CHAPTER-III

ENFORCEMENT MACHINERY UNDER ENVIRONMENTAL LAW
Environmental law enforcement, being a highly specialized area of implementation, entrusted to different agencies under different laws, presents a none-too-happy-a-picture; Lack or inadequacy of skill; less than satisfactory infrastructural facilities; poor and unimaginative understanding of the law; jurisdictional conflicts and Lack of coordination, among different agencies of implementation, appear to contribute to part and in effective implementation of laws. Ability of some of the more resourceful industries in either camouflaging their violations and non-compliance and in exerting undue pressure on the enforcement agencies, also has contributed to the inefficiency of the enforcement apparatus.

The Regulatory Structure

The regulatory structure for the enforcement of environmental is shown in chart 3.1.

Chart 3.1

Regulatory Structure

The Union Ministry of Environment and Forests (MoEF), constituted in
1985, is headed by a Union Minister who is assisted by a Secretary to the Government of India and Director General of Forests. The MoEF is the nodal agency at the central level for planning, promoting and coordinating environmental programmes in addition to policy formulation for the environment, forestry and wildlife sectors. The MoEF is responsible for formulating legislation in the above areas for sound environmental management and pollution abatement. The MoEF is assisted by six regional offices located in the country. Among many autonomous institutions under the MoEF, the Central Pollution Control Board (CPCB) is important. This discharges executive and advisory functions.

The States’ Department of Environment and Forests perform similar executive functions at the state level as MoEF does at the Centre. The State Pollution Control Boards (SPCB) in various states likewise perform executive and advisory functions.

**Main regulatory regime**

The main environmental regime in India for environmental protection and pollution abatement is based on CAC strategy. Under various environmental and forestry legislation, delegated legislation (comprising rules, regulations, notification and guidelines etc.) is issued for implementation. This is normally done by prescribing standards and issuance of consents by the CPCB and the SPCB. “The Environmental (Protection) Act 1986 provides an umbrella for a plethora of activities generated through the mechanics of delegated legislation and delegation of powers. The Environment Act did not repeal any prior law on environment or pollution control. It acts as a veritable
supplement.”¹ Delegated legislation has to deal with environmental audit, environmental impact assessment, hazardous industries and substances, ecomark, coastal zone regulations, bio-medicinal waste, ozone depleting substances, and recycled plastic manufacture and usage rules etc.

In India, standards have generally been criticised for being too lax, too stringent, or simply irrelevant. Given the enormous capital investment by firms and municipalities trying to comply with such standards, it is appropriate that standards face periodic review and updating. This process is ongoing in India.

The standards are applied more often for specific industries and are generally stricter for new ones in the hope that they comply with cleaner technologies. The standards are legally enforceable. The MoEF has issued industry specific standards for water effluents as well as for air emissions. These are generally known as Minimal National Standards (MINAS).

The CPCB has also specified the National Ambient Air Quality Standards (NAAQS) for residential, commercial, industrial and sensitive zones for the country as a whole. Respective State governments through SPCB have to ensure that the water quality criteria and ambient air quality objectives are met as per these specifications. This is primarily achieved by making the effluent and emission standards stricter than those prescribed by the Central Government. “National Ambient Air Quality Standards means the level of air quality necessary with an adequate margin of safety, to protect the public

health, vegetation and property.\textsuperscript{2} The National Ambient Air Quality Monitoring Programme (NAAQMP) was started in 1984. This is operated through SPCB, CPCB, and the National Environmental Engineering Research Institute (NEERI).

The frequency of inspection of industrial units depends on their level of severity of pollution. Industries are categorised as ‘Red’, ‘Orange’ and ‘Green’ according to the descending order of the severity of pollution. Amendments to the Air Act and the Water Act have empowered the Boards to take direct administrative action i.e., to close down polluting facilities and to stop their supply of electricity and water.

**Uniform Consent Procedure**

The MoEF has issued a draft notification under the Environmental (Protection) Act 1986 on the uniform consent procedure to be adopted by the SPCBs and the Pollution Control Committees (PCCs) of the Union Territories. The new proposals provide for combined application form for obtaining consent, which includes aspects of water pollution, air pollution and hazardous wastes management and handling. This will bring in uniformity in the process of grant and renewal of the consent by the SPCBs and the PCCs and will also provide a level playing field to the industries so as to regulate investment for sustainable development.

The SPCBs and the PCCs are now required to issue the consent order valid for a period against each category of industries, which have been classified into red, orange and green categories for the purpose of consent.

management. Validity of consent orders would be two years, three years and five years for industries in red, orange and green categories respectively. In case of non-polluting industries, consent order would be ten years. Draft notification also envisages frequency of visits to the industries by the officers of SPCB and PCCs for inspection of treatment plants and sampling of effluents etc.

**Problems of enforcement**

The Indian Supreme Court had made following observation in the case of *Indian council* for Enviro-legal action:

“If the mere enactment of laws relating to the protection of environment was to ensure a clean and pollution free environment, then India would, perhaps be the least polluted country in the World. But this is not so. There are stated to be over 200 central and state statutes, which have at least some concern with environmental protection, either directly or indirectly. The plethora of such enactments has, unfortunately, not resulted in preventing environment degradation which, on the contrary, has increased over the years.”

“India employs a range of regulatory instruments to preserve and protect its natural resources. As a system for doing so, the law works badly, when it works at all. The legislature is quick to enact laws regulating most aspects of industrial and development activity, but chary to sanction enforcement budgets or require effective implementation. Across the country, government agencies wield vast power to regulate industry, mines and other

---

polluters but are reluctant to use their power to discipline violators”.⁴

**Constitution of Central Board**

The Central Government within six months of the commencement of this Act in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union territories may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the Central Pollution Control Board to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

---

Composition of Board

As per the Water Act the Central Board shall consist of the following members, namely:\(^5\)

(a) a full-time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) Such number of officials, not exceeding five to be nominated by the Central Government to represent that Government;

(c) such number of officials, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards, of whom no exceeding two shall be from amongst the members of the local authorities functioning within the states;

(d) such number of non-officials, not exceeding three, to be nominated by the Central Government, to represent the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the Central Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the Central Government, to be nominated by that Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government;

The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

Section 3 of Water Pollution Act, 1974 as well as Section 3 of the Air Pollution Act, 1981 relates to the Constitution of Central Board. Rules 3 and 4 of the Water (Prevention and Control of Pollution) Rules, 1975 deal with the salaries, allowances and other conditions of service of the Chairman and members, secretaries respectively. Rule 7 of the said rules deals with powers and duties of the Chairman whereas Rule 9 deals with powers and duties of the member Secretary. Rule 8 empowers the Central Board for creation and abolition of posts.6

The general principle of construction is one on which there is a complete unanimity of all the courts in the world and this is that where the words or the language used in statute are clear and cloudless, plain simple and explicit, unclouded and unobscured, intelligible and pointed so as to admit of no ambiguity, vagueness, uncertainty or equivocation there is absolutely no room for deriving support from external aids. In such cases, the statutes should be interpreted on the face of the language itself without adding, subtracting or omitting words there from. Where the language is plain and

6 Bright Singh, I.S., Solid waste could also be a source of Indian Express daily, June 7, 2001.
unambiguous the Court is not entitled to go behind the language so as to add or supply omission s and thus play the role of a political reformer or of a wise counsel to the legislature.

**Constitution of State Boards**

The State Government shall, with effect from such date as it may deem fit, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under the Water (Prevention and Control of Pollution) Act, 1974.

**Composition of Boards**

A State Board shall consist of the following members, namely: 7

(a) a chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the State Government: Provided that the chairman may be either whole-time or part-time as the State Government may think fit;

(b) such number of officials, not exceeding five, to be nominated by the State Government to represent that Government;

(c) such number of persons, not exceeding five, to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

---

(d) such number of non-officials, not exceeding three to be nominated by the State Government to represent the interest of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the State Government, to be nominated by that Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.

Every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the said name, sue or be sued.8

However, no State Board shall be constituted for a Union territory and in relation to a Union territory; the Central Board shall exercise the powers and perform the functions of a State Board for that Union territory. But in relation to any Union territory the Central Board may delegate all or any of its powers and functions under this sub-section to such person or body of persons as the Central Government may specify.

Section 4 of the Water Pollution Act, 1974 as well as Section 5 of the Air Pollution Act, 1981 relate to the constitution of State Boards.

This section clearly shows that it is obligatory on the Government for the proper discharge of function and exercise of powers under the Act to constitute a Board as a legal corporate entity consisting of all its components mentioned in sub-section (2) representing various interests and under sub section (1) of Section 4 a notification in Official Gazette is required to be issued only for appointing a day with effect from which such a board is to function. The powers and functions that are referred to in the Act at various places are the powers and functions to be exercised and performed by such a Board as required to be constituted under sub section (2). Since the section itself makes such a Board a body corporate, it only means that all the elements and or components of the Board as mentioned in sub section (2) taken together and not individually would alone constitute a Board as contemplated under the Act.

Terms and Conditions of Service of Members

A member of a Board, other than, a member-secretary, shall hold office for a term of three years from the date of his nomination. But he shall continue to hold office even after the expiration of his term until his successor enters upon his office.9

The term of office of a member of a Board nominated under clause (b) or clause (e) of sub-section (2) of Section 3 or clause (b) or clause (e) of sub-section (2) of section 4 shall come to an end as soon as he ceases to hold the

9 The Tribune, Sunday Reading, March 27, 1988, p 2.
office under the Central Government or the State Government or, as the case may be, the company or corporation owned, controlled or managed by the Central Government or the State Government, by virtue of which he was nominated. A member of a Board may be removed before expiry of his term of office either by the Central Government or the State Government as the case may be, after giving him a reasonable opportunity of showing cause against him/her.

A member of a Board, other than the member-secretary, may at any time resign his office by writing under his hand addressed:

(a) in the case of chairman, to the Central Government or, as the case may be, the State Government; and

(b) in any other case, to the Chairman of the Board; and the seat of the Chairman or such member shall thereupon become vacant.

A member of a Board, other than the member-secretary, shall be deemed to have vacated his seat if he is absent without reason, sufficient in the opinion of the Board, from three consecutive meetings of the Board, or if he ceases to be a member of the State Board or of the local authority or of the company or corporation owned or controlled or managed by the Central Government the Central Government or the State Government and such vacation of seat shall, in either case, take effect from such date as the Central Government or, as the case may be, the State Government may, by notification in the Official Gazette, specify.

A casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the
remainder of the term for which the member in whose place he was
nominated.\textsuperscript{10}

A member of a Board shall be eligible for renomination.

The other terms and conditions of service of a member of a Board, other than the chairman and member-secretary, shall be such as may be prescribed.

Section 5 of the Water Pollution Act, 1974 as well as Section 7 of the Air Pollution Act, 1981 relate to the terms and conditions of service of members of Board. Rule 5 of the Water (Prevention and Control of Pollution) Rules, 1975 provides for the payment of allowances to non-official members of the Central Board.

The member of the Central Board can be removed by the Central Government or State Government at any time before the expiry of his term of office.

Briefly speaking a member other than a member secretary is entitled to hold office for three years. Notwithstanding the expiry of his term, a member may continue to hold office till his successor enters upon his office. The term of office of a member nominated by the Central/State Government shall come to an end as soon as he ceases to hold office under the Central/State Government etc. Before such removal the person should be given a reasonable opportunity of showing cause against such removal. The Chairman or member could resign the office by member is eligible for

renomination. Other terms and conditions of the Chairman and members shall be such as prescribed in the rules.

Disqualifications

The Act also provides for the disqualification for a person to be a member of the Board. No person shall be a member of a Board, who-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as
to render his continuance on the Board detrimental to the interest of the general public.\textsuperscript{11}

No order of removal shall be made by the Central Government or the State Government, unless the member concerned has been given a reasonable opportunity of showing cause against the same. A member who has been removed under this section 6 of Water Act, 1974 shall not be eligible for re-nomination as a member.

Section 6 of the Water Pollution Act, 1974 as well as Section 8 of the Air Pollution Act, 1981 relate to the disqualifications of members to be appointed in the Board.

This section embodies the principle of the natural justice that the member of the Board before the removal by the Central Government or the State Government must be given the reasonable opportunity of being heard.

\textbf{Vacation of Seat by Members}

If a member of a Board becomes subject to any of the disqualifications specified in section 6, his seat shall become vacant.

Section 7 of the Water Pollution Act, 1974 as well as Section 9 of the Air Pollution Act, 1981 relate to the vacation of seat by members of the Board.\textsuperscript{12}

\begin{itemize}
\item \textsuperscript{11} Ibid, p.16.
\end{itemize}
Meetings of Boards

A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. But if in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

Constitution of Committees

A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons, and for such purpose or purposes as it may think fit.

A committee constituted under this section shall meet at such time and at such place, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

The members of a committee (other than the members of Board) shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board as may be prescribed.

Section 9 of the Water Pollution Act, 1974 as well as Section 11 of the Air Pollution Act, 1981 relate to the constitution of Committees. Rule 6 of the Water (Prevention and Control of Pollution) Rules, 1975 deals with fees and allowances to be paid to such members of a committee of the Central Board as are not members of the Board under sub-section (3) of the Section 9 of the Water Pollution Act, 1974. Rule 11 of the Water Pollution (Procedure for Transaction of Business) Rules, 1975 deals with procedure for transaction of
business of committee constituted by the Board under Section 9 of the Water Pollution Act, 1974.\textsuperscript{13}

**Temporary Association of Persons with Board For Particular Purposes**

A Board may associate with itself in such manner, and for such purposes, as may be prescribed any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member for any other purpose.

The person so associated shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board, as may be prescribed.

**Vacancy in Board Not to Invalidate Acts or Proceedings**

No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

Section 11 of the Water Pollution Act, 1974 as well as Section 13 of the Air Pollution Act, 1981 provides that vacancy in the Board shall not invalidate acts or proceedings.\textsuperscript{14}


Delegation of Powers to Chairman

The chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board.

Section 11-A of the Water Pollution Act, 1974 as well as Section 15 of the Air Pollution Act, 1981 relate to the delegation of powers. Section 23 of the Environment Protection Act, 1986 provides for the same.

Member-Secretary and Officers and Other Employees of Board

The terms and conditions of service of the member-secretary shall be such as may be prescribed by the Central Government or the State Government. He shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board or its chairman.

Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions. The method of recruitment and the terms and conditions of service including the scales of pay of the officers and other employees of the Central Board or a State Board shall be such as may be determined by regulations made by the Central Board or, as the case may be, by the State Board. But no regulation made under this sub-section shall take effect unless,

a) in the case of a regulation made by the Central Board, it is approved by the Central Government; and
b) in the case of a regulation made by a State Board, it is approved by the
State Government.

The Board may, by general or special order, and subject to such
conditions and limitations, if any, as may be specified in the order, delegate to
any officer of the Board such of its powers and functions under this Act as it
may deem fit.

The Board is empowered to appoint any qualified person to be a
consulting engineer to the Board and pay him such salaries and allowances
and subject him to such other terms and conditions of service as it thinks fit.

Section 12 of the Water Pollution Act, 1974 as well as Section 14 of the
Air Pollution Act, 1981 relate to member secretary and officers and other
employees of the Board. Rule 4 of the Water (Prevention and Control of
Pollution) Rules, 1975 deal with salaries, allowances and other conditions of
service of member secretary.\textsuperscript{15}

\textbf{Constitution of Joint Board}

Two or more Governments of contiguous States, or the Central
Government in respect of one or more Union territories and one or more
Governments of States contiguous to such Union territory or Union territories,
may enter into an agreement to constitute a Joint Board for such period and
subject to the condition of renewal for such further period as may be specified
in the agreement. The Joint Board so constituted shall be a Board either for all
the participating States, or for participating Union Territory or Union Territories
and the State or States.

\footnotesize{15} \textit{Ibid}, p.36.
An agreement to constitute Joint Board may,\textsuperscript{16}

a) Provide, for the apportionment of the expenditure in connection with the Joint Board between the participating States or between the Central Government and the participating State or States.

b) Determine which of the participating States or Central Government and the participating State or States shall exercise and perform the several powers and functions of the State Government under the Act.

c) Provide for consultation between the participating States or between the Central Government and the participating State or States either generally or with reference to particular matters arising under the Water Act of 1974.

d) Make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

The agreement regarding the constitution of Joint Board shall be published in the Official Gazette of the participating States where the agreement was entered into between two or more states and, in the Official Gazette of participating Union territory or Union territories and participating State or States if it was entered into between the Central Government and the State or States.

Composition of Joint Boards

The provisions relating to the constitution of Joint Board if it is constituted in pursuance of an agreement between State Government of contiguous States, which are as follows: 17

a) a full-time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters. He shall be nominated by the Central Government;
b) two officials from each of the participating States to be nominated by the concerned participating State Government to represent that Government;
c) one person to be nominated by each of the participating State Governments from amongst the members of the local authorities functioning within the State concerned;
d) one non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry or trade in the State concerned or any other interest which, in the opinion of the participating State Government, is to be represented;
e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Government;

17 Dursbeck F, L Elandsson and C Weaver, ‘Status of Implementation of CNG as a fuel for urban buses in Delhi’, Centre for Science and Environment, New Delhi, 2001, p.32.
f) a full-time member-secretary, possessing qualifications, knowledge
and experience of scientific, engineering or management aspects of
pollution control, to be appointed by the Central Government.

Where a Joint Board is constituted in pursuance of an agreement
between the Central Government and State Government or State
Governments, it shall consist of the following members.

A full-time chairman, being a person having special knowledge or
practical experience in respect of matters relating to environmental protection
or a person having knowledge and experience in administering institutions
dealing with the matters aforesaid, to be nominated by the Central
Government;

a) two officials to be nominated by the Central Government from the
participating Union territory or each of the participating union territories,
as the case may be, and two officials to be nominated, from the
participating State or each of the participating States, as the case may
be by the concerned participating State Government;

b) one person to be nominated by the Central Government from amongst
the members of the local authorities functioning within the participating
Union territory or each of the participating Union territories, as the case
may be and one person to be nominated, from amongst the members
of the local authorities functioning within the participating State or each
of the participating States, as the case may be, by the concerned
participating State Government;

c) one non-official to be nominated by the Central Government and one
person to be nominated by the participating State Government or State
Governments to represent the interests of agriculture, fishery or industry or trade in the Union territory or in each of the Union territories or the State or in each of the States, as the case may be, or any other interest which in the opinion of the Central Government or, as the case may be, of the State Government is to be represented.

d) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central Government and situate in the participating Union territory or territories and two persons to be nominated by Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

e) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.¹⁸

When a Joint Board is constituted in pursuance of an agreement under section 13 (1) (b) the provisions of section 4 (4) shall cease to apply in relation to the Union territory for which the Joint Board is constituted.

But the provisions of sub-section 4 (3) as well as from sections 5 to 12 shall apply in relation to a State Board and its member-secretary. Wherever relevant a reference to a State Board is construed as including a Joint Board.

Special Provision Relating to Giving of Directions

Where any Joint Board is constituted then notwithstanding anything contained in this Act:

a) the Government of the State for which the Joint Board is constituted shall be competent to give any direction under this Act only in cases where such direction relates to a matter within the exclusive territorial jurisdiction of the State;

b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union territory.\(^1\)

Functions of Central Board

It is generally provided that the Central Board shall have the main function of promoting cleanliness of streams and wells be to promote in different areas of the States.

Without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely:

a) advise the Central Government on any matter concerning the prevention and control of water pollution;

b) co-ordinate the activities of the State Boards and resolve disputes among them;

c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

d) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;

e) organize through mass media a comprehensive programme regarding the prevention and control of water pollution;

f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well.\textsuperscript{20}

Provided that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;

i) perform such other functions as may be prescribed.

\textsuperscript{20} Ibid, p.23.
In addition the Central Board shall also perform such of the functions of the State Board as may be specified in an order made under section 18 (2). Under Section 18(2) inserted by the 1988 amendment Act the Central Government may direct the Central Board to perform the functions of a State Government, which had defaulted in complying with any directions given by the Central Government.

The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Functions of State Board

Subject to the provisions of this Act, the functions of a State Board shall be –

a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;

b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;

c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

---

d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

g) lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;

h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

i) to evolve methods of utilization of sewage and suitable trade effluents in agriculture;
j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

l) to make, vary or revoke any order --
   a. for the prevention, control or abatement of discharge of waste into streams or wells;
   b. requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent control or abate water pollution;\textsuperscript{22}

m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

n) to advice the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

\textsuperscript{22} Ibid, p.3031.
o) to perform such other functions as may be prescribed or as may, from
time to time be entrusted to it by the Central Board or the State
Government.

Moreover, a State Board may take certain emergency measures if it
determines that an accident or other unforeseen event has polluted a stream
or well. These measures include removing the pollutant, mitigating the
damages and issuing orders to the pollution prohibiting effluent discharges.

Section 17 of the Water Pollution Act, 1974 as well as of the Air
Pollution Act, 1981 both relates to the functions of State Board.

In *M.C.Mehta v. Union of India*, the Supreme Court held that it is true
that it may not be possible for the tanneries to establish immediately the
secondary system plant in view of the large expenditure involved but having
regard to the adverse effect the effluents are having on the river water, the
tanneries at Jajmau, Kanpur should at least set up of the primary treatment
plants and that is the minimum which the tanneries should do in the
circumstances of the case.\(^23\)

The financial capacity of the tanneries should be considered as
irrelevant while requiring them to establish primary treatment plants. Just like
an industry which cannot pay minimum wages to its workers cannot be
allowed to exist, a tannery which cannot adverse effect on the public at large
which is likely to ensure by the discharging of the trade effluents from the
tannery to the river Ganga would be immense and it will outweigh any

XXXIX, No.18, 2004, pp. 1771.
inconvenience that may be caused to the management and the labour employed by it on account of its closure. Moreover, the tanneries involved in these cases prevent the flow of untreated waste water from their factories into the river. Some of them have already complied with the demand, it should be remembered that the effluent discharged from tannery is ten times noxious when compared with the domestic sewage. Jajmau, Kanpur cannot be allowed to continue to carry on the industrial activity unless they take steps to establish primary treatment plants. In cases of this nature this Court acts affecting or likely to affect the public is being committed and the statutory authorities who are charged with the duty to prevent it are not taking adequate steps to rectify the grievance. For every breach of right there should be a remedy. It is unfortunate that a number of tanneries at Jajmau even though they are aware of these proceedings have not cared even to enter appearance in this court to express their willingness to take appropriate steps to establish the pre-treatment plants. So far as they are concerned an order directing them to stop working their tanneries should be passed.

It has been laid down by the Supreme Court that the mere use of the word “shall” by itself in the statute does not make the provision mandatory, but it is the duty of the Courts of Justice to try to get at the real intension of the legislature by carefully attending to the whole scope of the status to be construed. In each case, one has to look to the subject-matter, consider the importance of the provisions and the relations of that provision with the general object intended to be secured by the Act and upon the review of the case in that aspect decide whether the enactment is mandatory or only directory.
Powers to Give Directions

In the performance of its functions under this Act.  

a) the Central Board shall be bound by such directions in writing as the Central Board may give to it; and

b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

Provided that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

Powers and Functions under Air Act of 1981

The Air (Prevention and Control of Pollution) Act, 1981 was enacted to provide for the prevention, control and abatement of air pollution. The Act conferred and assigned some specific powers and functions the Central State Boards.

Functions of Central Board

According to Section 16 the main functions of the Central Board shall be to improve the quality of air and to prevent, control or abate air pollution in the country. In particular and without prejudice to the generality of the foregoing functions, the Central Board may.  


a. advise the Central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;
b. plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;
c. co-ordinate the activities of the State and resolve disputes among them;
d. provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution;
e. perform such of the function of any State Board as may, be specified in and order made under sub-section (2) of section 18;
f. plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of air pollution on such terms and conditions as the Central Board may specify;
g. organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;
h. collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;
i. lay down standards for the quality of air.,
j. collect and disseminate information in respect of matters relating to air pollution;
k. perform such other functions as may be prescribed.
The Central Board may establish or recognize a laboratory or laboratories to enable the Central Board to perform its functions under this section efficiently. The Central Board may delegate any of its functions under this Act generally or specially to any of the committees appointed by it.

**Functions of State Boards**

The Act deals with the functions of the State Boards. Accordingly the functions of the State Board with reference to this Act, shall be:  

- to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
- to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
- to collect and disseminate information relating to air pollution;
- to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programme relating thereto;
- to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
- to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;

---

to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft:

Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants;\textsuperscript{27}

- to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
- to Perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;
- to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying into effect the purposes of this Act.

A State Board may establish or recognize a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.

\textsuperscript{27} Pushpangadan, P., “Conservation biology and role of botanic garden in conservation of rare and endangered plants”, In Suhirman et.al. (Eds.). \textit{Strategy for flora conservation in Asia}, Kebun Raya Boger, Indonesia pp. 99-100.
The Powers of the Central Government under the Environment (Protection) Act, 1986

The Central Government has been granted general powers under Section 3 of the Environment (Protection) Act, 1986 to take all such measures for protecting and improving the quality of the environment and preventing controlling and abating environmental pollution, which may include measures with respect to all or any of the following matters.\(^2\)

a. coordinating the actions by the State Governments, officers and other authorities under this Act, or the rules made there under, or under any other law concerning environmental pollution.
b. planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
c. laying down standards for the quality of environment;
d. laying down standards for emission or discharge of environmental pollutants (different standards for emission may be laid down for different sources of emission or discharge of environmental pollutants);
e. restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;
f. laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

g. laying down procedures and safeguards for the handling of hazardous substances;

h. examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

i. carrying out and sponsoring investigations and research relating to problems of environmental pollution;

j. inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution;

k. establishing or recognizing environmental laboratories

l. collecting and disseminating information relating to environmental pollution;

m. preparing manuals, codes or guides etc. to the prevent and control and abatement environmental pollution;

n. such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

Three Issues Involved in Enforcement of Environmental Legislation

Some of the important issues involved in enforcement of environmental legislation in India are as follows: 1. The precautionary principle, 2. The polluter-pays principle, 3. Freedom of information.
The environmental issue in India looks gloomy despite so many Legislations and Acts. The rivers and lakes continue to be choked with industrial waste and sewage. The air in many cities of India is heavily polluted. Deforestation takes place quite normally. The protection of wildlife is not carried out in its true spirit, despite the enforcement of Acts.29

The people must be guided and helped to establish the trend of acceptance of preventing the environment as a whole, our health and Earth’s resources. The presence of legislation to protect the air, water, soil etc., doesn’t necessarily mean the problem is addressed.

Once the legislation is made at the global, national or state level, it has to be implemented. For environmental legislation to be successfully implemented there has to be an effective agency to collect relevant data, process it and pass it on to a law enforcement agency. If the law or rule is broken by an individual or institution, this has to be punished through the legal process.

The Government of India constituted a Central Board for prevention and control of water pollution after the Water Act, 1974 was passed. Subsequently Air (Prevention and Control of Pollution) Act 1986 was passed. The Central Board for prevention and control of water pollution was entrusted to manage the affairs enumerated in Air Act, 1986 and Environment Act, 1986.

Several other acts and rules were enacted. All the state governments also constituted pollution central boards in their respective states and accepted the central legislation in their respective legislative assemblies. Some of the pollution monitoring is carried out by other agencies, e.g., vehicular pollution is monitored by transport department. This is a real drawback because several agencies cannot control pollution.

Environmental litigation is more expensive than other types of disputes, as it involves expert testimony and technical evidence central and state boards must be able to afford the expertise and the administrative backing.\(^{30}\)

So, efforts are made to share the costs of anti-pollution measures taken by the industry to avoid state sponsored expensive and lengthy legal battles. The laws enacted by the government should be made very stringent and harsh so that every citizen may not dare to play with the environment and instead he/she should protect it. Three issues that are especially important for environmental legislation are:

1. **The precautionary principle**

   This principle has evolved to deal with risks and uncertainties faced by environmental management. The principle implies that an ounce of prevention is worth a pound of cure it does not prevent problems but may reduce their occurrence and helps ensure contingency plans are made.

---

The application of this principle requires either cautious progress until a development can be judged ‘innocent’, or avoiding development until research indicates exactly what the risks are, and then proceeding to minimize them.

Once a threat is identified, action should be taken to prevent or control damage even if there is uncertainly, about whether the threat is real. Some environmental problems become impossible or costly to solve if there is delay, therefore waiting for research and legal proof is not costless.31

2. The polluter-pays principle

In addition to, the obvious the polluter pays for the damaged caused by a development this principle also implies that a polluter pays for monitoring and policing. A problem with this approach is that fines may bankrupt small businesses, yet be low enough for a large company to write them off as an occasional overhead, which does little for pollution control.

There is, thus, debate as to whether the principle should be retrospective. Developing nations are seeking to have developed countries pay more for carbon dioxide and other emissions controls, arguing that they polluted the global environment during the Industrial Revolution, yet enjoy the fruits of invention from the era.

This principle, in fact, is more a way of allocating costs to the polluter than a legal principle. This principle was adopted by OECD member countries in 1972, at least in theory.

3. Freedom of information

Environmental planning and management is hindered if the public, NGOs or even official bodies are unable to get information. Many countries have now begun to release more information, the USA has a Freedom of Information Act, and the European Union is moving in this direction.

But still many governors and multinational corporations fear that industrial secrets will leak to competitors if there is too much disclosure, and there are situations where authorities declare strategic needs and suspend disclosure.

Critical Assessment of Enforcement of Environmental Laws

With the enactment of the Environment (Protection) Act, 1986, which is an umbrella legislation, the Central Government assumed the overall responsibility of “environmental protection and improvement”.

Although the Act empowered the government to designate Authorities for specific tasks, separate machinery for enforcement of the Act was not set up or designated except the Central Ground Water Board which was designated as the Central Ground Water Authority.

It is only in recent times, empowered Authorities have been constituted for specific assignments which include the following:

- Environment Pollution (Prevention & Control) Authority for National Capital Region set up in January, 1998;


33 Kaur, D., op.cit. p.55.
The powers of the Environment (Protection) Act have been exercised by the Central Government through the Ministry of Environment & Forests. However, the monitoring mechanism for implementation of the Act is still undefined although for the various regulations enforcement institutions have been enlisted. Also, in several areas of environmental concern such as vehicular-pollution control, the Ministry of Environment & Forests has no decisive role since it is implemented by a separate Ministry through the Motor Vehicles Act.

**Legal Loopholes**

It is often argued that our enforcement mechanism is very weak although the laws are very well drawn up. But, a careful analysis of the laws may reveal their inherent deficiencies which are closely linked to lapses in enforcement. To make clear this issue, let us refer to the Water Act, 1974.

The key person for enforcement of this Act is the Chairman of the State Pollution Control Board who should be professionally qualified and appointed on a full time basis. However, the Act does not stipulate such requirement.
Several State Pollution Control Boards are headed by part-time Chairmen without requisite qualifications and experience.34

Also, the Member Secretaries of the Pollution Control Boards are often drawn either from administrative service or even forest service who do not have the requisite technical background in pollution control. As a result, it becomes difficult for them to provide proper leadership and guidance to their subordinates.

Besides the Chairman and Member Secretary, as per provisions of the Act, the State Pollution Control Board is supposed to have 15 member’s nominated by the Government. Most of these part-time members are drawn from Government Departments and local civic authorities.

Many of these members, as pre-occupied as they are with their jobs, find very little time for making any constructive contribution towards effective functioning of the State Pollution Control Boards. On the contrary, the State Pollution Control Boards are faced with un-enviable situation of having such members who represent the polluting public sector units and civic services. The enforcement action in such situation is understandably weak.

Now, let us examine the legal provision for penal action against the polluters. In accordance with the Act, the State Pollution Control Board has to file a case before the lower court for action against a polluting unit and the “onus of proof is vested with the Board. Unlike the Public Interest Litigations (PILs) where the Supreme Court and the Green Benches of the High Courts

have been paying special attention in recent years, the lower courts are too busy to devote enough time for environment related litigations.\textsuperscript{35}

As a result, thousands of cases filed by the State Pollution Control Boards are still pending for years together. In a good number of cases where decisions are taken, the polluters have been given the benefit of doubt because of technical reasons as the Boards could not adequately meet the “onus of proof. Also, there are cases where the polluters even after conviction escaped deterrent penalties through legal wrangles. More often than not, polluters hire highly paid advocates to plead their cases whereas the State Boards are unable to do so because of financial constraints.

No wonder why the State Pollution Control Boards are disenchanted with the legal procedures which cause more harassment to the Boards than to the polluters. This is also the reason why the Boards prefer to take direct action (such as under Section 33A of the Water Act) rather than moving to the Court although even in such cases the polluters can delay the action by seeking “stay order” from the Court.

Yet another legal lacunae faced by the Pollution Control Boards relates to prosecution against public servants. According to the provisions of Sec. 197 of the Cr. P.C., permission from the Government is required for prosecution of such persons and more often than not it becomes difficult for the Boards to take legal action against them.\textsuperscript{36}


Perhaps, the most serious lacunae in the Act is the over-dependence on the legal system. In several countries, the pollution control authorities are empowered to impose fines depending on the nature and extent of pollution caused. However, in India, the Pollution Control Boards have to approach the judiciary for this purpose.

There are various provisions of the Act, though well-intentioned, are difficult to enforce. For instance, according to Section 18 of the Act, the Central Pollution Control Board can issue directions to the State Boards, which are binding on them. However, at the same time, the Act makes it obligatory for the Boards to comply with the directions of the concerned State Governments.

There are occasions when the directions of two authorities are not mutually complementary and, at times, totally contradictory. The Act also provides that in the event of failures on the part of the State Boards, the Central Board can take over such functions of; the State Boards with the approval of the Central Government. But, in reality, it is impractical to enforce such provision of the Act.

**Institutional infirmities**

Over the years, the Pollution Control Boards have been assigned the responsibilities for enforcement of various environmental regulations in addition to the Acts relating to water and air pollution control.

Also, in a number of cases, the Boards are called upon to deal with the issue such as municipal wastes, safety measures in factory premises, vehicular pollution and traffic management although the agencies like
Municipal Corporation, Factories Inspectorate and Transport Authorities are responsible for enforcement of regulations in their respective areas of work.

With the increasing expectations from general public and judiciary, as reflected through plethora of Public Interest Litigations (PILs), the Pollution Control Boards are required to play a lead role through investigations, suggestions for remedial measures and monitoring their implementation.\(^{37}\)

The Pollution Control Boards are hardly equipped with the necessary wherewithal to cope up with these daunting tasks. Professional manpower and laboratory infrastructure for pollution monitoring are the basic requirements for effective functioning of the pollution control machinery. But, the Boards are dismally short of such facilities because of dwindling budgetary support and restrictions imposed on recruitment of personnel besides lack of training and career opportunities for the existing staff.

Planning and enforcement of anti-pollution measures require sustained and cohesive team initiatives. But, the manner in which the Boards are constituted and the time given to the Boards are not in favour of such initiatives. As per provisions of the Act, the Boards are constituted for a period of 3 years and even within this limited period, the memberships of the Boards including the Chairmen and Member Secretaries are frequently changed.

The Pollution Control Boards are expected to function as statutory autonomous bodies. But, in reality, the Boards cannot function in such a

manner for various reasons including over-dependence on the Government for their existence. For effective functioning, the Pollution Control Boards should have the autonomy and over-riding powers to enforce the laws.

The Pollution Control Boards are expected to receive funds from the Government exchequer for their Plan and Non-plan expenditure. But, several State Governments have curbed and even totally stopped the “grants-in-aid” to the Boards. As a result, the Boards have to meet their expenditure from the reimbursement of the Cess collected through the Water (Prevention and Control of Pollution) Cess Act, 1977 and the fees received for processing the applications seeking ‘consent’ to discharge the effluents.38

The primary objective of the Water Cess Act were to augment the resources of the Boards and to provide economic incentives by way of giving rebate on Cess charges for installation and satisfactory operation of effluent treatment plants. In the absence of Government funding, the Boards have clutched on to Cess collection as their major source of existence which is not obviously serving the objectives of the Act.