

## **CHAPTER – 6**

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## **CHAPTER- 6**

***"Every human has a fundamental right to an environment of quality that permits a life of dignity and well-being"***

*United Nations Conference on the Human Environment, Stockholm*

### **1. A Preview**

The quality of the environment has been deteriorating steadily over the past few decades as a result of rapid industrialisation and parallel growth in urbanisation. Ambient standards of air, water and soil pollution are routinely exceeded with potentially disastrous consequences. India being a developing country, this problem tends to become more severe everyday with the ever increasing number of industries. In India, as in the rest of the world, the past two decades have witnessed a dramatic rise in environmental concern.

The Government of India has adopted various measures for conservation, upgradation and protection of the environment. India is an original signatory to the solemn declaration of the United Nations conference held in Stockholm on 'Human Environment' in the year 1972. This 'Declaration' acts as an eye-opener to mankind and the people of the world on the essential and imperative need to protect the environment. The issue of protection of the environment and sustainable use of natural resources has received due attention in our planning process in the early seventies. The Fourth Five Year Plan (1968-73) gave explicit recognition for integrating environmental dimensions into the planning and development processes. A full-fledged Ministry of Environment & Forests was constituted in 1985 to oversee these functions at the National level. The steps taken up by the Government to curb the pollution problem in India have been discussed in this section. India, being a developing country, adopted various measures and enacted

various laws for, conservation, up-gradation and protection of the environment and controlling environmental pollution. The success of all these laws depends upon proper implementation. The successfulness or otherwise of the environmental laws with reference to their objectives have been discussed on a theoretical and practical basis in this chapter. Under the present regulatory regime, the authorities responsible for the implementation of environmental laws are also facing some difficulties and constraints, a reference has also been made in this respect. Whether the legislations are properly serving its purpose for which it was designed or enacted by the parliament and achieving its objectives or not, have been discussed in this chapter. In relation to non-implementation of laws what is the role and responsibility of the courts in discharging judicial function have also been discussed in this chapter.

India is the first country in the world, which has provided for constitutional safeguards for the protection and preservation of the environment. In the constitution of India, specific provisions for the protection of environment have been incorporated by the Constitution (42 amendment) Act, 1976. Now, it is an obligatory duty of the State and every citizen to protect and improve the environment. The Directive Principles of State Policy contain specific provisions enunciating the State commitment for protecting the environment. Furthermore, duties of the citizens towards environment are contained in Article 51-A (g). This constitutional mandate has also been strengthened and reflected in various judicial decisions by adopting and applying a range of to guide the development of environmental jurisprudence.

Thus, up to 25 years after independence, India did not have any specific legislation on any of the field of environment. Although there are more than two hundred legislations in India which have some bearing on environmental protection, but in most cases environment concern is

incidental.<sup>1</sup> For example, the Fisheries Act 1897 prohibited destruction of fish by use of explosive or poisoning. In the fourth five year plan an environmental approach was adopted and the Water (Prevention and Control of Pollution) Act 1974 was passed and again in 1977 the Water (Prevention and Control of Pollution) Cess Act was passed. Nation wide deforestation necessitated forest conservation and the Forest (Conservation) Act 1980 was enacted. Then in 1981 the Air (Prevention and Control of Pollution) Act was passed. The Acts provided for establishment of Pollution Control Boards at the Central and State Level by the Governments. The Boards were empowered to exercise various powers under the Acts including advice to the respective Governments on appropriate sites for new industries. But they do not have any power to give directions to the Governments rather they are bound by the directions of the Governments. By the year 1986 an umbrella legislation, i.e. the Environment (Protection) Act was passed with a view to maintain a co-ordination among all environmental laws and Central and State Governmental agencies. 1990s witnessed fresh legislation dealing with insurance cover for hazardous industries.

The success of all these laws depends on proper implementation. An analysis of the working of the environmental legislations in India is necessary. In the *CRZ Notification case*,<sup>2</sup> the court said that tolerating infringement of an enacted law is worse than not enacting it at all. The theme of the 1990s Supreme Court judgements is poor implementation of laws.

The constitutional provisions are implemented through various environmental protection laws of the country. India has a large body of laws and regulations governing the environment. These include laws enacted by Central and State Governments as well as an increasing

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1. Govt. of India, Department of Science and technology, Report of the Tiwari Committee, 1980.

2. *Indian Council for Enviro-legal Action vs. Union of India* 1996 (5) SCC 281.

body of judicial decision's affecting industrial activities that generate pollution. Further, there are more than 200 statutes that have a bearing on environmental matters in India. However, the major legal provisions made in India are summarized below.

## **2. Working of the present Environmental legislations:**

### **A. The Water (Prevention and Control of Pollution) Act 1974**

**(amended in 1978 and 1988):-** The Water Act is a comprehensive legislation providing for the Prevention and Control of Water Pollution and for maintaining or restoring the wholesomeness of water in streams or wells. The Act provides for the establishment of the Central Pollution Control Board at the Centre and State Pollution Control Boards in the respective States. The functions of the Central Board at the national level are to (i) Advise the Central Govt. on matters relating to prevention and control of water pollution. (ii) Coordinate the activities of the State Board and resolve disputes among them (iii) Provide technical assistance and guidance to the State Boards (iv) Carry out and sponsor research and investigation in the problems of water pollution (v) Set the standards for streams and wells. (vi) Create environmental awareness and (vii) Act as State Board for the Union Territories.

State Board has executive and territorial functions which include (i) Planning for prevention, control or abatement of pollution of streams and wells (ii) Advise the State Govt. on matters relating to water pollution (iii) Inspection of sewage or industrial effluent, including municipal wastewater treatment plants for the treatment of sewage or trade effluents (iv) Setting standards for the sewage and industrial effluents discharge. There is a provision of joint boards for two or more contiguous States. In case of dispute between two State Boards, the Central Board has authority to arbitrate.

Important provisions in the Water (Prevention and Control of Pollution) Act, 1974 (As amended In 1978 And 1988) are Pollution Control Board (PCB) has the right to obtain any information regarding

the construction, installation or operation of an industrial establishment or treatment and disposal system, to take samples of trade effluent for the purpose of analysis in the prescribed manner, to enter and inspect any industrial establishment, record, register, document or any other material object, to prohibit use of stream or sewer or land for disposal system without prior consent of the PCB, Restriction on establishment and the operation of any industry process or any treatment and disposal system without prior consent of the PCB. PCB's right to refuse or withdraw consent, for discharge of effluents. Industry to comply with the conditions stipulated in the consent. PCB's to grant consent within four months after the date of receipt of the application complete in all respects. Industry to appeal to the Appellate Authority, in case of grievances against the order passed by the PCB regarding grant, refusal or withdrawal of the consent within the specified time in the prescribed manner. Industry to furnish information to the PCB and other specified agency in case of discharge of poisonous, noxious or polluting matter into a stream, sewer or land, occurred or likely to occur resulting in pollution due to an accident or any other unforeseen event. PCB's right to issue orders restraining or prohibiting an industry from discharging any poisonous, noxious or polluting matter in case of emergencies, warranting immediate action. PCB's have power to make an application to the court for restraining likely disposal of polluting matter in a stream or on land. Bar of jurisdiction in civil court in respect of any matter under purview of the Appellate Authority constituted under the Act and no grant of injunction in respect of any action taken or proposed in pursuance of the Act. (xi) Bar on filing of any suit or legal proceedings against the Government or Board officials, for action taken in good faith in pursuance of the Act. (xii) PCB's to make inquiries, in the prescribed manner, for grant of consent for discharge of effluents. PCB's power to issue directions for the closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation of supply

electricity, water or any other service to industry in the prescribed manner. (xiv) Industry to comply with the directions of the PCB within the specified time PCB's to maintain a consent register containing particulars of the consent issued and to provide access to industry at all reasonable hours. The water Act was enacted for the purpose of prevention and control of pollution of water. The State Government is empowered under section 19 of the Act to exercise overriding power to exempt certain areas from the operation of the Act but no guideline to follow such power has been given. Under section 24 (2) also the Act granted exemption of holder of easementary, customary and other right from the operation of the Act. More over, with a view to ensure economic development, the Government has been given discretionary power in application of the provisions of the Act to identified pollution prone areas.

One of the lacunas of the Water Act is that it does not provide specifically for the control of ground water pollution or control of dumping of waste on the land, which may eventually pollute underground water. The British Control of Pollution Act 1974 provided that it is unlawful to discharge into underground strata by means of well, bore hole or pipe, any trade effluent or sewage except with the consent of the river authority. In India the Water Act defines stream which means underground water. Therefore, in an indirect way ground water is included. The Amendment Act 1978 prohibited discharge of poisonous, noxious, or other polluting matter not only into any stream or well but also into sewer or on land. Only after this amendment, dumping of polluting matters which may eventually pollute water came to be regulated. Now the Pollution Control Board can take appropriate measures against pollution of ground water.

***B. The Water (Prevention and Control of Pollution) Cess Act, 1977 (Amended in 1991):-*** The Water Cess Act provides for the levy of a cess on water consumed by persons carrying on specified industries given in

Schedule-I of the Act and also local authorities entrusted with the duty of supplying water under the laws by or under which they are constituted at the rates specified in Schedule-II of the Act. The Cess is levied and collected by the State Government concerned and credited to the consolidated Fund of India. An industry which installs and operates its effluent treatment plant is entitled to a rebate of 25% on the cess payable. The cess has been introduced mainly to augment the resources of the Central and the State Pollution Control Boards.

**C. The Air (Prevention and Control of Pollution) Act 1981:-**The Air Act was enacted by Parliament under Article 253 of the constitution invoking the Central Government's power to make law for implementing decisions taken at international conferences.<sup>3</sup> The Act provides for the setting up of Central / State Boards for prevention and control of Air Pollution, however, Section 4 of the Act stipulates that in any State in which the Water (Prevention and Control of Pollution) Act, 1974 is in force and the State Government has constituted a State Pollution Control Board, that State Board shall be deemed to be the State Board for the prevention and control of air pollution. For Union Territories the Central Pollution Control Board is empowered to perform the functions of a State Pollution Control Board under the Act. The State Governments in consultation with their respective State Boards are empowered to declare air pollution control areas. As per the provisions of the Air Act no person can establish or operate any industrial plant in an air pollution control area without obtaining the consent from the concerned State Board. The Air Act was enacted on the line of the provisions of the Water Act. The Central and State Pollution Control Boards created under the Water Act carry out the functions of the Board, envisaged under the Air Act. The Air Act requires under section 19 all the

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3. *Preamble of the Act states that it represents an implementation of the decisions taken at the UN Conference on Human Environment held at Stockholm in 1972.*

industries to obtain consent certificate from the State Pollution Control Board. The State Governments are required to prescribe emission standard and ambient air quality standard after consulting the Central Pollution Control Board for industries. This made the State Board more subordinate and taken away the force of enforcement.

The penalties prescribed by the Act are also minimal and more profitable to the industries to pay the fine rather than to implement environmental clean up measures. Mensrea is also made essential for prosecution under the Act which is a source to avoid liability. Under section 25, a person will be liable for the act if it is committed knowingly, willfully. The managers avoid liability through this loophole and lower level employees come under the net. However, the amendment in 1988 empowered the State Board to close down the defaulting units of industries or stop supply of water, electricity and initiate criminal proceedings against them. But the Board does not have the power to restrain activities already polluting environment. Only it can bring injunction from the court.<sup>4</sup> The rules under the Acts also have not served to achieve the purpose of the Act because they purely administrative and incidental matters.<sup>5</sup>

**D. The environment (Protection) Act 1986:-** The provisions under this Act are to take all necessary measures for protecting the quality of environment, to plan and execute a nationwide programme for the prevention, to control and abatement of environmental pollution, to lay down standards for discharge of environmental pollutants. Empower any persons to enter, inspect, to take samples and test. Establish or recognise environmental laboratories, to Appoint or recognise government analysts to Lay down standards for the quality of environment, to Restrict areas in which any industries, operations,

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4. Section 33 Water Act and Section 22 A Air Act.

5. Vandana Pai, "Environmental Regulation and the Industry" 2 IJEL 2002 p -74.

processes may not be carried out or shall be carried out subject to certain safeguards to Lay down safeguards for prevention of accidents and take remedial measures in case of such accidents to Lay down procedures and safeguards for handling hazardous substances, to Constitute an authority or authorities for exercising its powers to Issue directions to any person, officer or authority including the power to direct closure, prohibition or regulation of any industry, operation or process or stoppage or regulation of supply of electricity, water or any other service. It confers powers on persons to complain to the courts regarding any violation of the provisions of the Act, after a notice of 60 days to the prescribed authorities.

The Central Government is empowered to take action under the provision of the Environment (Protection) Act, 1986. Powers under Section 5 of the Environment (Protection) Act, 1986 have been delegated by the Central Government to States and Union Territories. Rules have been framed and agencies / authorities have been notified under specific sections for carrying out specific functions. These include *Environmental Statement* All those carrying on an industry, operation or process requiring consent under Water (Prevention and Control of Pollution) Act, 1974<sup>6</sup> and/or under Air (Prevention and Control of Pollution) Act, 1981<sup>7</sup> (84 of 1981) and or authorization under the Hazardous Waste (Management & Handling) Rules, 1989, are required to submit the Environmental Statement in prescribed 'Form -V', for the Financial Year ending 31<sup>st</sup> March to the concerned State Pollution Control Boards / Pollution Control Committees in the Union Territories on or before 30th September every year. As a reaction to the Bhopal Gas Leak Disaster and the *Shri Ram* case in 1984 and 1985 respectively and strong public opinion, the Government recognized the legislative short

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6. Act 6 of 1974.

7. 84 of 1981.

coming and enacted the Environment (Protection) Act 1986 which is called the Umbrella Legislation because the Act aimed basically at co-ordination between State Government and other authorities to develop nation wide comprehensive program.

Under section 9 of the Act a person in charge of a plant is required to take steps to prevent or mitigate any discharge of an environmental pollutant in excess of the prescribed standard. If a person or company is able to prove that the offence was committed without his knowledge or he exercise due diligence to prevent the commission of such offence no liability arises.<sup>8</sup> Further, cognizance of a case can only be taken only on a complaint filed by the Central Government or its authorized officer<sup>9</sup> which provision narrowed down wide invocation of the provisions of the Act. Empowering affected persons to lodge complaint would help in bringing the defaulting persons to the eye of the authorities and also reduce administrative cost. Under section 3(3) the Government is authorized to constitute an authority to carry out the powers and functions as specified in the Act but so far the Government has not constituted the authority as provided by the Act.

All those carrying on an industry, operation or process requiring consent under Water (Prevention and Control of Pollution) Act, 1974 and/or under Air (Prevention and Control of Pollution) Act, 1981 and or authorization under the Hazardous Waste (Management & Handling) Rules, 1989, are required to submit the Environmental Statement in prescribed 'Form -V', for the Financial Year ending 31<sup>st</sup> March to the concerned State Pollution Control Boards/Pollution Control Committees in the Union Territories on or before 30th September every year.

**E. The Public Liability insurance Act 1991:-** A gap was felt to give immediate relief to the victims of accidents and environmental

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8. Section 18 EPA

9. Section 19 EPA

catastrophe while handling hazardous substances, and to fill up the gap the Public Liability Insurance Act 1991 was passed which combined enviro-health protection and social security to the effected persons. This is an Act to provide for Liability Insurance for the purpose of providing immediate relief to the persons affected by accidents occurring while handling hazardous substances. The Act casts on the person, who has control over handling any hazardous substance, the liability to give the relieves specified in the Act to all the victims of any accident which occurs while handling such substance. It would be the duty of every owner to take necessary insurance policies to discharge his liabilities.

On the principle of no fault liability, the Act under section 3(1), made the owner liable to give such relief as specified in the schedule for death, injury or damage. The claimant shall not be required to establish that the death, injury or damage was due to any wrongful act, neglect or default, of any person. (Section 3 (2)). It is also the liability of the owner to take out insurance policies against liability to give relief under section 3 (1) of the Act.<sup>10</sup> The Public Liability Insurance (Amendment) Act 1992 inserted a provision for establishment of Environmental Relief Fund by the Central Government which shall be utilized for paying relief for the award made by the collector under section 7 of the Act.<sup>11</sup> The Central Government may also constitute an Advisory committee from time to time on the matters relating to the insurance policy under this Act.<sup>12</sup>

**F. The National Environmental Tribunal Act 1995:-** This is an Act 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. This was enacted with a view to giving relief and compensation for damages to

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10. *Section 4 (1).*

11. *Section 7-A*

12. *Section 21.*

persons, property and the environment and for matters connected therewith or incidental thereto. The NET Act 1995 is a comprehensive piece of legislation which deals with disposal of compensation petitions by the victims of environmental accidents. The Act *inter alia* provides for liability to pay compensation, its procedure, composition of tribunal, jurisdiction, penalties, etc. The Act is based on the polluter pays principle as an alternative method of liability to resolve liability.

The Public Liability Insurance Act 1991 and the NET Act both provide for relief only against accidents arising out of handling hazardous substances. The Act empowered the Central Government to establish a national tribunal at New Delhi to entertain applications for compensation, hold inquiry, and make award determining the quantum of compensation to be paid with the power to grant interim award. Section 19 of the Act imposes a bar on all civil courts to entertain any application for any claim of compensation. An award made by the Tribunal under the Act may be challenged before the Supreme Court or High Court under Article 226 and 227 of the constitution.

**G. The Indian Forest Act 1927:-** Being a British Colonial law, the Indian forest Act reflects the exploitative intention of the colonial and feudal society rather than ecological and environmental purpose. The preamble to the Act states that the Act was passed to consolidate the existing law relating to forest produce and the duty leviable on timber. The Act was revenue oriented to regulate dealings with forest produce and levy of duty on timber. The Act divided forest into reserve forest, protected forest and village forest over reserve forest no right could be acquired except by succession or under a grant or contract or by pre-existing rights. Protected forest is not reserve forest. The protected forest and the manner of its use depend upon the notification of the State Government. Some states for example Assam and Tamil Nadu enacted legislations in the past for forest protection even before the central

legislation.<sup>13</sup> There are three categories of forest envisaged under the Act namely, reserved forest, protected forest, village forest and private forest. A state may declare forest lands or waste lands as reserved forest and may sell the produce from these forests. Any unauthorized felling of trees grassing, hunting, or quarrying in the reserved forest is punishable with fine or imprisonment or both. Reserved assigned to any village community is called village forest. The state Governments are empowered to designate protected forest and prohibit felling of trees and removal of forest produces and quarrying from these forests.

**H. The Atomic Energy Act 1962:-** The Atomic Energy Act 1962 and the Radiation Protection Rules 1971 regulate nuclear energy and radioactive substances in India. The Central Government is required, under the Act, to prevent radiation hazards, guarantee public safety, and the safety of workers handling radioactive substances and ensure disposal of radioactive wastes. Under the authority of the central Government, nuclear research, production and supply of atomic energy and manufacture and transport of radioactive substances also fall. The Center's apparently unfettered power to withhold from the public what it deems to be 'restricted information' shrouds India's nuclear activity in secrecy. The Government may classify as 'restricted information' any published information, regarding the location, quality, quantity, processing, acquisition and disposal of radioactive substances; the theory, design, construction and operation of nuclear reactors and of industrial plants that produce radioactive substances and any information relating to nuclear research.<sup>14</sup>

**I. The Wild Life Protection Act 1972:-** Under article 252 of the constitution parliament passed the Wild Life (Protection) Act 1972 on request of states for the purpose of protecting, propagating or developing wild life and its environment. The central Government and State

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13. P. Leelakrishna, "Environmental Law in India" Buuerworth edition p-16.

14. Armin Rosencranz, "Environmental Law and Policy in India" oxford university Press p-65.

Governments are empowered to proclaim national parks and wild life sanctuaries. It extends to selling or transferring wild animals, trophies and animal articles. Under the Act, hunting wild animals, keeping wild animals in captivity or possessing trophy against the rules are punishable offences. On a complaint filed by the Chief Wildlife Warden or any other officer authorized by the State Government, a first class Magistrate can take cognizance of an offence. The Act was amended in 1987 and 1991 which brought radical changes. However, under section 11 and 12 of the Act, special permits are given for killing animals for the purpose of education, scientific research, management and collection of species. Proviso to section 17-A of the Act allowed schedule tribes to collect and possess any specified plant for their bonafide use.

The amendment in 2002 to the Act a new administrative mechanism i.e. a National Wildlife Board in the place of Advisory institution for better management of wildlife. The board is responsible for impact assessment of various activities and projects on wildlife and its habitat and to take up measures for the protection and development of wildlife and forest. The amendment also prohibited construction of buildings, lodges, hotels and safari parks inside a sanctuary except with the approval of the Board. Under the amendment also more public participation and involvement is envisaged by representation of NGOs, local communities, and panchayat in the Board. The amendment also provided that the property acquired from illegal hunting and trade will be forfeited and dispose off by the State Government. The amendment also gave power to the executive government to change the extent of a protected area on recommendation of the Board, which was earlier given to the state legislature and created confusion.

**J. The National Environmental Appellate Authority Act 1997:-** The National Environment Appellate Authority Act 1997 requires the Central Government to constitute a National Environmental Appellate Authority headed by a retired justice of the Supreme Court or chief justice of a

High Court, to hear appeals against orders granting environmental clearance with respect to areas in which restrictions<sup>15</sup> are imposed to establish certain classes of industries or carrying on any operation or process. Any person aggrieved by any order of granting environmental clearance may challenge the order which includes project clearance by the Impact Assessment Authority. However, the National Environmental Appellate Authority has no power to hear appeals directly by the project authorities for denial of their project from environmental clearance. In the *A P Pollution Control Board vs. M.V. Naidu*,<sup>16</sup> the Supreme Court expressed the view that the National Environmental Appellate Authority is an ideal forum with judicial as well as technical expertise to adjudicate on complex environmental issues.

**K. The Forest (Conservation) Act 1980:-** Forest maintains the ecological balance, prevent soil erosion, shelter animals, and protect the tribal population, supply raw materials to industries and as source of revenue and a source of fodder and fuel. The large scale deforestation, environmental degradation and resultant ecological imbalances in India compelled the Government to enact the Forest (Conservation) Act 1980. The main purpose of the Act is to restrict de-reservation of forest, and use of forest and forest land for non-forest purpose. The Act aimed at providing for the conservation of forest and for matters connected therewith or ancillary or incidental thereto. The Act requires that the approval of the Central Government before a state de-reserves a reserved forest or uses forest land for non-forest purposes or to assign a forest land to a private person or corporation or clear forest land for reforestation is needed. Explanation to section 2 of the Act explains the expression 'non-forest purpose' as breaking up or clearing any forest land for the cultivation of tea, coffee, spice, rubber, palms, oil bearing plant, horticulture crops or medical plants. Section 3 of the Act

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15. Section 3(1) and 3(2)(v) of the Environment Act 1986.

16. AIR 1999 SC 812.

empowers the Central Government to appoint a committee to advise on the grant of prior approval and other matters connected with conservation of forest. The main function of the Advisory Committee is to advise the Central Government with regard to the grant of approval under section 2 i.e. restrictions on preservation of forest or use of forest land for non-forest purpose.<sup>17</sup>

**L. Hazardous Waste (Management & Handling) Rules, 1989**

The Hazardous Wastes (Management and Handling) Rules, 1989, provide for an effective inventory and controlled handling and disposal of hazardous wastes. Under the rules 18, categories of hazardous waste are identified along with their regulatory quantity Industries generating any of these waste beyond the regulatory quantity are required to seek authorization from the concerned State Pollution Control Board for its temporary storage in the premises and their disposal. Possibility, of common treatment facilities including landfill are envisaged. The operator of such facility is also required to obtain authorization from the Board. The Boards are expected to specify conditions on safe handling and disposal of the waste in the authorization. Treatment of the waste at the premises before disposal could also be specified. Import of hazardous waste for processing has to be got approved by the Central Government.

**M. Manufacture, Storage & Import of Hazardous Chemical Rules**

**1989:-** The principal objective of the regulation is the prevention of major accidents arising from industrial activity, the limitation of the effects of such accidents both on humans and the environment and the harmonization of the various control measures and the agencies to prevent and limit major accidents. The industrial activities covered by the regulation are defined in terms of process and storage methods involving specified hazardous chemicals.

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<sup>17</sup>. Section 3 of the Act.

An important feature of the regulation is that the storage of hazardous chemicals not associated with the process is treated differently from those coming under process use for which a different list of hazardous chemicals and their manufacture and storage procedures applies. Under the provisions isolated storage / cover sites are to be separate tank farms or warehouses. The Central Pollution Control Board and the State Pollution Control Board, as the case may be, are the enforcement agency for these storages.

A safety report is required to be prepared as per Rule 10 in this Act. It involves identification of the nature and use of hazardous chemicals at the installation. The report will also give account of arrangements for safe operation of an installation including control of any serious deviation that could lead to a major accident and for emergency preparedness at the site. The report will identify the type, and the relative likelihood of consequences for any major accident that might occur. It will also demonstrate that the manufacturer or the occupier has identified the major potential accidents from the activity and has provided appropriate controls.

***N. Manufacture, Storage & Import of Hazardous Chemical Rules***

**1989:-** The principal objective of the regulation is the prevention of major accidents arising from industrial activity, the limitation of the effects of such accidents both on humans and the environment and the harmonization of the various control measures and the agencies to prevent and limit major accidents. The industrial activities covered by the regulation are defined in terms of process and storage methods involving specified hazardous chemicals.

An important feature of the regulation is that the storage of hazardous chemicals not associated with the process is treated differently from those coming under process use for which a different list of hazardous chemicals and their manufacture and storage procedures applies. Under the provisions isolated storage/cover sites are to be

separate tank farms or warehouses. The Central Pollution Control Board and the State Pollution Control Board, as the case may be, are the enforcement agency for these storages.

**O. The Factories Act 1948:-** The amendment to the Factories Act 1987 inserted special provisions on hazardous industrial activities. The amendment was made under the light of the judgment in *Shri Ram Gas Leak Case*<sup>18</sup> which empowered the states to appoint site appraisal committees to advice on the initial location of the factories using hazardous processes. The occupier of every hazardous unit must disclose to his workers, the Factory inspector and the local authority all particulars regarding health hazards in the factory and the preventive measures taken. Every occupier must also draw an emergency disaster control plan which must be approved by the Chief Inspector of Factories. It is also the responsibility of the occupier to maintain medical record of each worker with the help of an employed personnel experienced in handling hazardous substances. The limits of exposure to toxic substance are prescribed in the schedule. Safety committee consisting of workers and managers are required to review the safety measures of the factory periodically.

### **3. PROBLEMS IN ENFORCEMENT OF LEGISLATIONS.**

1. The enforcing agencies find it difficult to enforce the regulatory standards on the industries. The major problems faced by the enforcing agencies are (i) less than required regulatory/enforcing manpower in regulatory agencies compared to the ever increasing number of industries, (ii) Lack of adequate technical knowledge/skills required for enforcement of regulations (iii) Resistance to change/attitudinal problems prevalent in industry (iv) Lack of financial resources in general.
2. *Concentration Based Standards:-* The Central Pollution Control Board has laid down ambient air and water quality standards, whereas the

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18. *M.C. Mehta vs. Union of India AIR-1987 SC 965.*

actual enforcement provisions relate to at source pollution. The absence of an appropriately defined link between ambient and source standards have had an immense impact on the environment. It is evident that despite increasing number of individual industries meeting emission standards, the total quantity of pollutants (pollution load on the environment) in the environment has been rising due to increase in the number of industries setting production facilities in a given area.

3. *Command and Control Policies*:- Till recently, the Government has tended to rely on the policy of direct regulation i.e. the command and control principle for pollution control. Little attention has been paid to alternative strategies such as minimizing the cost of achieving certain ambient standards, or improvement in manufacturing efficiencies etc., for achieving enhanced social and cost benefits etc. In fact most studies have indicated that pure command and control regimes are often four to six times costlier than market based regimes. It has been recognized that the problem of pollution has become more acute over time despite the regulations and hence conventional regulatory instruments should be combined with fiscal incentives, voluntary agreements, information and public participation etc.

#### **4. POLICY INSTRUMENTS FOR POLLUTION ABETMENT**

Environment Policy for industry in India, till recently, had focussed mainly on pollution control through end-of-pipe treatment, which itself is wasteful whereby pollutants are often transferred from one media to another media through the various treatment processes. Huge quantities of resources and energy are thus consumed during such treatment processes. With due recognition to the future raw material and energy scenario, the impact that the industry and its products have on the natural resource base and the environmental quality and the necessary thrust being given to the industrial growth in the country, the Ministry of Environment and Forests has formulated comprehensive policies for promoting sustainable development. It is against this background that

the Ministry of Environment and Forests issued a comprehensive Policy Statement for abatement of pollution and development of the National Conservation Strategy. Recently, MoEF has also prepared the Environment Action Programme. The statement has made a welcome attempt to shift the emphasis of policy from definition of objectives to practical questions of actual implementation. The salient features of the policy framework are discussed here

**Policy statement for abatement of pollution:-** The overall policy objective is to integrate environmental considerations into decision making at all levels. The policy aims at Prevention of pollution at source, Encouraging, developing and applying the best available practicable technical solutions", Ensuring that the polluter pays for the pollution and control arrangements, Focusing on the protection of the heavily polluted areas and river stretches and Involvement of the public in decision making

1. *National Conservation Strategy and Policy Statement on Environment and Development* :- It has been set out with the following priorities Conservation of natural resources, Land and Water, Prevention and control of atmospheric pollution including noise pollution, Industrial Development by using a mix of promotional and regulatory steps
2. *Environment Action Programme:-* It sets out the following priority areas  
(i) Control of industrial and related pollution with emphasis on reduction and/or management of wastes particularly hazardous wastes.- Tackling urban environmental issues (ii) Strengthening scientific understanding of environmental issues as well as establishing a structure for training at different levels, orientating and creating environmental awareness, focusing on resource assessment/conservation, water management problems etc. In all these policies, emphasis is on prevention of pollution and conservation of natural resources which will enable Indian Industry to compete in the international market.

## 5. INITIATIVES TAKEN FOR POLLUTION PREVENTION

Coupled with the shift in policy with more emphasis on prevention of pollution, the government has also introduced a number of schemes which will motivate the entrepreneurs to take up steps to curb pollution. A review of the schemes which have so far been introduced in India for pollution abatement is given here (i) Fiscal incentives (ii) The economic incentives (iii) *Strengthening Of Emission Standards* (iv) *Scheme for adoption of Cleaner Technologies in Small Scale Industries* (iii) *Ecolabelling*.

(i) *Fiscal incentives for pollution control*:- The economic incentives which have been introduced include the following:

a. *Water Cess Act 1977*:- The act provides for a 25% rebate on the cess payable if the person or local authority concerned installs a plant for treatment of sewage or trade effluent. It is instrument for pollution abatement.

b. *Effluent Charges*:- Effluent charges based on nature and volume of effluents released are being considered. The scope of charges will be extended to air emissions and solid wastes. These charges may generate initiatives towards optional releases and encourage new / advanced technology adaptations in the production processes.

c. *Credit and Loan at reduced rate of interest*:- The World Bank assisted Industrial Pollution Prevention Project is targeted at introducing Cleaner Technologies in industrial units. Under the investment component of the Project, the World Bank line of credit is available to industrial units for undertaking appropriate measures for Pollution abatement, with a focus on Waste Minimisation and adoption of Cleaner Production methodologies.

d. *Customs or Excise Duties and Sales Tax Rebate*:- The customs duty on some specified pollution control equipment has been reduced to a concessional rate of 35%. The countervailing duty has also been

eliminated for such items and auxiliary duty has been reduced to 5%. Since March 1992, a rebate of over 5% has been allowed on excise duty of over 5%. In addition to the rebate on customs and excise duties levied by the Central Government, certain states too have offered concessions on Sales Tax for specified pollution control equipment

- e. *Depreciation Allowance:-* There is provision for allowing the deduction of a certain percentage of written down actual cost of capital assets, net of any subsidies and concessions from gross profit in computing the base for levy of corporate tax. A notification issued in February, 1983 introduced for the first time a higher rate of depreciation for pollution control equipment as compared to 25% applicable for the general plant and machinery. This 30% was gradually increased to 100% in 1993-94 budgets.
  - f. *Investment allowance:-* A provision is available in the Income Tax Act under which a company can deduct upto 25% of the actual cost of some specified new assets for computation of taxable profit. This allowance was raised to 35% for pollution control equipment.
  - g. *Tax Benefits through contributions towards natural resource conservation:-* A provision has been made in the income Tax Act which allows deduction of contribution made by tax payers to any institution engaged in the conservation of natural resources while computing taxable income.
  - h. *Exemption From Tax On Capital:-* The Income Tax act also provides for exemption of capital gains arising from transfer of building, land, machinery etc., for establishing business in a new place to reduce industrial congestion.
- (ii) *Strengthening Of Emission Standards:-* In order to promote resource conservation by industry, rules related to standards for consumption of water by polluting industries (example Chemicals , Pulp and Paper,

Fertilizers, Tanneries, Sugar and Distilleries and Metallurgical industries) have been notified. To promote the shift from pollution control to pollution prevention regime, rules related to load based standards instead of concentration based standards have been notified for a limited number of industries viz. Refineries, Smelters, manufacturing of Inorganic Acids, Coke ovens, Aluminium Plants, Glass manufacture and some synthetic fibers.

(iii) *Ecolabelling*:- Eco-labelling scheme by Government of India supports Cleaner Production Policies as there is a strong emphasis on Cleaner manufacturing process for grant of eco-labels.

(iv) *Scheme for adoption of Cleaner Technologies in Small Scale Industries*:- The main aim of the scheme is to promote the development and adoption of Clean technologies and best practices and techniques including waste reuse and recycling for SSI's to realise economic and environmental benefits. The scheme provides financial assistance for undertaking Waste Minimisation assessments and Demonstration projects in selected sectors, preparation of sector specific manuals on Waste Minimisation / Demonstration projects undertaken, creation of data base on the availability of clean technology or present status of clean technologies used in the industries, identification and diffusion of clean technology to the industry and conducting training and awareness programme among small scale industries regarding pollution prevention and cleaner production.

## **6. AN OVERVIEW**

Environmental law enforcement presents an unhappy picture, which is characterized with lack of training and skill, lack of infrastructural facilities, poor understanding of law, and lack of co-ordination among different agencies. The results achieved so far with the existing regulatory regime though positive are apparently limited. In case of air quality, ambient air quality has been deteriorating in the four

metropolitan cities (Delhi, Calcutta, Chennai, and Mumbai), despite reducing intensity of air emissions from industries. In the case of water quality, the degree and extent of violation of prescribe emission standards/norms appears to have declined and especially so for key parameters such as BOD and coli form count etc., as discharged by industries across the country. However, the continual degradation of the environment despite provision of several rules and regulations can be attributed to various reasons, some of which have been enumerated here.

The enforcing machinery for legislations dealing with the protection of various issues environmental pollution is basically same. The Central Pollution Control Board and the State Pollution Control Boards are given the responsibility of implementation of pollution control laws. The Environment (Protection) Act 1986 which is known as umbrella legislation provides for creation of separate authority under direct control of the Central Government. Three tools have been given to the Central Board for controlling the environmental matters. *Firstly*, granting license to new industries, *secondly*, reviewing pollution control measures in existing industries, and *thirdly* prosecution of offenders. Besides these, Municipal Corporations, Jal Nigam, District Industrial Development Centre, Flood Control and Irrigation Departments, Municipal Development Authority, department of revenue and transport, local self government and constitutional authorities are responsible for implementation of environmental laws. Difficulty arises regarding jurisdictions of all the authorities. The authority of general administration extends to every conceivable aspect of public nuisance.<sup>19</sup> The State Pollution Control Board is empowered under both the Water Act and The Air Act to control and abate pollution. Conflict arises when the administration attempts to initiate action over as it amounts to

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19. Section 133 Cr.P.C.

public nuisance and the Board wants to deal with pollution. In resolving the conflict of jurisdiction different High Court also pronounced conflicting judgments. In *Tata Tea Ltd. Vs. State of Kerala*<sup>20</sup> it was held that specific pollution related laws were designed to prevent pollution, they impliedly repealed the provision of section 133 Cr.PC to the extent they relate to prevent and control of pollution. But the A.P. High Court in *Nagarjun Paper Mills Ltd. Vs. Sub-Divisional Magistra*<sup>21</sup> expressed the view that jurisdiction under Cr.PC does not conflict with the authority of the Pollution Control Board as long as it did not interfere with an order under Section 133 Cr.PC.

To examine various aspects of pollution control laws I took opinion of experts regarding the efficacy and efficiency of pollution control laws. I interacted with various local and constitutional bodies, non-government organizations, social organizations, and general public. I distributed different sets of questionnaire and interviewed them personally. A close analysis of the responses given authorities, experts and the general public shows that the efficacy and efficiency of environmental laws are sufficient though not excellent. The existing environmental laws in India are very comprehensive in their length and coverage but they suffer from in-effective enforcement. The Environment (Protection) Act 1986 not only aims at protection but also improvement of the environment as a whole. To achieve these objectives, the Act employs various preventive measures and control mechanisms, mainly applied through Central and State Pollution Control Boards. But the indifferent, lethargic, and callous attitude of the Boards and other authorities in taking cognizance of various kinds of pollution and equally negligent and oblivious nature of civic bodies the Act failed to achieve its goal.<sup>22</sup> It is also observed that public participation is also very important in environmental law and

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20. 1984 Ker.LT 645.

21. 1987 Cr.LJ 2071.

22. Z. M. Nomani, "water pollution and conservation: existing legal framework and strategy for reforms" in F.A. Khan (Ed) "Water Resource Management: thrust and challenges" 1997 at 207.

policy making. Illiteracy, poverty over population, low standard of living, lack of environmental awareness are common features in Indian societies where no law can serve its purpose without democratization of laws and public co-operation. That is why law is least venerated and generally observed more in breach than in compliance.

Some scholars expressed the view that there is shortage of trained and skilled personals in law. There was a legal cell in the Ministry of environment and Forest which exist no longer. Legislative drafts and policy papers are prepared by persons having no legal knowledge without giving proper attention as the subject may demand. Scientific officers in the Ministry and its regional offices pay much attention to the technical aspects rather than the substance. Moreover, officers in the policy making do not remain in the same position for long time and thus do not understand the nature of work and deep knowledge in its functioning. In *Delhi Bottling Company Vs. Central Pollution Control Board*<sup>23</sup> the CPCB lost the case on technical ground that the Governmental agency did not strictly observe the procedure prescribed by the Water (Prevention and control of pollution) Act 1974.<sup>24</sup> The constrains under which the agencies are functioning are poor and inadequate budget allocation, withdrawal of prosecution without assigning any reason, lack of equipment for measuring emission standard etc. It appears that the statutory authorities trying to avoid their responsibility but the authorities can not be expected to give a better account under such a circumstances. In recent years a considerable progress is made in bringing excellent policies in expansion of environmental administrative set up. The Five Year Plans stressed on for making enforcement machinery more effective and efficient, infrastructural facilities have been considered. But transmission of these into actual practice and adequate budget and effective functioning

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23. AIR 1986 Del 152

24. M. K. Ramesh, "environmental justice Delivery in India" 2 IJEL 2001.

machinery for proper implementation yet to take place.

Experts opined that at the inception environmental governance in India raised a lot of hope but after sometime it lost its goal in politics and administrative inefficiency that the common man got compelled to look elsewhere for overcoming environmental problems faced by them. Clash, conflict, and bureaucratization among agencies results into lack of consensus in the decision making process. Administrative high handedness lack of procedural formalities in the implementation of environmental law have often resulted in industries getting away with violations, an example is *Suma traders vs. Chairman, Karnataka State Pollution Control Board*<sup>25</sup> On a complaint the chairman of the Pollution Control Board ordered closure of industry, on challenge of such order the Board confirmed that the chairman did not have the power to issue such an order. The court held that it amounted to abuse of power and pay a penalty of Rs. 2500/ by way of cost.

It is also observed by some of the experts that political interference in appointments and in the day to day functioning of agencies hindered the agencies to become professionally competent and efficient bodies. The nature of qualification required for members and the chairman of pollution control board paved the way for the Govt. in making arbitrary appointments. Moreover, major industries like coal, petroleum electricity, iron and steel, agro- chemicals and heavy industries under public sector having strong Govt. representation in the Board. The environmental law enforcers are reluctant to enforce the law who occupy lower position in the administration.

Centralized power of policy framing, and not by experts but by bureaucrats is yet another difficulty felt by the environmental law enforcing agencies. Even the subordinate legislation under environment protection Act framed by the central department of environment and

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25. AIR 1998 Ker 8.

forest overrides any other Central or State legislation.<sup>25</sup> The joint forest management by local community people is a benefit sharing arrangement under the forest department for the service rendered in lieu of payment of wages for the labour. But decisions are being taken at the central and state level.<sup>26</sup> Decisions on the issues of development which also affects the environment are being taken by the central and state level only after Environment Impact Assessment and public hearing. Public hearing is just a formality of giving some information to local community of a proposed developmental activity and to hear their objection and not with the objective of prior informed consent and making them participants. There is no guarantee that the objections of the local people would form a part of decision making.

The use of criminal sanctions for environmental violations has proved ineffective. Environmental laws contemplate deterrent value in the imposition of punishment on the violators. Imperfection in definitions of environmental fences and the complexities involved in the prosecution of offenders have forced the pollution control boards to go for provocative action rather than prosecution. But ineffective enforcement has reduced the threat of punishment. There has been much increase in the penal sanctions but more increase in the dose punishment will not bring the desired result. The laws providing coercive punishment are not enforced regularly and certainly. The criminal activity tends to increase because the people feel that the threat has been removed. That is why environmental laws are more followed in their breach than in their observance.

Poor planning, maintenance of record, and vigilance also affected much the implementation of environmental laws. Pollution Control Boards issue consent orders without prescribing norms. In *Obayya*

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26. *Jagannath Vs Union of India AIR 1997 SC 811* in which the CRZ notification under EPA was held to prevail over state legislations.

*poojari vs. Karnataka State Pollution Control Board*<sup>27</sup> the state pollution control board granted consent for stone crushing without examining environmental damages. The order was challenged on the ground of adverse impact on the health. The court ordered the Govt. to immediately formulate policy and plan of action to regulate the business and identify safer zone for stone crushing operation.

The provisions of imposing fine, despite increase in the amount, are treated as a part of the cost of running the business. Statutory fines are not of the magnitude which would act as deterrent. They pinch neither corporations nor shareholders. In fact it is not the financial deterrent but public approbation and stigma that are attached to the criminal sanctions which will be more effective. When the powerful corporations and their chiefs are involved in environmental violations, courts often give the benefit of poor legislative drafting to these corporate offenders. It is true that the courts find it difficult to deal efficiently with the issues of scientifically complex nature involved in the environmental laws but then the criminal courts have always marshaled scientific evidence in other criminal violations. What is required is a will on the part of the court to implement the true intention inherent in the environmental laws, and thereby reinforce the values contained in the constitution through the right of criminal stigmatisation.<sup>28</sup>

There has been criticism against the penal provisions contained in the environmental legislations. Some scholars do not approve imposition of sentence of imprisonment at all while others suggest for more severity in penal provisions. Recent increase may not be justified because the earlier penal sanctions were not fully invoked by the law enforcers and the courts. But no criticism against criminal sanctions would be valid unless criminal sanctions are given a proper chance to deal effectively

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27. See, M.K.Ramesh, "Joint Forest planning & Management : Law, Practice and Proposals"

28. AIR 1999 Kar 157.

with the environmental violators.<sup>29</sup> For example a person found guilty of an offence under sections 43 and 44 of the Water Act must automatically be sentenced to a minimum, of six months of imprisonment but the punishment may well hinder prosecution by the Board which may be reluctant to pursue the case if the offence is not very serious because of the mandatory imprisonment involved. It would be reasonable that the magistrate should be empowered to award punishment without any fixed minimum punishment and with a fine as an alternative.

The existing legal framework for environmental protection in India is sufficient to meet the challenges in the ecological imbalances and to protect the environment. But it failed to produce required results due to lack of enforcement. The environmental law enforcing authorities do not have any kind of commitment or interest in enforcing these laws. Above all lack of political will is responsible for non-implementation of environmental laws. Some scholars are of the opinion that there is a need to have effective supervisory machinery for the implementation of environmental laws.<sup>30</sup>

Another great difficulty often raised by the environmental law enforcing authorities is lack of adequate fund which has prevented Boards from implementing various schemes for prevention of environmental pollution. There is also a problem that due to lack of fund adequate technical staff is not recruited and appointed staff deputed from other departments' do not pay much attention. In the field of codification of environmental laws India achieved a mark able position.

For effective implementation, people should become conscious of the problem of environment. In the minds of the people awareness should be created that a clean environment is the Fundamental Right of

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29. H. C. Agrawal, "Pesticide pollution of water" in C.K. Varshney (ed) 'Water Pollution and Management thrust and challenges 1991 p 57.

30. M.A. Acheson, 'Water pollution control in India' in C.K. Varshney (Ed) Water Pollution and Management thrust and challenges 1991 p 57.

human beings. People must be convinced that by protecting the environment and controlling pollution the health of the people will be safeguarded. The right to clean environment is recognized as an integral part of Article 21 must be assured in practice. Public participation compels the decision making bodies to act in just and fair manner for realization of the right to environment. The 2006 Bill to amend the Wild Life (Protection) Act 1972, proposed setting up of National Tiger Conservation Authority. But the Tribals have been opposing the Bill arguing that it would prevent forest dwelling tribals of their right to land. Prevention is better than cure. The main objective of *Environment Impact Assessment* is to analyse the effect of a project in order to protect human health or to contribute by means of a better environment to the quality of life, or to ensure maintenance of the diversity of the species and to maintain the reproductive capacity of the ecosystem as a basic resource of life. Before implementing any project, the consequences by way of environmental changes must be examined; conflicting social values must be balanced, and potential dangers should be avoided. The best environmental policy is to avoid adverse effect rather than subsequent cure. In the United State of America, the National Environmental Policy Act 1985 requires an environment impact assessment for major Federal Action having a significant impact on the human environment.

But the great problem is that EIA requires different types of expertise and knowledge to find out in the first stage, whether a project causes significant adverse effect, and if not, assessment is not required. In the second stage, it is to be examined whether there are secondary effects of socio-economic nature such as shrinking of civic amenities or loss of job opportunities. The third stage is cumulative effect of a project i.e. in the beginning it may be harmless but over a period of years the effect can be totally different.

Thus, India adopted a number of regulatory mechanisms to protect and preserve its natural resources. The legislature enacted sufficient laws for regulating every aspect of environment which effective implementation. The environmental agencies have vast powers but they are reluctant to use their powers and bring the environmental violators under law. The judiciary assumed the role of public educator, administrator and policy maker. The legislation and the role of judiciary combined together created a formal regulatory mechanism with the agencies like The Boards, state agencies and forest officers and a non-formal, citizens and court driven implementing mechanism. The environment Act 1986 and the rules there under regulated the unregulated fields like noise, coastal development, hazardous waste, transportation of toxic chemicals and environment impact assessment.

The recent regulatory regime is characterized by strengthening the enforcing agencies with enormous administrative powers to ensure compliance. Now the Board may direct to shut down the offending factory or to withdraw water or power supply. Previously the Board could take an action against the polluter through the intervention of the court but now the board can take direct action against the polluter. Now an aggrieved polluter can initiate a court action by challenging the order of the Board. Under the Environment Impact Assessment Regulation 1994, the Union Ministry of Environment and forest is responsible for evaluating Environment Assessment reports submitted by the proposers. For large projects, a review committee of experts carries out review. A National Coastal Management Authority and corresponding state level agencies has also been established by the Union Government. The budget and the staff of the Central and State Pollution Control Board have also been increased in the last decade. As a result, there is some improvement in enforcement of the environmental legislations in some of the states and union territories.

When an enactment is passed prohibiting certain types of activities, then it is important to ensure its effective implementation, otherwise it would lead to a lawless society. Violation of pollution control laws adversely effect the existing quality of life, ecological balance and the environment which will cause sufferings to the future generation. In India there are more than 200 Central and State legislations which have a bearing on environment, if properly implemented, then India would be one of the least polluted countries of the world. Enforcement of law is an executive function which it is bound to discharge. The courts are ill-equipped and it is not the function of the court to see day to day enforcement of the laws. In Public Interest Litigations relating to implementation and enforcement of environmental laws, the court is to see whether the executive authorities take steps for implementation or not. As such, the courts have to pass orders and give directions for the protection of the fundamental rights of the people. Passing appropriate orders for implementation does not mean taking of executive or legislative function. The orders and directions are passed in discharge of judicial function. If there is any complain by any person regarding violation of any legal right, due to inaction or wrong action of the State then such inaction should be prevented.

Environmental law making in India has not followed any consistent and logical path of serious deliberations both at the stage of drafting and consideration on the floor of legislatures, before becoming the law of the land. Even chance remarks or an expression of displeasure over an undesirable environmental situation by charismatic political leaders have often led to the making of laws. The circulars and guidelines as to joint forest management and notification as to Coastal Regulation Zone apparently are illustrations of this. Lack of vision in foreseeing environmental problems, not evolving appropriate policies plans and programmes, non-dynamic and non-reactive laws appear to

be the judicial activism.

Some scholars observed that India's high concentration of pollution is not due to a lack of effort in building a sound environmental legal regime, but rather to a lack of enforcement at the local level. Efforts are currently underway to change this as new specifications are being adopted for auto emissions, which currently account for approximately 70% of air pollution. In the absence of coordinated government efforts, including stricter enforcement, this figure is likely to rise in the coming years due to the sheer increase in vehicle ownership.