

CHAPTER 7

ENVIRONMENTAL POLICY AND LEGISLATIONS IN INDIA

7.1 INTRODUCTION

Policy is the sum total of the values to which a person or a group of persons or institutions social, legal and governmental - consider as important in their relation with one another. Environmental policies have to be formulated in the credible of social morals and values - the public opinion representing the views of both the elite expert and lay public. A clear vision should be there reflecting all the conflicting values and the vision is called policy and the translation into legal frame work called law.

7.2 GOALS OF ENVIRONMENTAL POLICY

The goals of the Environmental policy may be formulated in several ways - to protect human health, ensure viability of wild life, preservation of historic monuments, stopping further degradation of the environment etc. The policy is the overall environmental intention and direction forming the backbone and skeletal framework, from which all other environmental components are hung including environmental management systems, audits, assessments and reports.

7.3 ENVIRONMENTAL POLICY - PRE STOCKHOLM PERIOD (PRIOR TO 1972)

In the early years of Independence there was no precise environmental policy and not much attempts were made to frame any specific policy or law for the protection of environment. This period had more stress on the development of infrastructure with little concern for environmental issues. Various environmental concerns like sewage disposal, sanitation, public health etc., were dealt with different ministries of government. However, the concern for environmental protection was reflected in the national planning process and forest policy.

The 24th United Nations General Assembly decided to convene a conference on Human Environment in the year 1972 and it requested the member countries to prepare a report on the same. India as a member country of United Nations was also requested to do the same. The Government of India set up a committee on Human Environment under the Chairmanship of Dr. Pitambar Pant, member of the Planning Commission to prepare a report. The report indicated the need for establishing greater co-ordination and integration in Environmental Policies and Programmes.

In February 1972 a National Committee on Environmental Planning and Co-ordination (NCEPC) was established in the Department of Science and Technology. This was the apex advisory body in all the matters pertaining to environmental protection and improvement. The committee was assisted by Department of Science and Technology and an Office of the Environmental Planning and Co-ordination (OEPC) was set up under the direction of the Chairman of the committee. Major activities of the OEPC included collaboration with the project appraisal division of the planning commission in developing guidelines for evaluating the relevant costs and benefits of developmental projects by taking into account the environmental factors and formulation of proposals and co-ordination of research programmes on environmental problems.

7.4 ENVIRONMENTAL POLICY - POST STOCKHOLM PERIOD (AFTER 1972)

For the first time the importance of preserving the quality of life and promoting the environment along with development was stressed in the fourth Five Year Plan (1969 to 1974) with a chapter on long term perspective.

However it was only during the fifth (1974-79) and sixth (1980-85) five year plans, concerns that were expressed in the fourth plan were made into a concrete one by initiating several programmes.

7.4.1 Fifth Five Year Plan

The fifth five year plan (1974-79) stressed the need to have a close association with National Committee on Environmental Planning and Co-ordination with all major industrial decisions so that environmental goals are fully taken into account. It also stressed that in the process and pursuit of development there should not be any reduction in the quality of life and the link was very much stressed between developmental planning and environmental management.

7.4.2 Sixth Five Year Plan

In the sixth five year plan (1980-85) an entire chapter on 'Environment and Development' was included which emphasizes sound environmental and ecological principles in land use agriculture, forestry, wild life, water, air, marine environment, minerals, fisheries, renewable energy sources, energy and human settlements. It provided guidance on environmental concerns to administrators and resource managers in formulating and implementing programmes and lay down an institutional structure for environmental management in the Central and State Governments.

7.4.3 Tiwari Committee (1980)

The Government of India set up a committee in January 1980 under the Chairmanship of Shri. N.D. Tiwari, then Deputy Chairman of the Planning Commission to review the existing environmental legislations and recommend legislative measures and administrative machinery for environmental protection. The committee stressed the need for the proper management of the country's natural resources of land, forest and water in order to conserve the nation's ecological bases.

The committee's recommendations were

- ★ creation of comprehensive environmental code to cover all types of pollution and environmental degradation.
- ★ constitution of environmental Courts in all district headquarters and appointment of experts to assist the Court.
- ★ creation of Department of Environment.
- ★ setting up a Central Land Commission.
- ★ provisions of economic incentives to industries to encourage environment friendly products, income tax and sales tax benefits for adapting cleaner technology, investment tax, credits for purchases of purification devices, replacement cost of purification equipment in annual operating costs and minimal tax or no tax on the manufacture of pollution control devices.
- ★ making environmental impact assessment, not only a prerequisite for industry to start but also repeated periodically.

The emphasis laid in the planning commissions' reports and Tiwari committee's recommendations led the Government of India to set up a separate department namely Department of Environment in the year 1980. To improve the implementation of laws and policy directives the Department of Environment was replaced by an integrated Department of Environment, Forests and Wild life in the year 1985, which later on expanded into a Ministry namely Ministry of Environment and Forests.

7.4.4 Ministry of Environment and Forests

The Ministry of Environment and Forests serves as the nodal agency in the administrative structure of the Central Government for planning, promotion and co-ordination of environmental and forestry programmes. Its major activities include :

- ✦ conservation and survey of fauna, flora and wild life
- ✦ prevention and control of pollution
- ✦ afforestation and regeneration of degraded areas and protection of environment
- ✦ promotion of research, extension education and training to augment the manpower
- ✦ collection, compilation, storage and dissemination of environmental information
- ✦ creation of environmental awareness at different levels.

Later on two more agencies were created to tackle specific environmental problems viz.

1. National Waste Land Development Board
2. Central Ganga Authority

7.4.5 Establishment of Pollution Control Boards

In order to prevent and control water pollution, the Parliament enacted the Water (Prevention and Control of Pollution) Act in the year 1974 and similarly to prevent and control air pollution, the Air (Prevention and Control of Pollution) Act in the year 1981.

The Central Pollution Control Board was constituted under Section 3(1) of the Water (Prevention and Control of Pollution) Act in the year 1974.

Subsequently different states constituted State Pollution Control Boards in their respective states under the Section 4(1) of the Water (Prevention and Control of Pollution) Act 1974.

The major founding objectives of these boards were

- ❖ to advice the government on any matter concerning the prevention and control of pollution.
- ❖ investigation and research related to the problems of pollution prevention, control and abatement.
- ❖ organize through mass media comprehensive programmes regarding prevention and control of pollution.

- ❖ to provide technical assistance and guidance to the State Boards and co-ordinate the activities of the State Boards and resolve disputes among them.
- ❖ plan and organize training programmes for the prevention, control or abatement of pollution.
- ❖ collect, compile and publish technical and statistical data relating to pollution.

7.5 RIO CONFERENCE POLICY (1992)

The United Nations Conference on Environment and Development (1992) (Rio Conference) specified the policy statement for the abatement of pollution.

- ☛ to incorporate environmental costs in the decisions of producers and consumers.
- ☛ to reverse the tendency to treat environment as a 'free good' and to pass these costs onto other parts of society or other countries or to future generations.
- ☛ to move fully towards the integration of social and environmental costs into economic activities so that prices will appropriately reflect the relative scarcity and total value of resources and contribute towards the prevention of environmental degradation.
- ☛ to include wherever appropriate the use of market principles in the framing of economic instruments and policies to pursue sustainable development (Agenda 21 Chapter 8).

7.6 INDIAN ENVIRONMENTAL POLICY (1992)

The Ministry of Environment and Forests, Government of India in the same year 1992 announced a policy statement for abatement of pollution. The Preamble not only spells out the objectives but also shift emphasis from defining the problem area towards actual implementation for achieving the objectives.

The policy stresses :

- ♣ the need for a positive attitude on the part of everyone in the society to prevent pollution.
- ♣ the need for a comprehensive approach to integrate environmental and economic aspects in development planning.
- ♣ preventive aspects of pollution abatement and promotion of technological inputs to reduce industrial pollutants and reliance upon public co-operation in securing a clean environment to respond to the coming challenges.
- ♣ the integration of environmental considerations into decision making at all levels.

The policy statement adopts the following fundamental guiding principles.

- ◆ prevention of pollution **at source**
- ◆ the adoption of the **best available technology**
- ◆ the **polluter pays** principle : and
- ◆ **public participation** in decision making

The policy favors a combination of regulatory and market based instruments to prevent and control pollution.

There has been considerable activity in the states also. The Maharashtra State in the year 1997 announced a policy to restore the quality of its river waters and achieve ambient water quality standards. In the same year Haryana State announced a comprehensive conservation policy to improve pollution control.

7.7 FOREST POLICY (1988)

The major objectives of the new Forest Policy adapted in the year 1988 are as follows :

- ◆ maintenance of environmental stability through preservation and wherever necessary restoration of the ecological balance.
- ◆ conserving the natural heritage of the country.
- ◆ increasing substantially the forest / tree cover in the country through massive afforestation and social forestry programmes.
- ◆ meeting the requirements of fuel wood, fodder, minor forest produce and small timber of the rural and tribal populations.
- ◆ creating a massive people's movement with the involvement of women for achieving the objectives and minimize pressure on existing forests.

7.8 NATIONAL CONSERVATION STRATEGY (1992)

The National Conservation Strategy and policy statement of Environment and Development adapted in June 1992. The Policy

- ♣ provides the basis for the integration and industrialization of environmental considerations in the policies and programmes of different sectors.
- ♣ emphasizes sustainable life styles and proper management and conservation of resources.
- ♣ provides biomass on sustainable basis to the rural poor.
- ♣ provides promotion between forest based industry and farmers.

7.9 POLICY STATEMENTS AND COURTS

Eventhough policy statements are non-enforceable in Court of law, these statements represent a broad political consensus and enlarge the duties of government under the directive principles of state policy contained in the Part IV of the Constitution. Also these policy statements help the judges to interpret environmental statutes and spell out the obligations of government agencies under environmental laws. Some times a clear environment policy statement persuade the judge to prefer more environmental friendly interpretation and conservative approach.

7.10 POST STOCKHOLM ENVIRONMENTAL LEGISLATIONS

A plethora of Environmental Legislations have been enacted by Parliament, especially after the Stockholm Declaration (1972). These legislations have direct control in the protection, preservation and conservation of environment and prevention and control of pollution.

- I.
 - 1) The Water (Prevention and Control of Pollution) Act, 1974, as amended by Amendment Act 1988.
 - 2) The Water (Prevention and Control of Pollution) Rules, 1975.
 - 3) The Water (Prevention and Control of Pollution) (Procedure for Transaction of Business) Rules, 1975.

Notifications

1. Constitution of Appellate Authorities
 2. Delegation of Power to State Boards by the Central Board
 3. Central Water Laboratory to Various Union Territory Administrations.
- II.
 - 1) The Water (Prevention and Control of Pollution) Cess Act, 1977 as amended by Amendment Act, 1991.
 - 2) The Water (Prevention and Control of Pollution) Cess Rules, 1978.
- III.
 - 1) The Air (Prevention and Control of Pollution) Act, 1981 as amended by Amendment Act, 1987.
 - 2) The Air (Prevention and Control of Pollution) Rules, 1982.
 - 3) The Air (Prevention and Control of Pollution) (Union Territories) Rules, 1983.

Notifications

1. The Date from which the Act came into force
2. Declaration of Air Pollution Control Areas
3. Constitution of Appellate Authority

- IV.
- 1) The Environment (Protection) Act, 1986
 - 2) The Environment (Protection) Rules, 1986.
 - 3) Environment (Protection) (Second Amendment) Rules, 1999

Notifications

1. Delegation of powers to the Central Pollution Control Board, 1986.
2. Officers/Agencies authorized to take samples, 1986
3. Officers authorized for taking cognizance of offenses, 1987
4. Environmental Laboratories and Analysts, 1987
5. Officers/Agencies authorized to enter the premises for inspection, 1987
6. Hazardous wastes (Management and Handling) Rules, 1989 (1)
7. Rules for the Manufacture, use, import, export and storage of hazardous micro organisms, genetically engineered organisms or cells, 1989
8. Manufacture, Storage and Import of Hazardous Chemical Rules, 1989
9. Restricting location of industries, mining operations and other development activities in the Doon Valley in Uttar Pradesh, 1989.
10. Prohibition and restriction of the handling of hazardous substance in different cases, 1990
11. Prohibiting storage of chemicals in Antop Hill in Bombay, 1990.
12. Delegation of Powers to the Central Pollution Control Board, 1991.
13. Eco-Labeling Notification I-1991.

14. Eco-Labeling Notification II-1993.
15. Eco-Labeling Notification III-1994.
16. Eco-Labeling Notification IV-1994.
17. Eco-Labeling Notification V-1995.
18. Eco-Labeling Notification VI-1995.
19. Eco-Labeling Notification VII-1995.
20. Eco-Labeling Notification VIII-1995.
21. Eco-Labeling Notification IX-1995.
22. Eco-Labeling Notification X-1995.
23. The Coastal Regulation Zone Notification, 1991 (subsequently amended 16.08.1994, 31.01.1997, 09.07.1997, 04.08.2000 and Supreme Court Judgement dated 18.04.1996).
24. Restrictions on the setting up of industries in Dahanu talukha, District Thane (Maharashtra), 1991.
25. Environmental Impact Assessment Notification I-1992.
26. Environmental Impact Assessment Notification II-1994.
27. Environmental Impact Assessment Notification III-1994.
28. Restriction of certain activities in specified area of Aravalli range, 1992.
29. Recognized laboratories under rules for the manufacture, use, import, export and storage of Hazardous Micro Organisms/Genetically Engineered Organisms or Cells, 1993.
30. Aquaculture Authority Notification, 1997.
31. Prohibition on the imports of hazardous wastes, 1997.
32. Prohibition against open burning of waste oil, 1997.
33. Public Hearing Notification I-1997.
34. Public Hearing Notification II-1997.
35. Taj Trapezium Zone Pollution (Prevention and Control) Authority Order, 1998.

36. 2-T Oil (Regulation of Supply and Distribution) Order, 1998.
 37. National Coastal Zone Management Authority Order, 1998.
 38. Bio-Medical Waste (Management and Handling) Rules, 1998.
 39. Prevention of dumping and disposal of fly ash, 1999.
 40. Recycled plastics manufacture and usage Rules, 1999.
 41. Environment (Siting for Industrial Projects) Rules, 1999.
 42. Hazardous wastes (Management and Handling) Amendment Rules, 2000.
 43. The Noise Pollution (Regulation and Control) Rules, 2000.
 44. Ozone Depleting Substances (Regulation and Control) Rules, 2000.
 45. The Municipal Solid Wastes (Management and Handling) Rules, 2000.
- V. 1) Forest (Conservation) Act, 1980 as amended by Amendment Act, 1988
 2) Forest (Conservation) Rules, 1981.
- VI. 1) The Wildlife Protection Act (1972) as amended by Amendment Act, 1991.
- VII. 1) The Public Liability Insurance Act, 1991.
 2) The Public Liability Insurance Rules, 1991.
- VIII. 1) The National Environment Tribunal Act, 1995.
- IX 1) The National Environment Appellate Authority Act, 1997.

7.10.1 Other Enactments with Environmental Concern

Apart from the above Acts, Rules and Notifications there are other enactments which contain few sections on the protection of Environment and prevention of pollution, they are :

1. Code of Civil Procedure, 1908
2. The Factories Act 1948 as amended by Amendment Act, 1987
3. Industries (Development and Regulation) Act, 1951
4. Mines and Minerals (Regulation and Development) Act, 1957
5. The Merchant Shipping Act, 1958
6. Atomic Energy Act, 1962
7. The Insecticides Act, 1968
8. Monopolies and Restrictive Trade Practices Act, 1969
9. Code of Criminal Procedure, 1973
10. The Indian Coast Guards Act, 1978
11. Motor Vehicles Act, 1988
12. Central Motor Vehicles Rules, 1989