CHAPTER V

GENERAL STATUTES BEARING ON ENVIRONMENT

Industrial pollution is controlled to certain extent even before the enactment of these environmental statutes dealt with in the earlier chapter. Tiwari Committee\(^1\) constituted to review the environmental legislation and extent of control existing over environmental degradation, identified that there were in existence for long, two hundred odd laws dealing with environmental matters some of which of course were concerned with pollution control. Environmental policy, then, was not a harmonious coordination of environment and development.\(^2\) Environmental matters limited themselves to functions like protection of public health and restriction of resource utilization in the economic perspective. Their significance rests on the fact that indirectly they also reduce the consequences from pollution considerably and if amended in an environmental perspective can better serve all round environmental protection programmes including control of industrial pollution which affects the health of not only workers and their family but also members of the general public in the neighbourhood.

2. Chatrapati Singh, "Legal Policy For Environmental Protection", (1984) C.U.L.R. p.8. Thus it was that if these laws protect or conserve, they get in the way of production and development, and where their aims are industrial or demographic development, they grossly overlook the conservation and protection objectives.
In a country like India where 'dharma' was the rule of the law and life, ancient society gave much value to the protection of the environment. This state of affairs continued to exist for a long time till the time when industrialisation had set in upsetting the balance. There were only general provisions dealing with the offence of pollution in the penal laws. The dieties of industrialisation had its counterchecks in the form of certain laws specifically regulating each industrial activity and in their train in the form of certain provisions therein protecting the environment from the ill-effects of such activities.

Local legislation, working at the grass-roots with the task of protecting public health also control industrial activities by licensing and restricting irresponsible utilisation of drains for carrying hazardous and other industrial waste. Laws for protecting the natural resources serve as a check on the industrial activities causing pollution.

3. C.M. Jariwala, "Changing Dimensions of Indian Environmental Law", in P. Leelakrishnan et al., (Eds), Law and Environment (1992) p.1. Ancient literature contains full evidence on this matter. It was the dharma of everyone to protect the nature. People worshipped nature as well as objects of nature. And for causing injury to nature, punishments were prescribed. Natural resources like rivers enjoyed great significance and were considered as Goddesses with purifying capacity. Polluting water of a river was considered a sin and attracted punishment.

4. Indian Penal Code, 1860 and Code of Criminal Procedure, 1973 deal with pollution as an offence under different sections and is an important tool used by those aggrieved by industrial pollution resulting in nuisance.

5. For eg. Boilers Act of 1923; Explosives Act of 1884; Explosive Substances Act of 1908; Petroleum Act of 1934; Workman's compensation Act of 1923; Poisons Act of 1919 etc.
Thus the legal measures having bearing on the control of pollution caused by industries can be classified into four categories:

1) General laws that provide for the control of pollution as part of the criminal justice administration. 6

2) Specific industrial laws that inter alia control pollution. 7

3) Planning laws that control pollution in order to protect public health, 8 and

4) Planning programmes and laws aimed at protecting natural resources from the industrial and municipal misuse. 9

General laws

1. Indian Penal Code

The provisions under the Indian Penal Code dealing with offences affecting the public health and safety, public nuisance or mischief are those earliest measures having considerable significance for the control of industrial hazards.


Thus, it makes a specific provision for punishing an offender who voluntarily fouls the water of any public spring making it less fit for which it is ordinarily used. The intentional act of fouling is the essence of this section applying only to a public spring or reservoir. The application of this provision depends on the nature of the environment affected by the act.

The pollution of waters other than springs and reservoirs is considered separately as a public nuisance. They are acts affecting seriously the health, safety, comfort or convenience of the public.

10. Indian Penal Code Section 277 states: "Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both".

11. The question raised is whether the term 'public spring' includes a river or a canal. In Queen v. Vittichakkam, I.L.R.4. Mad. 229 the conclusion arrived at is that the public spring contemplated under section 277 of the Indian Penal Code did not include continuous stream of water running along the bed of a river. Following the same line Bombay High Court reiterated the same view in Emperor v. Nanaram (1904) 6 Bom.L.R. 52. Thus the application is restricted and this may be because rivers or canals were then thought to have the self-purifying capacity since the foul is to be carried far away by the following currents.

12. The Indian Penal Code of 1860, Section 299.
of the public and do not include a private nuisance. A similar provision having significance to a certain extent in charging a polluting industry is the provision dealing with mischief. It applies both to damages to the public as well as to any person and if a person intentionally fouls waters of a well or lake or river, causing health hazards to those living in the vicinity, can be prosecuted for the same.

Code of Criminal Procedure

Code of Criminal Procedure of 1973 credits itself by the fact that it has a provision used extensively by the persons affected by industrial pollution since long and for the longest period of time with great implications. It was a relief in the

13. The Indian Penal Code, Section 268 of 1860 defines public nuisance. A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to the persons who may have occasions to use any public right...

14. Section 425 of the Indian Penal Code states: "Whoever, with intent to cause, or knowing that he is likely to cause, wrongfull loss or damage to the public or to any person, causes the destruction of any property, or to any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects it injuriously commits mischief".

15. Section 133 of the Criminal Procedure Code provides a speedy, summary remedy against public nuisance and the provision is used for the control of industrial pollution when the public complain of nuisance is caused by the industry or operation.
real sense for, indiscriminate use of drains, rivers, etc. by
the industries when affected the public with no legislation to
control it as an environmental pollution, public could invoke
this provision and courts did not lag behind in elevating this
power, vested in the Magistrate for removal of public nuisance,
to a credible remedy for industrial pollution. The signifi-
cance of this section is not at all affected even in the wake
of specific legislation for the control of pollution. It will
not be an exaggeration if we recall that Supreme Court decision
in the 80's Ratlam's case brought under Section 133 of the
Criminal Procedure Code widened the scope of these provisions
to such an extent that further development in environmental
jurisprudence took place on this firm and strong basis.

16. Infra, Chapter 6 on 'Common Law Remedies' deal in
detail how the judiciary could ascertain control of
pollution caused by industries using this provision.

17. It was a controversial issue which High Courts of
different states disposed off differently. The con-
clusion arrived at, is that no specific legislation
can reduce the significance of this provision.


19. Supra, n.16.
Civil Procedure Code

A civil suit for permanent injunction restraining the polluter from causing public nuisance in yet another remedy in which the common law remedy is given a statutory recognition. Code of Civil Procedure ensures the right of action in case of public nuisance. High Court of Andhra Pradesh upheld the coexistence of this provision side by side with the specific legislation for environmental protection in order to control industrial pollution.

Similarly the Easement Act, restricts certain rights such as exclusive rights to enjoy and right to advantages arising from situation to enjoy without disturbance the natural advantages.

21. Id., Section 91 reads:
"Public nuisance and other wrongful acts affecting the public-1) In the case of public nuisance or other wrongful act affecting, or likely to affect, the public, a suit for a declaration and injunction or for such other relief as may be appropriate in the circumstances of the case may be instituted -
a) by the Advocate General or
b) with the leave of the court, by two or more persons, even though no special damage has been caused to such persons by a reason of such public nuisance or other wrongful act".
arising from its situation. At the common law every riparian owner is entitled to the continued flow of waters of a natural stream in its natural condition without any obstruction or pollution.

Thus these provisions under the general laws gave statutory implementation to common law remedies. Though, except Section 133 of the Code of Criminal Procedures all other provisions are used very rarely, they are considered the tools for controlling pollution.

II Specific Industrial Laws Bearing in Control of Pollution

Those specific industrial laws enacted with different purposes contain provisions that incidentally control pollution

23. The Indian Easement Act, 1882 (Act V of 1882), Section 7(a) and 7(b). This right includes the right of every owner of land that within his limits, the water which naturally passes or percolates by, over or through his land shall not, before so passing be percolated, be polluted by other persons. (Illustration (f)) and right of every owner that water passing through natural stream shall be allowed by other persons to flow within such owner's limits, without interruption, alteration etc in quantity, direction, force or temperature (Illustration(h)).


25. One such case is Babulal v. Ganeshyamdas Birla, decided by the M.P.High Court on 19 May, 1976. It was a case brought under Section 268, 269, 277, 288 and 290 of the Indian Penal Code.
caused by industries. Though there are a number of laws for controlling individual industrial processes or even control pollution at the regional level, the idea here is to concentrate only those national laws having significance in compromising the national industrial policy with environmental policy.

Factories Legislation

Industrialisation got momentum after independence as the planners considered it to be the right step in the right direction. Industrial policy introduced as early as in 1948, therefore, put forward measures for achieving the same which included the welfare of the industrial workers. Factories Act, 1948 in essence is contemplated as a social welfare legislation.

26. Supra. n.6.

27. For example Bengal Smoke Act, 1905, Bombay Smoke Act, 1912, Water Prevention and Control of Pollution Act, Maharashtra, and Water Prevention and Control of Pollution Act, Orissa etc.


30. Objectives and reasons held that the main object of 1948 Act is to ensure adequate safety measures and to promote the health and welfare of workers.
dealing in detail with provisions such as health, safety and welfare of the workers to be achieved through cleanliness in the premises and safe working conditions. This Act contains certain general provisions relating to protection of health. A significant provision from the environmental angle is the one relating to disposal of wastes and effluents. Thus the idea of environment protection crept into the management realms, because they had to dispose off wastes and effluents. Punishment is provided for violation of the provision.

31. Factories Act 1948, Section 7A inserted by amendments in 1987, (Act 20 of 1987). It prescribes the general duties of the occupier of a factory to ensure the health, safety and welfare of the workers at work in the factory.

32. Id., Sections 11-20.

33. Id., Section 12 (1): Effective arrangements shall be made in every factory for the disposal of wastes and effluents due to the manufacturing process carried therein. Amendment of the Act in 1976 introduced the requirement that the effluent and wastes should be treated before disposal of the same. Earlier the provision contained aimed at only the disposal of the waste and effluents.

34. Id., Section 92 provides for punishment or violation which is imprisonment for a term extending to three months or fine extending to five hundred rupees or both.
Precaution against dangerous fumes is another preventive measure for controlling pollution by industries. These provisions are further implemented specifically through the rules framed by the State Government. Thus the Act authorises the State Government to make rules for the approval, licensing and registration of factories instead of directly laying down the norms for such approval, licensing and registration. These rules entrust authorities such as Local authority, Effluent Board, Director of Fisheries and Health Officer the power to approve the arrangements for the disposal of effluents and waste.

35. Id., Section 36.
36. Id., Section 12(2) provides that the State Government may make rules prescribing the arrangements to be made under sub-section(1) or requiring that the arrangements made in accordance shall be approved by such authority as may be prescribed. By virtue of this delegated power State Governments have made rules thereunder such as U.P.Factory Rules, 1950; Tamil Nadu Factory Rules, 1950; West Bengal Factories Rules, 1958; Maharashtra Rules, 1963; Mysore Rules, 1969; Kerala Rules, 1957 etc.
37. Id., Section 6(1). But section 6(2) circumscribes the purpose of such approval by laying down that, if no order is communicated to the applicant within three months, the permission applied for will be deemed to have been given.
38. Thus approval shall be obtained from the Local Authority in case the drainage system is to be connected to public sewerage system, but when there is no public package system to be thus connected the approving authority is the Health Officer or Public Health Authority (For example: Rule 22 of Maharashtra Factories Rules, Rule 18 and 52 of the Mysore Factories Rules). U.P.Factories Rules provide for the approval of the Effluent Board constituted by the State Government (Rule 18) while Tamil Nadu Rules provide that approval shall be obtained from the Director of Fisheries or such authority as the State Government may appoint in this behalf (Rule 17(3)).
Judicial interpretation has elevated this step for effective arrangements to a mandatory one and a factory can be prosecuted for an offence under Section 92 read with Section 12 of the Act and Rules framed thereunder. Thus, there are only a few provisions under the Factories Act having relevance to some extent for the control of pollution in the environmental perspective.

Bhopal tragedy led to the amendments of Factories Legislation along with the environmental statutes by inserting provisions imposing certain specific responsibilities on the occupier of factories engaged in hazardous processes. The Act by defining hazardous processes acknowledged that pollution of general environment or material impairment to the health of the workers may be caused by unscrupulous industrial processes. Thus it is not the effluents and wastes alone that will have adverse impact on the worker's health, but special

39. For example, High Court of Allahabad in the case of Nagendra Lal v. State of U.P., 1981 (43) Factories and Labour Reporter, 144 overruled its own single bench decision and held that a factory can be prosecuted for an offence under section 92 read with section 12 of the Act and the Rules even if the plans for the arrangement of effective disposal of wastes and effluents have neither been approved nor disapproved by the Effluent Board, p.147.


41. Id., Section 2(6) "hazardous process" means any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, byproducts, wastes or effluents thereof would - i) cause material impairment to the health of the persons engaged in or connected therewith, or ii) result in the pollution of the general environment.
care is required with regard to the raw materials used, intermediate or finished products and byproducts to avoid such consequences. This definition has thus added an environmental dimension to this otherwise social enactment to protect the workers engaged in industrial activities. Workers' right to information about health and safety at work as well as the right to complain about the inadequacies of health and safety measures is protected along with a duty cast on the workers not to misuse or neglect the safety devices. 42

With a view to achieve the new objective the steps taken include:

1) constitution of a Site Appraisal Committee 43 to examine applications for the establishment of a factory involving hazardous processes and make its recommendations to the State Government within ninety days. 44

42. Id., Section 111 A(i) and (ii) - rights and Section 111 the duty.

43. Id., Section 41 A(1). It is an expert body with Chief Inspector as its Chairman. Other members include representatives of - The Pollution Control Board, both Central and State; Meteorological Department, Town Planning Department of the State and Expert in the field of occupational health. In addition, there are five other members co-opted by the State Government such as scientist with knowledge of hazardous processes involved in the factory representative of local authority and three others deemed fit by the State Government.

44. Id., Section 41 A(2).
2) compulsory disclosure of information by the occupier

3) specific responsibility of occupier in relation to hazardous processes.

4) power of Central Government to appoint Inquiry Committee

5) permissible limits of exposure of chemical and toxic substances.

6) workers participation in safety management and

7) right of workers to warn about immediate danger.

If an evaluation of these provisions is made in the environmental perspective, there is no doubt that something progressive is envisaged for the health and safety of the workers involved in

45. Id., Section 41 B.

46. Id., Section 41 C - It includes maintaining a health record or medical record of workers exposed to any chemical, toxic or harmful substances and appointment of an officer to provide facilities for protecting workers.

47. Id., Section 41 D - The inquiry Committee consists of Chairman and two other members to enquire to the standards of health and safety.

48. Id., Section 41 F.

49. Id., Section 41 G.

50. Id., Section 41 H.
hazardous industrial processes. But the protection of the
general environment from industrial hazards is yet to be
achieved. Even then there are attempts made positively such
as constitution of a site appraisal committee for the location
of an industry. But, the Amendment Act did not lay down any
criteria for the location of such industries. The appraisal
committee is only an advisory body to make recommendations
leaving the decision making power to the State Government.
The constitution of the committee shows that it is a forum of
executives representing the Government leaving aside the partic-
cipation of the general public. Moreover, on the State Govern-
ment's approval to an application for the establishment of a
factory involving hazardous processes, no further approval
from the Pollution Control Board under Water Act or Air Act
is necessary. This in effect can avoid the control of the
Pollution Control Board over industrial establishments and thus
reduce the significance of environmental statutes considerably
bringing industrialisation to the interest of the Government
in power without the checks and counterchecks by environmental
agencies such as the Pollution Control Board.

Nevertheless, those measures for leading to the protec-
tion and safety of workers also ensure prevention of environ-
mental hazards endangering the environment as a whole.

51. Id., Section 41 A (4).
52. Id., Sections 41 B - 41 H.
Further, the 1987 Amendments have inserted a new section empowering the Inspector to prohibit employment on account of serious hazard, in addition to the penalty for contravention of those mandatory provisions. The schedules annexed contains the list of industries involving hazardous processes, the permissible level of chemical substances in work environment and the list of notified diseases.

Factories Rules framed at the State level carried these general provisions into action and contains several specific provisions that can be used significantly for the control of pollution.

53. Id., Section 87 A.
54. Id., Section 96 A - Penalty for contravention of Ss. 41B, 41C and 41H. It is punishable with imprisonment extending to seven years and fine upto two lakhs and for continuous contravention, additional fine extending to 5000/ per day for the first such failure (96A(1)). If the failure continues beyond one year after the date of conviction, imprisonment upto ten years. It also amended Section 92 to increase the penalty.
55. Id., Schedule I under section 2 (b)-List of industries involving hazardous processes-29 items.
56. Id., Schedule II under Section 41F.
57. Id., Schedule III gives a list of notified diseases (29 in number)
58. To mention for example Kerala Factories Rules, 1957 deals with approval of sites (Rule 3), disposal of waste and effluents (Rule 17), constitution of safety committee (Rule 81). The schedules annexed classifies the factors and provisions for protecting the workers from dangers as well as hazards affecting their health (Schedule XXVII inserted by G.O.(MS)No.6/87/LBR dated 22nd January, 1987). See for details Kerala Factories Rules, 1957 (Notification in the Kerala Gazette No.52 dated 24th December, 1957).
Industries Development and Regulations

So far as the control of industries is concerned, Industries (Development and Regulations) Act, 1951 (IDRA, 1951) is the first and most significant legislation. The control provisions then did not aim basically at control of pollution, but, there are areas that would well accommodate such measures without much difficulty.

It is considered to be in the public interest that the Central Government shall take within its control the industrial activities specified. This control is primarily achieved through ways such as constituting a Central Advisory Council for the purpose of advising the Central Government on matters of development and regulation of Scheduled industries.

The Central Government, in addition, may establish for any

59. Act No. 65 of 1951. The objective of the Act is to implement the Industrial Policy of 1948. The planning of future development on sound and balanced lines is sought to be served by the licensing of all new undertakings by the Central Government (Statement of object and reasons IDRA 1951).

60. Id., Section 2. The First Schedule contains a long list of 38 categories of industries engaged in the manufacture and production of any of the articles mentioned under each.

61. Id., Section 5. The council consists of a chairman and members not exceeding thirty, all appointed by the Central Government representing interests such as owners of industrial undertakings in scheduled industries, persons employed in such industries, consumers of goods manufactured in such industries, such other classes including primary producers. The Central Government is to consult this Advisory Council.
Scheduled industry, a Development council which is a body corporate to perform functions specified. The Development council is to submit a report to the Central Government for the completed financial years.

Provisions that are of environmental significance are the registration of existing industries and licensing of new industrial undertakings. This licensing extends to production and manufacture of new articles and in special cases, the functioning of an industry can be prohibited unless it gets proper registration or license wherever necessary or the change of location. The contravention of these provisions can be dealt with by fine as well as imprisonment. A factory managed in a manner detrimental to public interest may be taken over after notification, sometimes even without investigation. It can also exempt industries from the

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62. Id., Section 6. The Development Council consists of members representing the owners of industrial undertakings, technically qualified persons, representing the workers, and representing the consumers. The council is to perform functions specified under Schedule II. These functions include among other things suggesting norms of efficiency with a view to eliminate waste and obtaining maximum production, improving quality and reducing costs.

63. Id., Section 7.

64. Id., Section 10.

65. Id., Section 11.

66. Id., Section 11 A (inserted by 1993 amendments)


68. Id., Section 24.

69. Id., Section 18 A.
operation of any of the provisions under this Act. It is under this exemption clause that environmental protection got introduced for the first time under this Act making location of an industry an important clause for getting this exemption thus discouraging industrial undertakings in sensitive localities.

70. Id., Section 29 B. It provides - If the Central Government is of opinion that it would not be in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Gazette, exempt, subject to conditions, any industrial undertaking from the operation of all or any of the provisions of this act.

71. Id., The Government has delicensed 28 industries including 28 bulk drugs as specified in this Ministry’s Notification No. S.O.291(E) dated 18th March, 1985; No.S.O.438(E) dated 8th August, 1986 and No.S.O.834(E) dated 11th November, 1986 for non-MRTP/non-FERA companies subject, inter alia to the condition that the location of the undertakings should not fall within the standard urban area limits as determined in the Census of India, 1981 of a city having a population of more than one million or within the municipal limits of a city with a population of more than five lakhs. Another 71 industries were delicensed for MRTP/ERA companies for locations in backward areas vide Government Notification No.140(E) dated 31st March, 1986 as subsequently amended vide Notification No.1127(E) dated 29th December, 1987 subject inter alia to the condition that the industrial undertaking is not within a radius of 100 kms of a city having a population of 25 lakhs according to the 1981 Census.

Consequent upon the issue of New Locational Policy as contained in Government No.629(E) dated 30th June, 1988, it has now been decided that henceforth, the delicensing facilities as extended to non-MRTP/ERA vide Notifications referred to in para 1 above, will not be available, if the industrial undertaking is located
(a) 50 kms from the boundary of the standard urban area limits of any city having a population of more than 25 lakhs according to the 1981 Census; or
(b) 30 kms from the boundary of the standard urban limits of any city having a population of more than 15 lakhs but less than 25 lakhs according to 1981 Census; or
(c) 15 kms from the boundary of the standard area limits of any city having a population of more than 7.5 lakhs but less than 15 lakhs according to the 1981 Census; or
(d) The standard urban area of the municipal limits of other cities and towns.
For details also see supra, Chapter 3
New Industrial Policy has amended this provision\textsuperscript{72} exempting from license considerably making licensing compulsory for those industries coming under the first and second schedule.\textsuperscript{73} This exemption from licensing is however, subject to certain locational restrictions.\textsuperscript{74} It is only the environmental safety, land use, urban planning and related factors that are kept in view while considering the industrial license application.\textsuperscript{75}

This Act is further implemented through the rules of 1952.\textsuperscript{76} Thus an application for registration shall be made to the Ministry of Industry (Department of Industrial Development).\textsuperscript{77}

\textsuperscript{72} Notification No. S.O. 477(E) dated July 25, 1991 under Section 29 (B) IDRA, 1951 is published in supersession of a number of notifications of the Government of India. For details see supra. Chapter 3, f.n. 39.

\textsuperscript{73} Ibid. According to this, the exemption will be available for only the Small Scale and ancilliary undertakings covered in Schedule III as well as those covered by S.O. 232(E) but not included in Schedule I or II. The Schedule contains the list of industries reserved for the public sector while Schedule II the list of industries requiring compulsory licensing. It contains a list of 18 categories.

\textsuperscript{74} Ibid. Press Note No. 3(1991 Series) dated 2nd August 1991 contains a list of 23 cities with population of 10 lakhs and above details also see 1991 C.C.L. Part III pp.340-347.

\textsuperscript{75} "Guidelines For Industrial License Applications Received For The Industries Falling Outside Compulsory Licensing, But involving Locational Angle". (Press Note No.17 of 1992, dated 2nd November, (1992) 3 Comp.L.J. p.110.


\textsuperscript{77} Id., Rule 3.
Such an application for license or permission for new industry shall be made before initiating any work and the application is considered by a committee which includes representatives of different Ministries of the Central Government including Ministry of Environment and Forest. Again the owner of an industry shall send a half yearly return from the grant of license till such time as the industrial undertaking commences production to the Ministry of Industrial Development or any authority appointed for the same.

Measures for the protection of the environment are brought into effect through those press notes released by the Ministry of Industry declaring a list of twenty highly polluting industries specifying that they should have a clearance from the environmental angle. Thus, it is provided that con-

78. Id., Rule 7.
79. Id., Rule 10(1) & (2). Rule 10(2) has been substituted by S.O.58(E) dated 21.4.1993. This amended Rule provides that the Committee shall consist of members representing the Ministries of the Central Government dealing with:
   i) the industry specified in the first schedule to the Act;
   ii) Finance;
   iii) Science and Technology;
   iv) Environment, Forest and Wildlife;
   v) Small Scale Industries.
   In addition, the Central Government or the Committee may include in such Committee any other member to represent any other Ministry.
80. Id., Rule 19. The report is to be sent every half year ending 30th June and 31st December in Form 'G' which contains in it the declaration of steps as to whether approval for the pollution control steps has been received from the appropriate authority.
version of Letter of Intent into industrial licence or conversion of provisional registration into regular registration will take place, only if, apart from other prescribed conditions, environmental conditions as required are fully satisfied. Conditions are imposed to check pollution along


In order to check and prevent air water and soil pollution arising out of industrial projects it is incorporated that in respect of certain industries of a highly polluting nature, it would not only be necessary to install suitable pollution control equipments, but also to identify the site and location of the project where a particular unit would be set up. The industries listed are:

1) primary metallurgical producing industries viz zinc, copper, lead, aluminium and steel; (2) paper, pulp and newsprint; (3) pesticides, insecticides; (4) refineries; (5) fertilizers; (6) paints; (7) dyes; (8) leather tanning; (9) rayons; (10) sodium/potassium cyanide; (11) basic drugs; (12) foundry; (13) storage batteries(lead acid type); (14) acids/alkalies; (15) plastics; (16) rubber-synthetic; (17) cement; (18) asbestos; (19) fermentation industry; (20) electroplating industry.

84. Supra. nn.81, 82.

The conditions to be fulfilled are:

1) The State Director of Industries confirms that the site of project has been approved from the environmental angle by the competent State Authority.

2) The entrepreneur commits both to the State Government and the Central Government that he will install the appropriate equipments and implement the prescribed measures for the prevention and control of pollution.

3) The concerned State Pollution Control Board has certified that the proposal meets with the environmental requirements and that the equipments installed or proposed to be installed are adequate and appropriate to the requirements.
with a checklist to ensure compliance. Again in order to make these measures more practicable, the validity period of letter of intent/industrial license have been extended from one year to three years. It is further made clear that the No Objection Certificate from the Pollution Control Board as per condition 3 of the Environmental Clearance Notification is a requirement to be fulfilled before the issue of license and instructed industries to get the consent from the board before considering the application for such conversion.

Other ancillary measures having significance so far as licensing industrial activities from the environmental angle include: 1) Scheme to develop low-cost non-waste technology and control of pollution.

2) Packages of Delicensing of Industries and Incentives

3) Incentives for setting up industries in 'No Industry Districts' Backward Areas.

88. (1991) 3 Comp.L.J. p.31. The scheme is to promote the adoption of technologies and best practicable techniques for environmental benefit among industrial units. This was announced by the then Minister for Environment and Forest, Kamal Nath, while addressing on "Technology Co-operation for Sustainable Development" organised by Confederation of Engineering Industry on 19th July, 1991. The thrust is on waste minimisation for pollution control is nothing but waste management.
89. See supra. Chapter 3, f.n. 40.
90. (1983) 2 Comp.L.J. p.137. As part of correcting regional imbalance and securing industrialisation of backward areas of the country, the Government provided incentives which include concessional finance by All India Lending Institutions, subsidy on fixed capital investments, preferential treatment in the grant of industrial licenses. This policy indirectly regulated industrialisation in cities and towns.
4) Identification of protected districts/nonpolluting industry districts and industries

5) Inclusion of subcolumns under column 7 related to location of industries to get information as to matters relevant under 'Forest

Forest Conservation Policy restricts the use of forest land for industrial projects. For setting up of factory or its ancillary units or for procurement of raw materials prior permission of the Central Government in the Department of Agriculture and Cooperation in the Ministry of Agriculture has to be obtained. The Government is also required to ensure that all aspects concerning environmental protection are looked into carefully before approval for setting up of industrial ventures near national parks, sanctuaries or national monuments etc. are accorded permission. Dispersal of industries is an important national objective to serve simultaneously to avoid concentration in already overcrowded metropolitan areas.

91. (1987) 3 Comp.L.J. p.52 (F.No.10/156/85-LP dated 17th February, 1987). With a view to ensure that ecologically fragile regions in the country are protected from the adverse effects of industries which emit harmful effluents, the Department of Environment in the Ministry of Environment and Forests have identified a list of districts as totally protected and also those districts where non-polluting industries could be located. They have also identified a list of industries which could be set up in these districts in various States and Union Territories. List I protected districts and List II non-polluting industry districts List III industries that could be set up in these districts.

92. Forest Conservation Act, 1980
Application form for a license or permission under IDRA - Environment aspects-Amendments Relating to issued by Ministry of Industry vide No.10/8/82-LP dated 16.2.83. (1988) 2 Comp.L.J. p.86. Therefore, application for exemption from licence under section 11, 11A or 13 of IDRA 1951 has been amended by adding subcolumns under column 7 relating to 'Location' of industry.

After independence, our industrial policy aimed economic stability through industrialisation and meeting the agricultural needs by developing public and private sector industries assisted by small scale sector. Then came the gradual shift in the policy to disperse industrial growth to rural areas aimed at achieving the national objective of socialist pattern of society as well as removing the rural-urban disparities and unemployment. For industries have a tendency to cluster around the cities which invariably result in environmental problems caused by overcrowding, pollution, disease and lack of civic amenities. These are problems affecting public health and therefore became significant under the planning regulations as well as local bodies legislation. Thus the scope of planning schemes is extended to protect the environment directly.


95. For instance, Prime Minister's Policy Statement on 10th December 1986 states that dispersal of industries is an important national objective. It serves simultaneously to avoid concentration of already overcrowded metropolitan areas and also to spread the benefits of industrialisation more evenly to backward areas. "Industrial Policy During Seventh Plan Period" PM's Policy Statement, 10th December, 1986 in (1987) 1 Comp.L.J. p.48.

96. For example, Town and Country Planning Act, 1945, Travancore Town and Country Planning Rules, 1933, Madras Town Planning Act, 1920 etc. provided for industrial locations in their development schemes taking into consideration the public health protection.
But the Planning Regulations restricted themselves to the location of industrial sites and schemes for regulating and controlling the deposit or disposal of waste materials or refuse. Local bodies legislation stepped further to restrict industrial activities as part of their administrative mechanism for protecting public health.

Local Bodies Legislation and Control of Industrial Pollution

Local bodies are constituted for the implementation of national policies from the grass roots. Their administration is regulated by legislation at the State level. As part of this administrative policy, restrictions are laid on the use of places for certain purposes by licensing the same. A list of

97. Thus in Town and Country Planning Act, 1 120 (28th March, 1945) Schedule under Section 5 details of matters to be dealt with by schemes which included prohibition, regulation and control of the deposit or disposal of waste materials and refuse, sewerage drainage and sewage disposal. In Madras Town Planning Act, 1920 (Act VII of 1920) part II the General Town Planning Scheme provide for the map drawn which contains the industrial site.

98. For example, Kerala Municipalities Act, 1960 (Act 14 of 1961) and Kerala Panchayat Act, 1960 (Act 32 of 1960) supplemented by the Kerala Municipalities (Construction or Establishment of Factories or Installations of Plants and Machinery) Rules, 1956 and Kerala Panchayat (Licensing of Dangerous and Offensive Trades and Factories) Rules, 1963. Amended from time to time, they are now substituted by the new legislation of 1994 after the 73rd and 74th amendment of the Constitution in 1993.

99. These Acts provide that a factory can be established only after getting a license from the local authorities (Section 284 and Section 96 of Kerala Municipalities and Kerala Panchayat Act respectively).
activities having some impact on the environment are thus enumerated as offensive or dangerous to human life or health or property. Similarly, they also restrict the construction or establishment of any factory, workshop or workplace and the installation in any premises any machinery or manufacturing plant by providing that permission should be taken for the same if steam or other power is employed. Approval of the Inspector of Factories and consulting and having regard to the health officer are the requirements to be fulfilled by

100. Kerala Panchayats (Licensing of Dangerous and Offensive Trade and Factories) Amendment Rules, 1992. (Kerala Gazette No.34 dated 25.4.1992) Section 284 of the Municipalities Act provides that no place shall be used within the municipal limits for any purpose specified under Schedule III, without a license of the Commissioner and except in accordance with the conditions specified there. Schedule III enumerated the purposes for which premises may not be used without a license.

Under the Kerala Panchayat Act, Section 96 contains the similar provision and Schedule I of the Kerala Panchayats (Licensing of Dangerous and Offensive Trades and Factories Rules) 1963 enlists the purposes (126 in number) for which the license is essential.

101. Section 285 and Section 97 of the Municipalities Act Panchayat Acts respectively.

102. Section 285(4)(a) of the Municipalities Act provides that if more than nine workers are proposed to be employed on any day in the factory workshop or workplace approval of the Inspector of Factories shall be obtained. The Kerala Panchayat Rules, 1963 under Rule 12(4)(a) provided for such an approval if the factory workshop or workplace comes within the purview of the Factories Act, 1948. Amendment Rules, 1992 now provide that approval of the Inspector of Factories will not be required if the approval of green channel counters in the District Industries Centre or in the Kerala State Industrial Development Corporation has been obtained.

103. Section 285(4)(b) and Rule 12(4)(b). The Panchayat Rules, 1963 additionally provides that in respect of matters to be specified by the Director by general or specific order shall, also consult the Divisional Fire Officer as regards the precautionary measure to be taken against the outbreak of fire.
the authorities before granting such a permission. Permission can very well be denied on the ground of likelihood of causing nuisance.\textsuperscript{104} Giving directions for abatement of nuisance caused by steam or other power is an important function using which the authorities can even prohibit the use of the particular kind of the fuel employed or restrict the noise or vibration by prohibiting the working of a factory, workshop or workplace between the hours of 9.30 p.m. and 5.30 a.m.\textsuperscript{105} Power of entry to such premises\textsuperscript{106} further strengthens the scope of controlling industrial activities

\textsuperscript{104} Nuisance is defined as "any act, commission, place or thing which causes or is likely to cause injury, danger, annoyance, disturbance or offence to the sense of sight, smell or hearing or to rest or sleep or which is or may be dangerous to life or injurious to health or property".

\textsuperscript{105} Section 286 of Municipalities Act and Rule 13 of Panchayat Rules.

\textsuperscript{106} Executive authority is empowered to continue its vigilance over the working of the factory and thus control the industrial activities considerably for the sake of protecting public health.

Rule 15 provides that the executive authority or any person authorised by him in this behalf may enter any factory etc. a) at any time between sunrise or sunset. b) at any time when any industry is being carried on c) at any time by day or night, if he had reason to believe that any offence is being committed under Rule 12 or Rule 13.
from adversely affecting the public health. Kerala Municipalities
(Construction or Establishment of Factories or Installation of
Plants and Machinery) Rules, 1966 further expand the scope of
Section 285 by bringing within it even factories that do not
employ power. At the same time exemptions are provided for
the use of power when the purpose is purely domestic.

Thus it can be seen that Local Bodies Legislation provide
specifically for the regulation of industrial activities which
in turn control industrial pollution. Though these provisions
are narrow in their scope, there are occasions when aggrieved
persons approached the courts for compelling the authorities to
perform their duties and apex court vehemently criticised the
irresponsible attitude of Municipal authorities.

107. Rule 3: Classes of factories which do not employ power but
which require permission—Thus any premises whereon it is
proposed to employ 20 persons or more on any day without
the aid of power shall be deemed to be factories under
Section 285(1) of the Act.

108. Rule 4 of Municipalities Rules, 1966 and Rule 16 of

109. For example in Ratlam's case and Ganga pollution cases, the
court pointed out that even though there are provisions
to deal with pollution, municipalities are oblivious to
this obligation whereby provisions remain just on papers
without any adequate action being taken to pursuant
thereo. Supreme Court took the chance to criticise the
municipal irresponsibility generally and made the ruling
against Kanpur Municipality, under Ganga Pollution case
applicable mutatis mutandis to all other Mahapalikas and
Municipalities which have jurisdiction over the area
through which the Ganga flows. Municipal Council,
But High Courts do not seem to be strict in interpreting those provisions and failed to remedy complaints against the liberal attitude of local bodies. More distressing fact is that the 1993 amendment of the Kerala Panchayat (Licensing of Dangerous and Offensive trades and Factories) Rules failed to review the provisions in the environmental perspective when it amended Rule 12 (4) (a). The beacon of light in the right direction came with the Seventy fourth Amendment which for the first time provided for the "protection of environment". But 73rd Amendment 1992 inserting 11th Schedule which enumerates matters to be handled by Panchayats do not contain a similar provision. Environmental protection should be an item not only in the list of Schedule 12 but also in Schedule 11.

In line with this Amendment, the Kerala Municipalities Act, 1994 is legislated along with Kerala Panchayat Raj 1994.

110. For details see infra. Chapter 8 pp. 279-281
111. Kerala Gazette No. 34 dated 25.4.1992, thus as part of the New Industrial Policy of Government as per G.O.(P) 119 (91) 9/91/D dated 22-10-1001 a Green Channel Scheme has been introduced for expediting clearance for starting new industrial units. Rule 12 (4).
112. 74th Amendment 1993 (20th April 1993) inserted Part IX A The Municipalities and also 12th Schedule (Article 243) which includes:
8. "urban forestry, protection of the environment and promotion of ecological aspects".
But the new provisions added seem to be leaning more towards a liberal industrial policy. The newly added Schedule VII gives a list of activities that require a clearance under Section 448 (4)(b) from the District Health Act 13 of 1994. The objective and reasons clearly indicate that it is in accordance with the 73rd Amendment which aims at ensuring public participation in planning and local administration. But Kerala Panchayat Raj Act, 1994 has just reported the provisions under the 1960 Act with regard to licensing the establishment and installation of factories. Under this Act sections 232-234 reiterates Section 96-98 of 1960 Act except that the expiry period for the notification is now 30 days instead of 60.

Thus under Section 448 (4)(b) is added that if the factory is located in an Industrial estate, Mini estate, Industrial Development Area, Development plot provided by Industries Department or Small Scale Industries Corporation no such consultation with Health Officer is needed if the factory one listed under Schedule VII. Moreover if such factory declare that there will be no effluents and the General Manager of the District Industrial Centre recommend the same, no consultation is necessary.
If any solid liquid or gaseous effluents cause pollution, that has to be referred to the Health Department.

Ganga Action Plan and Industrial Pollution

Industrialisation, urbanisation and modernisation of agriculture are the factors that pollute the otherwise pure water of Ganga. The role of industries in polluting the sacred

116. Schedule VII. List of activities that require a clearance under section 448 (4) (b).

Schedule I List of duties
It includes public health, social forestry and environmental protection, Small Scale Industries and awareness of environmental matters.

Schedule VI - The list of activities that cannot be started without a license.

Schedule VII- Those activities that require clearance under Section 448(4)(b).

1. (a) Battery making; (b) manufacture of cycle parts including tyres and tubes; (c) manufacture of industrial and scientific instruments, hand tools and machine tools which includes electroplating with chromium, cutting oil and heat treatment; (d) manufacture of bulbs, tubelights, mercury bulbs, reflectors, metallic shades etc., (e) pickling of iron and steel; (f) manufacture of electrical and electronic parts which involves acid treatment, electroplating, solvent treatment etc., (g) manufacture of telephone, telegram, teleprinter which involves electroplating and heat treatment; (h) manufacture of time piece, watch, self illuminating direct.

2. Chemicals and fertilizers (3) Dyes, (4) Food processing (5) Canning (6) Manufacture of mineral oils such as engine oil, cutting oil and transformer oil (7) Paints and varnish (8) Manufacture of paper including colour paper (9) Medicine (10) Internal combustion engine, diesel engine, radiator (11) Textile printing, dyeing, mercerising, bleaching etc.

If any solid, liquid or gaseous effluents cause pollution, that has to be referred to the Health Department.

Schedule VII - Those that require clearance from Fire Officers.

Schedule X - Dangerous diseases.
river Ganga is a fact already established beyond any doubt. 118 Seventh Five Year Plan undertook the cleaning of the Ganga as a task to be achieved though with much effort. 119 It is an interdisciplinary and interministerial programme. 120 Thus in February 1985, the ten member Central Ganga Authority was set up with the Prime Minister as the Chairman. 121 This Authority utilised foreign aid as well to execute the cleaning process. 122

118. Brojendra Nath Banerjee, *Can The Ganga Be Cleaned* (1989) p.32, p.91. Ganga collected surface runoff, municipal and industrial wastes such as toxic and harmful substances in effluents from textiles, chemical industries, tanneries etc. Central Water Pollution Control Board after conducting an extensive monitoring of the river water revealed that the river receives polluted water of domestic sewage and industrial effluents of exactly one hundred towns including 29 Class I cities on its banks. A survey by the Central Pollution Control Board in 1981 identified 120 industries in West Bengal, 102 in U.P. and 85 in Bihar relevant in terms of pollution.

119. Seventh Five Year Plan, para 18.34. The idea of Action Plan for cleaning Ganga is the brainchild of the Prime Minister, Mrs. Indira Gandhi and the five year programme for the same, on the basis of the information collected for quite a long time by the Central Pollution Control Board with the support of seven State Pollution Control Boards.

120. Ibid. It involved the participation of DEON, DINES, Ministry of Works and Housing and Ministry of Agriculture.

121. Ibid. According to the Seventh Plan ₹.240 crores is left for Ganga Action Plan (para 18.69) Ganga Project Directorate was set up as a wing of the Department of Environment.

122. Supra. n. p.57. Thus Netherlands under the Indo-Dutch cooperation programme is to provide technical and financial assistance of ₹.38.4 crores for providing tannery effluent treatment facilities, Thames Water Authority provides knowhow as water quality modelling, Thames Water International provides corporate advisory services to people in operational maintenance, World Bank assistance amounting to ₹.46.25 crores to U.P. Urban Development Project which also covers Ganga Action Plan etc. are some of them.
The Action Plan has great significance in the control of industrial pollution because it concentrated mainly on the control of pollutant flowing into the Ganga. Workshops held as part of this plan also concentrated on issues such as recycling of waste, bio-monitoring, treatment technologies and river front conservation.

Industrial effluents flowing into the Ganga are many as the industries located on the banks of Ganga from Gangotri

123. The objectives of the Action Plan in the first phase were the immediate reduction of the pollution load and the establishment of self sustaining treatment plant system. But, it is also interesting to note that initially the Action Plan did not cover the treatment of industrial waste. It was the first meeting of the Central Ganga Authority (p.154) that took note of the seriousness of industrial pollution at specific locations. The main sources of pollution of the Ganga are urban and industrial liquid wastes. For instance the survey conducted by the Pollution Control Boards of U.P., Bihar and West Bengal on request by the inter-departmental Steering Committee of Central Ganga Authority revealed that industrial wastes accounted for about 33% of the pollution in U.P., 20% in Bihar and 27% in West Bengal.


124. Ibid.
to Gangasagar comes to hundreds. Though there was enough data regarding the intensity of industrial pollutants discharged untreated into the river, the Action Plan concentrated more on cleaning the river, undertaking schemes for the same. Instead of planning in a future perspective, to reduce pollution at source by giving more attention to the task of phasing out or shifting some of the polluting industries and preventing the establishment of new ones, the emphasis given was for primary treatment of sewage and sullage. The Central Ganga Authority urged the State Pollution Control Boards to ensure that industries provide treatment facilities. This reluctant action left the industries uncontrolled still polluting the river the picture of which is brought out through the Ganga Pollution case. The court criticised the sluggish pace of the Ganga Action Plan at Kanpur. It also ordered the Pollution Control Boards of U.P., Bihar and West Bengal to submit their reports regarding industrial compliance with the pollution control measure in their respective states.

125. Chemical Industries, DDT Factories, tanneries, paper and pulp mills, petrochemical and fertilizer complexes are examples of industrial activities that line the river. Indian Drugs and Pharmaceuticals Ltd., Bharat Heavy Electricals Ltd., Oudh Sugar Mills of the Birlas, Orient Paper Mills, Refinery at Barauni are some of the major industries.

126. Id., pp.169-175.

127. Id., p.165. The plan envisaged the cleaning of cities with population more than one lakh as the first task. For this purpose, planned the diversion of sewage through pipelines followed by the creation of treatment facilities.

128. M.C.Mehta v. Union of India, A.I.R. 1988 S.C.1115. It is a case brought against nearly one thousand five hundred major and medium industries in the Ganga Basin.

129. Ibid.