conduct of government policy;
 - To compel municipal authorities to perform a public duty;
 - Violation of religious rights or other basic fundamental rights.
- The aim of the Environmental Public Interest Litigation (EPIL) is to assist the general public in voicing out their complaint on environmental issues.
- This new approach on environmental is used to enable the public, volunteers, private sectors and other stakeholders participate and make decisions regarding the protection of their environment, natural resources from pollution and ecosystem destruction.



IMPORTANCE OF PIL

- Public interest litigation provides a wider interpretation to the right to equality, life and personality which is guaranteed under part III of the Constitution of India. It has also introduced some types of reliefs or remedies under the writ jurisdiction.
- It also functions as an effective instrument to bring changes in the society or social welfare. Through public interest litigation, any public or person can seek remedy on behalf of the oppressed class by introducing a PIL.
- Non-Governmental Organization is a broad term, which includes charity organizations, advisory committees and various other professional organizations. NGOs in India are spread across the country and they have close contacts with communities.
- They are involved in the whole spectrum of developmental activities from creating environmental awareness to undertaking watershed development: from disaster management to sustainable livelihoods; from joint forest management to giving inputs to policies. They range from clubs, which encourage nature camping to agencies, which undertake research and monitoring.
- NGOs are now playing an important role in framing the environmental policy, mobilizing public support for environmental conservation, and protecting the endangered species of forests and animals. Environmental organizations such as Earth watch and Sea Shepherd Conservation Society have been successful in creating awareness about the environmental dangers in using drift nets in the commercial fishing industry.