Chapter - IV

PROBLEMS OF ENFORCEMENT

As a corollary to the preceding chapter, an attempt has been made in this chapter to examine another facet of the actual implementation of the existing laws, in terms of problems of enforcement being faced therein. It is, generally, felt that the enforcement of pollution control laws in India is sporadic and uncertain.¹ For this purpose, some crucial aspects have been tested here which, in turn, lay bare the structural difficulties and loopholes, hampering the deterrent value of the statute itself. Apart from the efficacy of the legal muscle for water pollution control, the strategy, approach and coordination in the enforcement machinery has been dealt with, in order to present an overall picture of the problems of enforcement.

I. Exercise of the Legal Muscle

A general feeling about environmental laws is that they are not adequate in content and are ineffective. In fact, their poor implementation is a major issue.² For

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¹ Susan G. Hadden, "Statutes and Standards for Pollution Control in India", Economic and Political Weekly, vol. XXII, No. 16, 18 April 1987, p. 715.

² G. Sundaram, "Implementation of Environmental Regulations", paper presented in South and Central Asian Cooperation Workshop at Administrative Staff College of India (Hyderabad, 1986), p. 3.
instance, the Motor Vehicles Act is in existence since 1939, contains provisions for control of emissions. These provisions, however, have hardly been implemented. Some experts regard poor bureaucratic and political commitment, lack of procedures and systems, lack of awareness and poor data base and information as the main reasons for the poor implementation of the existing environmental laws in India. The Water (Prevention and Control of Pollution) Act 1974, is no exception to this tragic state of affairs prevailing in India.

As already seen earlier (chapter II), under the Water Act, an industry is required to procure "consent" of the pollution control board for discharging its effluents into a stream or well or sewer or on land. Ironically, it has been generally noticed, the boards have been somehow "lenient" in granting consent orders, allowing the industry to discharge effluents within the prescribed standards, often subject to certain conditions. Herein lies the crux of the problem. It may be noted that the consent jurisdiction vested in the boards is a powerful tool for prevention

3 Ibid.
4 Section 25/26 of the Water Act.
and control of water pollution. This has been amply demonstrated in its use by some of the state pollution control boards.\(^5\) However, by and large, the boards have been rather helpless to have a check upon the industries, in order to see that conditions of the consent order are fully complied with, once "consent" has been granted. That the bulk of the prosecutions launched under the Water Act concern violations of the conditions of the consent order, rather than failure to obtain consent per se, underscores this point. Ostensibly, therefore, an insistence on the part of the board for setting up of a treatment plant or other anti-pollution measures by the industry, as a condition precedent, could act as a deterrent. A more judicious use of the power to consent can certainly serve as an effective weapon in the armour of both the central and the state pollution control boards in the enforcement of the Water Act.

It seems that the various lacunaes in the Water Act have rendered the water pollution control boards "teethless or boneless wonders".\(^6\) The fact, however, remains that hitherto the main strategy of the boards, as a rule

\(^5\) For example, Rajasthan, Gujarat, etc.

\(^6\) See, n.2.
rather than an exception, has remained "persuasive". An observation, for example, made by P.R. Gharekhan, Member-Secretary of the Central Pollution Control Board throws considerable light on this aspect. According to him the:

Pollution control board monitors the quality of wastes, discharges and emissions from time to time. If any industry fails to comply with the consent conditions, the pollution control boards coaxes, cajoles and then threatens legal action: When all efforts fail, the board is supposed to prosecute the erring industry (emphasis added) (7)

This "extra-legal" approach, prima facie appears to have caused some laxity in the exercise of their statutory powers, ostensibly, for fear of litigation -- on the grounds of court delays and costs. It has, in turn, invariably caused damage to the efficacy of the boards, possessing a punch, as enforcement machinery under the Water Act. The net result has been that the consent order has become practically a "licence to pollute" -- with the boards chasing the industries, finding it extremely difficult "to persuade" them to comply with the conditions, and industries avoiding them on various pretexts. Ironically, it has also contributed very little to building up a body of case law in the field, as generally, the boards have moved

before the courts as a last resort. This sad state of affairs could well have been avoided, had the boards not relied too heavily on the "persuasive" strategy. In the course of field visits by this scholar, to some of the state pollution control boards in India, the officials did concede this fact. It is a hopeful sign that there appears to be now an increasing awareness on the part of the boards to discard this approach and pursue their statutorily envisaged role with full vigour.

(a) **Central Board**

A bulk of the prosecutions under the *Water Act* have been launched under section 33 (apprehension of pollution) or section 44 (violation of conditions of consent order), read with sections 25/26. The Central Board for the Prevention and Control of Water Pollution (hereinafter referred to as the "Central Board") performs two-fold functions: (1) as the National Board and (2) as the State Board for all the Union Territories. In its function as a National Board, it performs functions in the field of assessment, prevention and control of water pollution. As a State Board, it launches prosecutions in the respective Union Territories.

In the past decade, in its capacity as a State Board, the Central Board has prosecuted industries in the Union
Territories of Delhi, Pondicherry and Goa. However, Delhi bears the brunt of these prosecutions. Upto 31 March 1978, the Central Board had sanctioned prosecution against 17 industries in Delhi. Many of these industries were persuaded by the Board to obtain consent for discharging their trade effluent. Having failed in its attempts, the Board finally moved to the court. During 1978-79, the Central Board sanctioned prosecutions against eleven industries -- seven for failure to obtain consent and four for breach of conditions of the consent order. No fresh prosecutions, however, were launched during 1980-81, in any Union Territory -- except Delhi. As a result, only two prosecutions were launched against M/s. V.L. Industries and M/s. Laxmi Thread Agency in the Court of Metropolitan Magistrate, New Delhi. Nevertheless, the Board got

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9 CBPCWP Annual Report 1978-79, p.38. These industries were: M/s. Charkha Soap Mills (Delhi); M/s. Such Khand Soap Factory (Delhi); M/s. M.K. Rubber Mills (Delhi); M/s. Shahdara Aluminium World (Delhi); M/s. Zuri Agro Chemicals (Goa); M/s. Arlem Breweries Ltd. (Goa); M/s. Shahdara Soap Factory (Delhi); M/s. Shakti Soap Mills (Delhi); M/s. New Public Soap Factory (Delhi); M/s. Sanjivani Sahakari Sakhar Khetana (Goa), M/s. Pondicherry Paper Mills (Pondicherry).

favourable results in three cases, which were instituted in Delhi during 1977-78. In two of these cases, the industry preferred appeals before the Additional District and Sessions Judge and in the third case the Metropolitan Magistrate convicted the industry and sentenced it to pay a fine of Rs. 2,500/- with costs. The Board also entered into a compromise in three cases, as the concerned industries complied with the consent conditions imposed upon them. As regards M/s. Pondicherry Paper Mills (prosecuted under section 44 during 1978-79), the Central Board filed another complaint under section 33 for the closure of the industry till it complied with the conditions in the consent order. Accordingly, the Board obtained an ex-parte order from the sub-Divisional Magistrate, Pondicherry. The industry, however, undertook to comply with all the conditions imposed by the Boards. As a result, the Board did not press for the pending complaint under section 44. During this year, almost 15 cases remained

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11 M/s. Rama Dyeing Works (Delhi); decided on 5 July 1980; M/s. Ghanshyam Chemicals and Proofing Works (Delhi), decided on 20 May 1980 and M/s. Delhi Dyeing and Manufacturing Works (Delhi), decided on 5 July 1980.

12 M/s. Shandara Steel Rolling Mills; M/s. Sawhney Rubber Industries and M/s. Sardar Aluminium Factory -- all in Delhi.

13 See, n. 10, p. 30.
pending in Delhi alone.\textsuperscript{14}

The Central Board, however, did not institute any legal proceedings during 1981-82, despite the approval (to this effect) in its 46th meeting on 4 March 1982, to prosecute M/s. Swadeshi Cotton Mills (Pondicherry) and 26 other small-scale industries in Delhi.\textsuperscript{15} All the cases against 15 industries (prosecuted during November 1978 to May 1979) remained undecided during this year too.\textsuperscript{16} Nevertheless, the decision in two cases\textsuperscript{17} went in favour of the Board with the conviction of industries by the Metropolitan Magistrate, Delhi. On the appeal filed by the industries, however, the Sessions Judge, while upholding the conviction, granted reduction in sentence.

As decided in its 45th meeting (4 March 1982), the Central Board prosecuted 21 small units in Delhi, apart from 3 industries in Pondicherry. The Board also prosecuted two major industries -- M/s. Delhi Cloth Mills and M/s. Delhi Milk Scheme -- in Delhi during 1982-83 under section 33 of

\begin{itemize}
\item[14] Out of these 15 pending cases, four cases were filed in November 1978, five in April 1979 and six in May 1979.
\item[16] Ibid., p. 36.
\item[17] The case against M/s. Rama Dyeing Works was decided on 5 July 1980 and that against M/s. Ghanshyam Chemicals & Proofing Works was decided on 20 May 1980. In both these cases, reduction in sentence was granted by the Sessions Judge on 14 October 1981.
\end{itemize}
the Water Act. In both these cases, the Metropolitan Magistrate, Delhi directed the industry to instal an effluent treatment plant.\textsuperscript{18} In three Pondicherry cases,\textsuperscript{19} the industries were directed by the Magistrate to set up treatment plants within the prescribed time. However, in the third case the industry, aggrieved by order of the Sub-Divisional Judicial Magistrate, Pondicherry, moved a criminal revision application as well as a writ petition challenging the vires of section 33 of the Water Act, before the Madras High Court.

The Central Board, however, took a somewhat unusual step at its 48th meeting (11 November 1982) to drop the cases, against 16 industries, which were instituted during the 1977-79 period.\textsuperscript{20} The Board explained the rationale for doing so as:

\begin{quote}
(T)hese cases have been dragging on for a long time and were against small industries which had comparatively low pollution potential and... no purpose would be served by spending a lot of effort to take to these cases to fruition.\textsuperscript{21}
\end{quote}

\begin{itemize}
\item \textsuperscript{18} The Orders were passed on 18 September, 1982 and 4 October 1982 respectively.
\item \textsuperscript{19} These cases were: \emph{M/s. Anglo-French Textiles Ltd., M/s. Sri Bharta Mills and M/s. Swadeshi Cotton Mills.}
\item \textsuperscript{20} \emph{CBPWP Annual Report 1982-83}, pp.44-45.
\item \textsuperscript{21} Ibid.
\end{itemize}
A status quo was rather maintained during 1983-84 as regards fresh prosecutions by the Board, barring a solitary case filed against M/s. McDowell Distilleries, Goa. The Board was also forced to start a prosecution de novo against M/s. Swadeshi Cotton Mills, Pondicherry, following the quashing of the order of the Sub-Divisional Magistrate (Pondicherry) by the Madras High Court. During this year, 9 cases instituted under Section 25 and 26 of the Water Act, were decided as the industries complied with the conditions prescribed by the Board. At least one case was closed, with the industry (M/s. Anglo-French Textiles, Pondicherry) ceasing its operations and also discharge of effluents. Moreover, cases instituted against 16 industries, for failure to obtain consent, remained pending at different stages of prosecution.


23 The industry was prosecuted in the Magistrate's Court of Pondicherry under Sections 33 and 44 of the Water Act for failure (i) to improve/expand the existing effluent treatment plant in the brewery unit for accommodating distillery waste and (ii) to obtain a prior consent from the Central Board before erecting a molasses distillation plant.

24 Cases decided during 1983-84 (all in Delhi): 

<table>
<thead>
<tr>
<th>Case</th>
<th>Date of prosecution</th>
<th>Date of Decision</th>
</tr>
</thead>
<tbody>
<tr>
<td>M/s. Dinesh Steel</td>
<td>3 July 1982</td>
<td>2 April 1983</td>
</tr>
<tr>
<td>M/s. Haryana Hosiery</td>
<td>29 May 1982</td>
<td>2 April 1983</td>
</tr>
<tr>
<td>M/s. Lark (1) Pvt. Ltd.</td>
<td>3 July 1982</td>
<td>3 Sept. 1983</td>
</tr>
<tr>
<td>M/s. Mazdoor Soap Mills</td>
<td>28 April 1982</td>
<td>4 June 1983</td>
</tr>
<tr>
<td>M/s. Midland Indus.</td>
<td>28 April 1982</td>
<td>24 March 1984</td>
</tr>
<tr>
<td>M/s. V.L. Industries</td>
<td>4 April 1981</td>
<td>3 March 1984</td>
</tr>
</tbody>
</table>
This profile of prosecutions launched by the Central Board, on the basis of the data available till 1983-84, reveals a low-key exercise of the legal muscle to bring the polluters to book. It may also be noticed that the Central Board's legal drive is, by and large, concentrated in the Union Territory of Delhi, with Pondicherry and Goa accounting for only a fringe of the prosecutions. In many cases, the prosecution has turned out to be a symbolic rather than of any deterrent effect, since the magistrates have, almost as a rule, directed the concerned industry at the most, to set up a treatment plant -- a basic requirement normally prescribed in the Consent Order of the Board. To avoid this unsavory situation, the Central Board should have, in the first instance, avoided generous grant of the Consent Orders. In fact, the Board can formulate a rational policy for the purpose, which can serve as an effective strategy for prevention and control of water pollution too. It can subscribe to this strategy, both as a National Board as well as a State Board for the Union Territories.

Another important feature that deserves attention is the delay in arriving at decisions in the courts, especially because of the dilatory tactics adopted by the defaulters. Since the Board has been virtually left to the mercy of the court to force the defaulting industry to follow its
directions -- with the Board having no real power of summary closure of the polluting unit -- and the industry seeking almost routine adjournments on the one pretext or the other have, collectively, thrown the enforcement of the Water Act, virtually out of gear. It is also a sad commentary for the water pollution control strategy in India that the very machinery set up for the enforcement purposes should be left paralysed because of some of the glaring lacunaes in the parent statute as well as the judicial inertia.

**State Boards**

In general, the problems being faced in prosecutions by the State Pollution Control Boards are no different from that of the Central Board. In fact, on the basis of the available data, the picture appears to be a little more dismal. A meagre number of prosecutions launched by the State Boards reflects their performance on this front. Since the Water Act came into force, a total number of 674 cases\(^2\) launched in the whole country against various industries, both by the Central (2 cases) as well as the State Boards, underscores this point. Out of them, 110 cases have gone in favour of the pollution control boards, 

\(^{25}\) **The Times of India** (New Delhi) 25 September 1986.
11 against them and the remaining 553 cases are still pending at various stages in the courts, throughout the country. That only a total of 612 cases (excluding 62 cases by the Central Board) were launched by 18 State Pollution Control Boards in the past one decade, itself is revealing. All the more distressing is the fact that a large number of prosecutions are dragging on for years in the courts.

A perusal of the profile of prosecutions by various state Pollution control boards throws ample light on the exercise of the legal muscle by them. For example, all the 14 cases filed by the Maharashtra Pollution Control Board under the Water Act 1974 (the Maharashtra Prevention of Water Pollution Act, 1969 having been repealed by it) are pending.

### Table -I

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Particulars</th>
<th>MPWPC</th>
<th>Water(P&amp;CP) Act 1974</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>No.of cases filed</td>
<td>90</td>
<td>14</td>
</tr>
<tr>
<td>2.</td>
<td>No.of cases compounded</td>
<td>35</td>
<td>-</td>
</tr>
<tr>
<td>3.</td>
<td>Amount of compensation received</td>
<td>Rs. 2,12,875</td>
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</tr>
<tr>
<td>4.</td>
<td>No.of cases convicted</td>
<td>25</td>
<td>-</td>
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<tr>
<td>5.</td>
<td>No.of cases dismissed</td>
<td>13</td>
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<tr>
<td>6.</td>
<td>No.of cases withdrawn</td>
<td>2</td>
<td>-</td>
</tr>
<tr>
<td>7.</td>
<td>No. of cases pending</td>
<td>15</td>
<td>14</td>
</tr>
</tbody>
</table>

Source: Maharashtra Pollution Control Board, Bombay

26 Ibid.

27 As per the data provided by the Maharashtra Pollution Control Board, Bombay.
The above table is self-explanatory. It may be noted that under the now repealed Maharashtra Pollution Control Act (1969), the performance of the State Board appears to be quite impressive - with 35 cases compounded, 25 convictions and compensation to the tune of Rs. 2,12,875. As compared to this, during 1982-85 (the Board under the 1974 Act was set up in 1982) the performance of the Board (with not a single of the 14 cases having been decided) remains inexplicable.

The approach adopted by the Gujarat Pollution Control Board is reflected in this statement:

In the beginning the Board adopted the policy of persuading the industries to act according to the provisions of the Water Act, 1974. Though more than sufficient time was given to the industries, they did not heed to the directives of the Board. The Board was constrained to rush before the Court of Law. (28)

The Gujarat Pollution Control Board (GPCB) initiated a total of 84 cases \[\text{See Table II}\] during 1974-85, through its Regional Offices at Ahmedabad (29), Baroda (30), Surat (17) and Rajkot (7). It can be seen that the bulk of the cases have been filed under section 44 (43 cases) and section 33 (33 cases) of the Water Act. It is also noteworthy that the

28 Note from the Chief Scientific Officer, Gujarat Pollution Control Board, Gandhinagar, dated 21 October, 1985.
<table>
<thead>
<tr>
<th>Sr. R.O. Office</th>
<th>Case filed</th>
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<th>10/75</th>
<th>10/76</th>
<th>10/77</th>
<th>10/78</th>
<th>10/79</th>
<th>10/80</th>
<th>10/81</th>
<th>10/82</th>
<th>10/83</th>
<th>10/84</th>
<th>Total Re ar</th>
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<tr>
<td>1. Ahmedabad</td>
<td>Water Act</td>
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<td>Air-Act</td>
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<td>2. Baroda</td>
<td>Water Act</td>
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<td>Others.</td>
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<td>3. Surat</td>
<td>Water Act</td>
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<td>4. Rajkot</td>
<td>Water Act</td>
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<td>-</td>
<td>2</td>
<td>1</td>
<td>-</td>
<td>18</td>
<td>28</td>
<td>20</td>
</tr>
</tbody>
</table>

* = 6 cases under section 44 and 17 cases under section 33 of Water Act;
+ = Under section 186 & 189 of IPC;
@ = Under section 733 of Cr.P.C.;
& = 3 cases under section 44 and 14 cases under section 33 of Water Act, 1974;
** = 5 cases under section 44 and 2 cases under section 33 of Water Act, 1974.

[Source: Gujarat Pollution Control Board, Gandhinagar.]
GPCB filed 7 cases under section 133 (public nuisance) of the Criminal Procedure Code (1973) and a case under sections 186 and 189 (obstructing public servant in discharge of public functions and threat of injury to public servant) of the Indian Penal Code (1860). In actual terms, all the cases (except three) have been instituted during four years, October 1981 to September 1985. In a case at Surat, however, the Judicial Magistrate took a rather surprising view that since there was no corresponding amendment (as in section 25 and 26 by Water (P & CP) Act, 1978) in section 33 of the Water Act, the section was not applicable where the industry was discharging its effluent on land. 29 The GPCB laments that the industries play delaying tactics. It is interesting to note as to how the GPCB views the problems in the enforcement of the Act:

The Act is new. The persons implementing the Act are also new. The judicial officers are also new. There is no precedent. There are no past rulings of the High Court and the Supreme Court. There are omissions in the Act. We want social reform through the judicial system. It will take time to reap the fruits of our present labour. 30

It may not be possible to entirely agree with this diagnosis and prescription given by the GPCB, but it does point to where the problem lies.

29 Ibid.
30 Ibid.
The main difficulty, as viewed by the Himachal Pradesh State Board for Prevention and Control of Water Pollution (HPSBPCWP) has been the delay in getting the final verdicts of the courts. According to the Himachal Pradesh Board, the final verdicts of the court are awaited even after holding 25 to 30 hearings in each case. The complaints filed by the Board, for example, against 13 industries during January-August 1984 for failure to obtain consent and/or installation of treatment plants, remained pending till August 1985.

The Bihar Pollution Control Board used powers under section 33 of the Water Act to prosecute six prominent industries. However, in a criminal revision application against this prosecution by M/s. Bata India Ltd. (Mokamah Ghat), the Patna High Court upheld it in favour of the Board. Twenty-four industrial units, including Champaran Sugar Co. Ltd. (Chanpatia) and Tata Iron & Steel Co.

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31 Data provided by the Member-Secretary, Himachal Pradesh State Board for Prevention & Control of Water Pollution (Simla), dated 31 August 1985.

32 Ibid.

33 Bihar Pollution Control Board (Patna) Annual Report 1983-84, p.16. The six industries were: M/s. New Swadeshi Sugar Mills (Narkatiagunj); M/s. Rohtas Industries Ltd. (Dalmia Nagar); M/s. Bata India Ltd. (Mokamah Ghat); M/s. McDowell & Co. (Hatiadah); M/s. M.A. Paper & Cardboard Factory (Sasamusa) and M/s. H.A. Paper Mills Pvt. Ltd. (Sasamusa).
(Jamsheedpur) also filed writ petitions before the Patna High Court against the decision of the Appellate Committee in respect of water cess to be levied on them. The Patna High Court took a remarkable step in appointing Mr. Marcus Kindo, Judicial Magistrate (First Class) Patna, as a Special Judge (criminal) to hear cases under the provisions of the Water Act, 1974. The Board has been candid in expressing its legal difficulties to the author:

(a) The State Government has not set up a State Water Laboratory and appoint an analyst as required by Section 52 of the Water Act 1974;

(b) Mr. Marcus Kindo, Judicial Magistrate, Patna, is not authorised to hear and adjudicate cases launched under Section 33 of the Water Act 1974, Section 14 of the Water Cess Act 1977 and the Air Act 1981;

(c) The State (Pollution Control) Board is not authorised by the Central Government to institute proceedings under section 14(3) of the Water Cess Act 1977;

(d) The State Government has not set up an Air Pollution Control Laboratory and has not appointed an analyst under the Air Pollution Control Act 1981;

(e) Rules have not been framed under the Water Pollution Control Act 1974;

(f) "Air Pollution Control Area" has not been declared under the Air Act 1981.

34 See, ibid., p.17.

As a result of the cumulative effect of the failure of the Bihar Government to take the above mentioned steps, according to the State Board, it felt itself handicapped to take legal action against the industrial units flouting its directions.

A rational exercise of the "consent jurisdiction" however, appears to have paid good dividends to the Rajasthan State Water Pollution Prevention and Control Board. Having refused consent to 59 industrial units, the Board was, nevertheless, successful in compelling 34 industries to instal effluent treatment plant. The Rajasthan Board appears to have made an extensive use of section 33 of the Water Act in prosecuting 15 industries, with 12 textile units in Jodhpur alone. It also prosecuted 5 industries for violating conditions of the consent order 1983-84. Only 3 cases, however, were

36 Data provided by the Executive Engineer (Admn.), Rajasthan State Water Pollution Prevention and Control Board (Jaipur) dated 30 September 1985. Industries, whose consent applications were refused were from Ajmer(2), Alwar (12), Banswara (2), Bhilwara(8), Bundi(2), Bikaner(1), Chittorgarh(2), Jaipur(9), Jhunjhunu(3), Kota(4), Pali(4), Sri Ganganagar(2), Tonk(1) and Udaipur(7).

37 Industries which installed effluent treatment plant upto March 1984 were from Ajmer(1), Alwar(6), Bhilwara(1), Jaipur(6), Jhalawar(1), Jodhpur(2),Kota(8), Pali Marwar(1), Sri Ganganagar(1) and Udaipur(7).

38 See, n.34.

39 Ibid.
decided (in favour of the Board) whereas almost 75 cases in various lower courts and 11 writ petitions against the Board in the Rajasthan High Court remained pending.40

In Tamil Nadu, the Water (Prevention and Control of Pollution) Amendment Act 1978 was adopted only in 1984. It required notification by the government of a date, on or before which the existing industrial units were required to apply for consent of the State Board. This date was notified as 31 May 1984.41 Following it, as the 1985-86 policy Note of the Board states, the Board resolved to prosecute in a big way almost 249 industrial units for failure to apply to the Board for consent by the stipulated deadline (i.e. 31 May 1984).42

Like the Tamil Nadu Board, the West Bengal Pollution Control Board has also resorted to the legal muscle for

40 The pending cases in the lower courts were in districts of Balotara(6), Pali(61), Bharatpur(1), Jaipur(2), and Bhilwara(5). Writ petitions filed against the Board in the Rajasthan High Court (Jaipur Bench) were by: M/s. J.K. Industries; Mr. Balwantsingh Mehta; M/s. Bhilwara Textiles; M/s. Aggrawal Textiles; M/s. Kundanlal Basimal; M/s. Ganganagar Sugar Mills; M/s. J.K. Synthetics (two petitions); M/s. D.C.M. Delhi (two petitions); M/s. Mewar Sugar Mills; Rajasthan State Electricity Board, Tilak Nagar.

41 G.O. Ms No.12, Environment Control Department, Govt. of Tamil Nadu, dated 12 March 1984.

42 A Policy Note on Control of Water and Air Pollution 1985-86, p.3, send by Mr. G. Rangaswamy, Member Secretary, Tamil Nadu Pollution Control Board (Madras), vide his letter dated 27 July 1985.
water pollution control. It is interesting to note that between January 1980 and December 1986 the Board filed only 11 cases under the Water Act, 1974 and 5 cases were filed during 1986 under the Water Cess Act, 1977 (see Table III). At its 72nd Meeting on 7 October 1986, the Board resolved to institute cases against six industries under the Water Act (1974) and against four industries under section 14 of the Water Cess Act 1977. In a public interest litigation filed before the Calcutta High Court, by some local people of the Andulia village against the Kolaghat Thermal Power Station, it was contended that the project authorities are causing and/or permitting trade effluent, poisonous, noxious and polluting matter to the stream, tank and land of the village which resulted in injury to the public health and public convenience. The


Table - III

Showing cases filed by the West Bengal Pollution Control Board

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of Industry</th>
<th>Date of filing &amp; Name of Court</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>A.</td>
<td>Under the Water Act 1974</td>
<td></td>
<td></td>
</tr>
<tr>
<td>1.</td>
<td>Everest Paper Mills Ltd. Barasat, 24-Parganas</td>
<td>4.1.80 S.D.J.M. at Barasat</td>
<td>Hon'ble High Court rejected the petition of the accused company on the responsibility ground and directed to continue the trial in the S.D.J.M. Court at Barasat.</td>
</tr>
<tr>
<td>2.</td>
<td>East End Paper Ind. Ltd. Bansberia, Hooghly</td>
<td>2.8.80 S.D.J.M. at Chinsurah</td>
<td>Hon'ble High Court accepted the petition of the accused company in connection of personal appearance in the Court and exempted the accused from personal appearance in the Court but direct to continue the trial at the Court of S.D.J.M. Chinsurah.</td>
</tr>
<tr>
<td>4.</td>
<td>Serampore Distillery, Serampore, Hooghly</td>
<td>1.8.85 S.D.J.M. at Serampore, Court</td>
<td>Date fixed up for evidence on 20.12.86.</td>
</tr>
<tr>
<td>5.</td>
<td>Carew &amp; Co., Asansole, Burdwan</td>
<td>18.1.86 S.D.J.M. Court</td>
<td>Date fixed up for evidence on 2.1.87.</td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Name of Industry &amp; Court</td>
<td>Date of filing</td>
<td>Remarks</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------------</td>
<td>----------------</td>
<td>---------</td>
</tr>
<tr>
<td>6</td>
<td>Kesoram Rayons Bamberia, Hooghly</td>
<td>18.1.86 Chinsurah S.D.J.M. Court</td>
<td>All accused appeared in the court and Ld.S.D.J.M. directed the accused to submit their reply on the basis of the charges framed by W.B.Pollution Control Board.</td>
</tr>
<tr>
<td>7</td>
<td>Aceto Chemicals, Calcutta</td>
<td>19.2.86 Alipore S.D.J.M. Court</td>
<td>Date fixed up for evidence on 9.2.87</td>
</tr>
<tr>
<td>8</td>
<td>Bowreah Cotton Mills, Bowreah, Howrah</td>
<td>1.3.86 Uluberia S.D.J.M. Court</td>
<td>Cognizance taken by the Court and process issued but accused has not yet turned up.</td>
</tr>
</tbody>
</table>

**B. Under the Water Cess Act, 1977**

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Name of Industry &amp; Court</th>
<th>Date of filing</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Kesoram Rayon Bansberia, Hooghly</td>
<td>18.1.1986 Chinsurah S.D.J.M. Court</td>
<td>All accused appeared in the court and S.D.J.M. directed the accused to submit their reply on the basis of the charges framed by W.B.Pollution Control Board.</td>
</tr>
<tr>
<td>Sr. No.</td>
<td>Name of Industry</td>
<td>Date of filing &amp; Name of Court</td>
<td>Remarks</td>
</tr>
<tr>
<td>--------</td>
<td>-----------------------------------</td>
<td>---------------------------------</td>
<td>--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>2.</td>
<td>Eastend Paper Indus. Bansberia, Hooghly</td>
<td>18.4.1986 C.J.M. Court, Chinsurah</td>
<td>Accused company appeared through Advocate and filed a petition for the exemption of personal appearance of the accused Managing Director. Hon'ble Court directed the accused to appear before the Court on 11.7.86 but the accused filed a petition to the High Court and accused company obtained an interim order of stay against the order of C.J.M.Court, Chimsurah and therefore matter is now pending in High Court for hearing.</td>
</tr>
</tbody>
</table>

Source: West Bengal Pollution Control Board, Calcutta
Calcutta High Court, in an interim order, directed the West Bengal Pollution Control Board to inspect the Thermal Power Project at Kolaghat within one month. Following such inspection the Board was to submit a report suggesting protective measures to the General Manager, Kolaghat Thermal Power Project, and to the Secretary, West Bengal Electricity Board, to implement those protective measures within a period of four months from the date of submission of such report.

Ostensibly, this scenario of the exercise of the legal muscle by the pollution control boards, though not exhaustive, is definitely an indicator of the existing state of affairs for prevention and control of water pollution in India. Though all the State Pollution Control Boards were not forthcoming and some of them responded only symbolically, nevertheless the valuable discussions this scholar had personally with officials of some of these Boards threw considerable light on their performance. Different Boards have exercised the legal muscle with varying degree of thrust, yet almost all the Boards seem to be concerned about the delay caused on the court proceedings. A plausible reason for the rather dismal performance

45 The interim directions were passed by Mr. P.K. Mukherji, J., of the Calcutta High Court on 4 December 1986 in writ petition C.O. No. 8490 (w) of 1986.
in using the legal muscle as a deterrent, is aggravated by the near absence of the required "teeth" in the statute to enable the Boards to play a decisive role, such as summary closure of the polluting industry. In fact, in order to realise the Objects and Reasons of the Water Act, the Boards need to be vested with real and effective powers for the purpose, especially keeping in view the chronic state of water pollution in India. It is appreciable that, of late, some of the Boards have launched a legal drive, even with the help of limited powers at their disposal, to bring more and more polluters to book.

II. Effectiveness of Sentence/Fine:

Chapter VII of the Water Act (1974) provides for penalties and procedures. Section 41 to 45 provide for different penalties for violation of provisions of the Act. Barring sections 43, 44 and 45, however, the other two sections do not prescribe any minimum mandatory sentence. Furthermore, both sections 41 and 42 prescribe a sentence "which may extend to three months or with fine or with both". Since they provide imprisonment or fine, in almost all the cases, the Judicial Magistrates impose fine. The amount of fine too is meagre -- maximum upto Rs.5,000/-
under section 41 and upto Rs.1,000/- under section 42.

As regards sections 43 and 44, the minimum mandatory sentence is not less than six months and maximum sentence upto six years and with fine, whereas section 45 provides for imprisonment of not less than one year and extending upto seven years and with fine.

Even the recently enacted comprehensive Environment Act\textsuperscript{46} is of no help in prescribing a mandatory deterrent punishment. Although the Act lays imprisonment upto 5 years or fine upto one lakh rupees,\textsuperscript{47} it suffers from a serious flaw which, in effect, robs it of any effective value. The mischief is contained in section 24, which provides:

\begin{itemize}
  \item[(1)] Subject to the provisions of Sub-section(2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.
  \item[(2)] Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.
\end{itemize}

\textsuperscript{46} The Environment (Protection) Act 1986 (No.29 of 1986) The Act received the assent of the President on 23 May 1986 and came into being on 19 November 1986.

\textsuperscript{47} See, section 15.
Thus an act or omission, constituting an offence under the EPA may fall within the ambit of the Water Act 1974 too. As a result, by virtue of section 24(2) of the Environment Act, the offender will be liable to be punished under Chapter VII of the Water Act. This makes the new Act almost redundant. It is understood that a move is afoot to remedy this situation. Having realised the folly in hurriedly pushing through the lacunae-ridden Environment Act in the Parliament, the Government is considering to amend the other laws, especially the Water Act (1974) and the Air Act (1981), to avoid the unsavory condition created by section 24(2) of the new Act.\footnote{48} As regards the Water Act (1974), it is proposed to amend sections 41 to 45 (See, Table IV)\footnote{49} to make the penalties more stringent.

A perusal of the decisions rendered in prosecutions launched by the Central Board and the State Boards, as discussed earlier, goes to show that in most of the cases the courts have, almost as a rule, directed the industry to set up effluent treatment plants. As a result, no industrialist has so far been sent to jail for violation of the

\footnote{48} See, D.O. Letter No.Q.15012/2/84-PL, dated 7 November 1986, by Mr.T.N.Seshan, Secretary, Department of Environment, Govt. of India, to the Chief Secretary, Govt. of West Bengal.

\footnote{49} Ibid. Annexure.
**Table - IV**

Showing Penalties Existing under the Water Act (1974) and Proposed Penalties with Reasons Therefore.

<table>
<thead>
<tr>
<th>Section</th>
<th>Existing Penalties</th>
<th>Proposed penalties</th>
<th>Reasons</th>
<th>Provisions of Sections violated</th>
</tr>
</thead>
<tbody>
<tr>
<td>41</td>
<td>Punishment with imprisonment for a term which may extend to 3 months or rupees five thousands or with both and in case the failure continues with an additional fine which may extend to rupees one thousand for every day during which such failure continues after the conviction for the first such failure.</td>
<td>Penalty of rupees five thousand existing in s.41 is proposed to be increased to rupees ten thousand</td>
<td>Existing Penal provisions are proposed to be modified with a view to harmonise provisions of both the Air and Water Acts; and also s.41 is proposed to be restricted to violations of s.20(2) or (3) which are relatively minor as compared to s.32 (1)(c) or s.33(2)</td>
<td>S.20(2) - State Boards's directions to persons for furnishing information as to the abstraction of water or discharge of effluents. S.20(3) - State Boards' direction to furnish information regarding waste disposal systems. S.32(1)(c) - Board's order for restraining/prohibiting discharge of any poisonous noxious or polluting matters where so warranted.</td>
</tr>
<tr>
<td>Section</td>
<td>Existing Penalties</td>
<td>Proposed Penalties</td>
<td>Reasons</td>
<td>Provisions of section violated</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------</td>
<td>--------------------</td>
<td>---------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>42</td>
<td>Punishment with imprisonment for a term which may extend to 3 months or with fine which may extend to one thousand rupees or with both.</td>
<td>Existing penalties retained as they are</td>
<td></td>
<td>S.42 - Penalty for certain acts like - damages, destroys removal of notices, inscriptions, obstructing persons acting under the directions of Board, non-furnishing of information, failing to intimate occurrence of accidents, furnishing false statements, etc.</td>
</tr>
<tr>
<td>43</td>
<td>Imprisonment of not less than six months which may extend to six years and fine (for contravening provisions of S.24)</td>
<td>with a minimum prison sentence of one and a half years which may extend to six years and fine</td>
<td>Penalties enhanced to make the provisions deterrent. Violations under S.32(1)(c) and 33(2) are considered serious and are proposed to be brought under S.43.</td>
<td>S.24 - Prohibits use of stream or well for disposal of polluting matters, etc. S.32(1)(c) - Board's order for restraining/prohibiting discharge of any poisonous, noxious or polluting matters where so warranted. S.33(2) - Court's order for immediate restraining/prohibiting discharge of pollution.</td>
</tr>
<tr>
<td>44</td>
<td>Imprisonment of not less than six months which may extend to six years and fine (for contravention of S.25 or 26)</td>
<td>with a minimum prison sentence of one and a half years which may extend to six years and fine</td>
<td>The offences under S.25 and 26 are considered to be serious.</td>
<td>S.25 - provides for restriction on new outlets and new discharges without previous consent of the State Board. S.26 - provision for taking consent from the State Board regarding discharge of sewage or trade effluent existing before the Water Act came into force.</td>
</tr>
<tr>
<td>Section</td>
<td>Existing Penalties</td>
<td>Proposed Penalties</td>
<td>Reasons</td>
<td>Provisions of sections violated</td>
</tr>
<tr>
<td>---------</td>
<td>--------------------</td>
<td>--------------------</td>
<td>--------</td>
<td>--------------------------------</td>
</tr>
<tr>
<td>45</td>
<td>Minimum imprisonment</td>
<td>Minimum imprisonment</td>
<td>Since penalties under s.43 and 44 are proposed to be enhanced it is also proposed to enhance the penalty under s.45.</td>
<td>S.25 - provides for restriction on new outlets and new discharges without previous consent of the State Board. S.26 - provision for taking consent from the State Board regarding discharge of sewage or trade effluent existing before the Water Act came into force. S.32(1)(c) S.33(2)</td>
</tr>
</tbody>
</table>

A person convicted under s.24/25/26 if again found guilty of an offence involving contravention of the same provision, he shall on the second and every subsequent conviction be punishable with imprisonment for a term not less than one year but which may extend to 7 years and with fine. 

Source: West Bengal Pollution Control Board, Calcutta.
provisions of the Water Act. They get away with meagre fines, especially when the polluter is a big industrial unit. Ironically, as disclosed to this scholar by the Law Officer of the Gujarat Pollution Control Board, the small fines virtually act as a "licence to pollute" rather than having any deterrent effect. Similarly, as opined by the Chairman of the Maharashtra Pollution Control Board in his discussions with this scholar, the imposition of fine as a routine practice has made it convenient for the industries to "pay and pollute". Another major difficulty is that, to attract the punitive provisions of the Act, pollution of streams ought to be done "knowingly", rather than "negligently". The problem is further aggravated as the "burden of proof" to prove the offence lies on the prosecution and not on the polluter. Accordingly, the burden of proof in the context of pollution remains the crux of the problem.

A cumulative effect of all this is that with little penal powers available under the existing law, the prosecution remains severely handicapped, either to secure deterrent punishment or exemplary fine imposed on the polluter. This, in turn, amply demonstrates the "toothless" character of the enforcement machinery of the Water Act. It severely undermines the enforcement of the statute
too. Therefore, immediate corrective measures are called for to arrest further damage due to the inadequacy of the sentence/fines laid down in the Act. A strict view of the acute problem of water pollution is equally called for on the part of the judiciary, especially the trial courts.

III. Availability and Use of Funds

It is axiomatic that performance of the enforcement machinery depends, to a great extent, on the availability, as well as the rational use, of funds. This is true both in terms of expenses incurred for administrative purposes as well as their primary function of prevention and control of water pollution. It has been revealed in the course of discussions that this scholar undertook personally with officials of various State Pollution Control Boards in India, that the financial difficulty tends to throw their basic activities out of gear — almost making them non-functional. Various factors can be attributed to this plight of the boards.

In the case of the Central Board for the Prevention and Control of Water Pollution, *prima facie*, the availability of funds does not seem to have posed any problem. It may be so because of the significance of the role of the Central Board, both in terms of its function of monitoring
as a National Board and as a State Board for the Union Territories. Consequently, the Central Board does not appear to have suffered for want of funds, having received generous grant-in-aid from the Government of India over the years. The Grant-in-aid, which is the basic source of funds of the Central Board, has skyrocketted to Rs.140 lacs -- a seven-fold increase in seven years (1977-78 to 1983-84) (See Table V).

Table - V

Showing grant-in-aid to the Central Board

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget Rs.lakhs</th>
<th>Amount Released Rs.lakhs</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>140.00</td>
<td>140.00</td>
</tr>
<tr>
<td>1982-83</td>
<td>100.00</td>
<td>88.00</td>
</tr>
<tr>
<td>1981-82</td>
<td>75.00</td>
<td>70.00</td>
</tr>
<tr>
<td>1980-81</td>
<td>55.00</td>
<td>45.00</td>
</tr>
<tr>
<td>1979-80</td>
<td>44.00</td>
<td>39.71</td>
</tr>
<tr>
<td>1978-79</td>
<td>37.00</td>
<td>37.00</td>
</tr>
<tr>
<td>1977-78</td>
<td>20.00</td>
<td>20.00</td>
</tr>
</tbody>
</table>

Source: Central Pollution Control Board (New Delhi), Annual Reports.
It may be seen that the budgeted amount of grant-in-aid has recorded a steady increase. The increase is more spectacular during 1981-82 to 1983-84. Generally, the amount released has been commensurate with the budgeted amount, except for some deviations during 1979-80 to 1982-83. This has, however, not adversely affected the level of activity of the Central Board. Moreover, the income accruing to the Board from consent fees and other receipts has been of little significance.

Out of the funds at the disposal of the Central Board, its activities -- both as a National Board and State Board -- constitute a major chunk of the disbursements. Significantly enough, a sizeable amount of the funds has been generally spent on its activities as the National Board, as compared to its role as a State Board (See Table VI). It is also clearly discernible that its expenditure as a State Board exceeded that as a National Board in the initial years 1977-78 and 1978-79. Its activities -- as an overall national monitoring agency -- has picked up momentum from 1979-80 onwards, which was almost 2.5 times more during 1983-84. The major components of its expenditure as a National Board have been for inter-state monitoring, basin and sub-basin studies, comprehensive industry documents, air pollution control, etc. As compared to this, its function as a State
Board has required it to spend on laboratory facilities, monitoring and control of pollution at source.

Table - VI

Showing Expenditure Incurred by the Central Board

<table>
<thead>
<tr>
<th>Year</th>
<th>Administration (Rs.in lakhs)</th>
<th>Activities Total</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>As Central Board</td>
<td>As State Board</td>
</tr>
<tr>
<td>1983-84</td>
<td>42.29</td>
<td>75.41</td>
</tr>
<tr>
<td>1982-83</td>
<td>28.18</td>
<td>27.95</td>
</tr>
<tr>
<td>1981-82</td>
<td>22.72</td>
<td>19.23</td>
</tr>
<tr>
<td>1980-81</td>
<td>18.20</td>
<td>20.80</td>
</tr>
<tr>
<td>1979-80</td>
<td>18.40</td>
<td>11.05</td>
</tr>
<tr>
<td>1977-78</td>
<td>5.98</td>
<td>1.99</td>
</tr>
</tbody>
</table>

Source: Central Pollution Control Board (New Delhi), Annual Reports.

Another major share of expenditure of the Central Board is taken by administrative expenses, which ranks second only to its spending as a National Board. Administrative expenses have sharply gone up in 1981-82, following a big jump in the staff to 130 from 79 in the previous year (See Figure-I). This steep hike in the administrative
INCREASE IN STAFF STRENGTH SINCE 1975

(Source: CBPCWP Annual Report 1983-84)
expenses has continued so unabatedly that in 1983-84 it was almost 40% (Rs.42.29 lakhs) of its total spending both as a National Board and State Board (Rs.108.85 lakhs).

A glaring omission needs to be noted here, there is no mention of the amount spent on prosecutions etc. in the Statement of Income and Expenditure of the Control Board (as given in its Annual Reports). It is, however, possible that legal expenses are shown under the head "administration"). A separate mention of the legal expenses would have been a good indicator of the weightage given to this crucial aspect of enforcement.

As compared to the Central Board, the financial position of most of the State Pollution Control Boards is rather in a shambles. This has, often, not only hampered their smooth functioning but also virtually foreclosed their pollution control activities. A financial squeeze, advertently or inadvertently, cannot but have demoralising effects on the Boards in the enforcement of the Water Act, especially in the launching of the prosecutions against the polluters. It may also be noted that the Act is silent about the funds for the Boards, although they are supposed to be autonomous. Even the Water (Prevention and Control of Pollution) Cess Act, 1977, is not helpful in this regard. It appears to be rather more an incentive to the entrepreneur.
to successfully implement the pollution control measures and claim the refund of 70%. As per section 6 of the Water Cess Act, powers to assess the cess (on the basis of consumption of water by industries and local bodies) to recover it and to send the same to the Union government (in the Consolidated Fund of India) have been conferred on the state Board. The Central government releases funds, against recovery of water cess, to the state governments to be passed on to the state Boards. Ironically, it has been complained that the state governments have been dilly-dallying in passing on this amount to the state Boards apart from giving irregular and inadequate grant-in-aid to them. A classic example is available in the treatment meted out to the Bihar Pollution Control Board by the Government of Bihar.

The budget of the Bihar Board was Rs.1.10 crores in 1983-84. The Board, however, was bogged down in financial crisis as the state government failed to provide any fund to the Board which, nevertheless, managed with its savings (see Table VII). A cursory look at the budget of the state Board and the actual funds doled out to it, is a sad reflection on the part of the Bihar government as to how a stepmotherly attitude can effectively frustrate all pollution control plans. It also makes mockery of the
### Table VII

<table>
<thead>
<tr>
<th>Year</th>
<th>Budget</th>
<th>Fund from State Government (Rs.in lakhs)</th>
<th>Amount spent</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>110.00</td>
<td>-</td>
<td>24.60</td>
</tr>
<tr>
<td>1982-83</td>
<td>77.00</td>
<td>10.00</td>
<td>17.68</td>
</tr>
<tr>
<td>1981-82</td>
<td>30.00</td>
<td>8.75</td>
<td>10.67</td>
</tr>
<tr>
<td>1980-81</td>
<td>25.10</td>
<td>10.00</td>
<td>11.56</td>
</tr>
</tbody>
</table>

Source: Bihar Pollution Control Board (Patna), Annual Report 1983-84, p.20.

autonomy of the statutory Board, by keeping it virtually at the mercy of the state government to carry out even its statutory obligations. The Bihar Board, therefore, bitterly notes that it could not achieve its targets for lack of grant-in-aid from the state government. This can be seen from the fact that the state government did not transfer the amount of Rs. 32,31,069 to the Bihar Board, which it had received for the purpose from the Central government. Table VIII reveals a graphic picture of the attitude of the Bihar government in releasing these funds to the Board. It is astonishing to note that, except for the aberration of 1982-83 when Rs.33,87,300/- were
Table VII

Showing Position of Cess at a Glance (as on 31 March 1984) in case of Bihar Pollution Control Board

<table>
<thead>
<tr>
<th>Year</th>
<th>Cess Assessed (Rs.)</th>
<th>Cess Collected (Rs.)</th>
<th>Cess Remitted to Govt. of India (Rs.)</th>
<th>Amount released by Govt. of India (Rs.)</th>
<th>Amount released by Bihar Govt. to State Board (Rs.)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1983-84</td>
<td>1,61,74,602.45</td>
<td>25,12,175.12</td>
<td>15,41,202.34</td>
<td>32,31,069.00</td>
<td>nil</td>
</tr>
<tr>
<td>1982-83</td>
<td>33,16,963.20</td>
<td>24,68,275.70</td>
<td>19,76,102.07</td>
<td>7,32,700.00</td>
<td>33,87,300.00</td>
</tr>
<tr>
<td>1981-82</td>
<td>23,18,703.30</td>
<td>24,24,063.17</td>
<td>29,97,667.46</td>
<td>23,27,273.00</td>
<td>nil</td>
</tr>
<tr>
<td>1980-81</td>
<td>46,07,141.42</td>
<td>26,19,894.87</td>
<td>15,06,378.10</td>
<td>10,60,000.00</td>
<td>nil</td>
</tr>
<tr>
<td>1979-80</td>
<td>30,18,582.88</td>
<td>2,51,847.48</td>
<td>2,51,846.48</td>
<td>mil</td>
<td>nil</td>
</tr>
<tr>
<td>Total</td>
<td>2,94,35,953.25</td>
<td>1,02,96,255.34</td>
<td>82,73,196.45</td>
<td>73,51,042.00</td>
<td>33,87,300.00</td>
</tr>
</tbody>
</table>
released, the Bihar government sat over the amount of the water cess released by the Central government during 1979-80 to 1983-84. This consistent neglect of the state Board by the Bihar government remains inexplicable. It goes without saying that such an approach of the state government tends to frustrate the very object and purpose of the Water Act. It appears that, all pleas and complaints of the Bihar Board have fallen on deaf ears, which has, in its wake, seriously undermined its performance as an enforcement agency under the water Act.

There are, however, some shining examples too, where the State Boards have received, though not as budgeted, regular funds from the state governments. The Gujarat government, for example, gave grant-in-aid of Rs.57.72 lakhs and Rs.73 lakhs to the Gujarat Pollution Control Board during 1982-83 and 1983-84, respectively. During 1987-88, it is expected to get around Rs. 1 crore as grant-in-aid. Similarly, the Tamil Nadu Pollution Control Board received Rs.18.50 lakhs during 1983-84 from the state government.

50 Gujarat Pollution Control Board (Gandhinagar), Annual Reports 1982-83 and 1983-84.
51 Tamil Nadu Pollution Control Board (Madras), Annual Report 1983-84.
The Madhya Pradesh government has not been consistent in providing funds. This may be seen from the funds released during 1977-78 (1.59 lakhs), 1978-79 (Rs. 5.59 lakhs), 1979-80 (3.50 lakhs) and 1980-81 (5.69 lakhs) to the M.P. Pollution Control Board.  

From all these trends, one thing comes to surface that the availability of the required funds has remained a perennial concern of the State Pollution Control Boards. Obviously, funds are the focal point around which all the activities for prevention and control of water pollution entrusted to the Boards revolves. It is quite understandable that all the budgeted amount may not be forthcoming, yet there is no justification in depriving the Boards of their required funds to carry out their plans. Since most of the administrative overheads (e.g. salaries to the staff, rent, etc.) are of a standing nature, any curtailment in the budgeted expenditure directly affects expenses earmarked for pollution control purposes. Therefore, the availability of funds must not be allowed to become the sword of Democles for the pollution control Boards. Extreme cases, such as the Bihar Board, should be avoided at all cost.

It is imperative that the state governments must also give due priority in allocation of funds for prevention and control of water pollution along with industrial development, lest they are confronted with horrendous ecological problems in the coming years. The best course, however, would be to allow the Boards to maintain their supposedly autonomous status with minimum reliance on the state government in the matter of funds. A modus operandi for this purpose may comprise of substitution of water cess by a broader "environment cess" -- to be levied on the basis of capital cost of the large and medium as well as small-scale industries, say, 1% and 0.5% per year, respectively. The Boards may be allowed to retain a major part of the amount available from such an environment cess. This will ensure a rather free flow of operational funds for the Boards to carry out their statutory enforcement functions without any pressures or being subjected to the dictates of the state governments.

IV. Coordination Between the Central Board and State Boards

The two-tier enforcement machinery enshrined under the Water Act requires due coordination for prevention and control of water pollution. The Central Board was constituted

53 See, Section 3 of the Water Act, 1974.
in September 1974. On the other hand, out of the 22 states (Arunachal Pradesh and Mizoram (1986) and Goa (1987) are the latest additions) in India, so far 18 states have adopted this Act and have constituted their respective State Pollution Control Boards. Though, Tripura has adopted the Water Act, it is yet to constitute the Board. Moreover, three northeastern states -- Manipur, Nagaland and Sikkim -- are yet to adopt the Act and to constitute the Board. However, 9 Union Territories are under the direct charge of the Central Board. It may also be noted that the Central Board as well as the State Pollution Control Boards have been entrusted with the additional responsibility of administering air pollution control too.

An in-built requirement in the Water Act, for nomination of 5 persons from among the members of the state Boards -- in the Central Board consisting of 17 members, in a way, seeks to ensure coordination in their respective


55 As regards the Union Territory of Mizoram, Parliament has passed a Constitutional Amendment Bill in August 1986 granting statehood to Mizoram.


57 Section 3(2)(c) of the Water Act 1974.
roles. The Central Board carries out its functions at two levels, namely (1) as Central Board at the National level and (2) as State Board for the Union Territories. Among its functions at the national level, the coordinating role of the Central Board is clearly laid down in the Water Act that it should:

coordinate the activities of the state Boards and resolve disputes among them. (58)

Being the apex policy-making body, the Central Board also ensures implementation of pollution control programmes in Union Territories as well as coordinates and guides activities of the state Boards. To ensure smooth coordination, the Central Board has decentralised its activities on a regional basis. This, in a way, enables it to have effective decentralised monitoring and channelising of the entire enforcement machinery under the Water Act.

(a) The Southern Regional Office (functioning since 28 July 1982) of the Central Board at Madras coordinates activities of the state Boards of Andhra Pradesh, Karnataka, Kerala, Maharashtra and Tamil Nadu. It also covers the Union Territories of Lakshadweep; Goa, Daman and Diu; Pondicherry, Karaikal, Yanam and Mahe and Dadra and Nagar

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58 Section 16(2)(b). A similar provision also exists under section 16(2)(c) of the Air Act 1981.
(b) The North-western Regional Office has been started at Chandigarh (from 1 November 1983) covering the state Boards of Haryana, Himachal Pradesh, Jammu and Kashmir, Punjab and Union Territory of Chandigarh. 60

It, however, needs to be noted that the pollution control activities of the state Boards of Gujarat, Madhya Pradesh, Rajasthan and Uttar Pradesh and the Union Territory of Delhi, which were put under earlier Northern Regional Office (Delhi) are now being coordinated by the Central Board's Headquarters in New Delhi. 61

(c) The East and North-eastern Regional Office at Calcutta (from 1 July 1983), comprises the state Boards of Assam, Bihar, Orissa, Manipur, Meghalaya, Nagaland, Tripura and West Bengal as well as the Union Territories of Andaman and Nicobar Islands, Arunachal Pradesh and Nizoram. 62

It is expected that with the setting up of regional offices for the western and central regions, in future, the

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60 Ibid.
61 Ibid.
62 Ibid.
Central Board's coordinating capacity will be greatly enhanced. This would, in turn, lead to a more cohesive approach between the Central and state Boards in formulating and implementing pollution prevention and control strategies as well as programmes.

V. Ganga Clean-up: A Curative Strategy

As an off-shoot of the various problems encountered in the enforcement of the Water Act, as well as the structural difficulties experienced by the enforcement machinery, the Department of Environment has launched an important curative strategy for combating chronic pollution in the Ganga. This, is, however, an "extra-legal" approach directly aimed at restoring the pristine purity of the Ganga.

Regarded as the cradle of Indian civilization, the Ganga has been sinking and stinking, choked by the tons of dangerous chemicals and organic wastes emptied into river daily. The clean-up operation has special importance because as the largest river basin of 9,00,000 sq.kms., the Ganga drains eight states -- Himachal Pradesh, Punjab, Haryana, Uttar Pradesh, Rajasthan, Madhya Pradesh, Bihar, West Bengal and the Union Territory of Delhi -- covering 26% of India's landmass and carrying 25% of India's water wealth. Out of its 2,525 kms length - ranging from Gangotri
in the Himalayas to the Ganga Sagar where the Ganga empties into the Bay of Bengal—almost 600 kms. long stretch is feared to be the worst polluted. The sheer size of this operation makes it the biggest river clean-up project in the world.

**Action Plan**

In view of the alarming state of pollution and the growing assault on the "self-cleansing" capacity of the river the Ganga Action Plan has been launched, after a two year survey of the entire river basin. The Action Plan, laying down a curative strategy on a time-frame basis, reflects the government's new priorities for combating the chronic problem of water pollution in India. The first phase of the operation, during 1985-90 at an estimated outlay of Rs.250 crores, will also coincide with the UN-sponsored International Water Supply and Sanitation Decade.

The major objectives of the Action Plan in the first phase are: immediate reduction of the pollution load (leading eventually to total prevention) on the river and the establishment of self-sustaining treatment plant systems. Keeping

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64 The Ganga Action Plan was made public by the Prime Minister Mr. Rajiv Gandhi in his first Broadcast to the Nation on 5 January 1985.

65 See, n.63.
these in view, the following have been identified as the components of the Action Plan:

i) Renovation (cleaning/silting/repairing) of existing trunk sewers and outfalls to prevent the overflow of sewage into the Ganga.

ii) Construction of interceptors to divert flow of sewage and other liquid wastes into Ganga.

iii) Renovation of existing sewage pumping station and sewage treatment plants and installation of new sewage treatment plants to recover the maximum possible resources specially energy to operate the pumping and treatment plants and derive the maximum possible revenue to cover at least the operation and maintenance of these plants.

iv) Arrangements for bringing human and animal wastes from locations proximate to the sewage/sullage digesters for sanitary disposal, production of energy and manure.

v) Providing sullage or sewage pumping stations at the outfall points of open drains, to divert the discharge from the river into the nearest sewers and treatment plants.

vi) Alternative arrangements to prevent discharge of animal and human wastes from cattle sheds located on the river banks.

vii) Low cost sanitation schemes in areas adjoining the river to reduce or prevent the flow of human wastes into the river.

viii) Biological conservation measures based on proven techniques for purification of streams.

ix) Pilot projects to establish cost effective systems for diversion of wastes now flowing into the river, their treatment and resource recovery.
Pilot projects to establish feasibility of technology applications in the treatment of wastes and resources/energy recovery. (66)

Thus it needs to be noted that the Action Plan aims at the municipal sewage and setting up of sewage treatment plants. Industrial effluents will be primarily taken care of by the State Pollution Control Boards (U.P., Bihar and West Bengal).

**Ganga Authority**

The Action Plan is to be implemented and monitored by the Central Ganga Authority (CGA) set up for the purpose. (67) The apex body of the CGA, headed by the Prime Minister, consists of nine members. (68) The main functions of the CGA have been laid down as:

(a) To lay down, promote and approve appropriate policies and programmes (long and short-term) to achieve the objectives;

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66 Department of Environment (Govt. of India), *An Action Plan for Prevention and Pollution of the Ganga*, July 1985, pp.4-5.

67 The Central Ganga Authority was set up under the Government Resolution No.Q.1401/4/84-EPC(I), published in the *Extraordinary Gazette of India*, dated 16 February 1985.

68 The nine members are: Union Finance Minister; Chief Minister of Uttar Pradesh, Bihar and West Bengal; Deputy Chairman of Planning Commission; Ministers of State for Planning, Environment & Forests and Science and Technology as well as Member (Science) of Planning Commission.
(b) To approve the Action Plan;
(c) To mobilise financial resources;
(d) To review the progress of implementation and give necessary directions to the Steering Committee; and
(e) To take all such measures, as may be necessary, for achieving the objectives of the Authority. (69)

The CGA is to meet at least once a year. (70) Apart from it, a Steering Committee, consisting of 19 members with the Project Director of the CGA as member-secretary, has also been constituted. (71) It comprises officials of different agencies involved in the project, apart from experts in waste treatment, public health engineering, algaculture and pisciculture. The Department of Environment has created a wing in June 1985 -- the Ganga Project Directorate -- to service the CGA and the Steering Committee (see, Figure II). The Directorate appraises and approves sub-projects prepared and submitted by field-level agencies, coordinates various agencies, provides funds and monitors the progress. (72)

70 Ibid., p.13.
71 Ibid.
72 Ibid., p.15.
Figure II

ORGANIZATIONAL STRUCTURE FOR THE GANGA ACTION PLAN

CENTRAL GANGA AUTHORITY
Chairman: Prime Minister
Policies, Programme—Approval, Review

STEERING COMMITTEE
Chairman: Secretary, Deptt of Environment
Chief Secretaries, U.P., Bihar, West Bengal
Representatives of Ministries,
Specialist organisations and experts
Action Plan approval, fund allocation,
programme formulation

STATE GOVTS
U.P., Bihar, West Bengal
Nodal Deptt
Programme formulation, coordination at State level

STATE AGENCIES
Water & Sewage Boards—Pollution
Control Boards, Development Authorities,
Local Bodies, Specialist Agencies
Scheme preparation, execution, maintenance

GANGA PROJECT DIRECTORATE
Project Director
Project appraisal, clearance, fund
release, coordination, monitoring,
servicing CGA and Steering Committee

CENTRAL GOVT
Specialised Deptts. and
agencies, Central Pollution
Control Board, DMES etc.
Scheme preparation, execution,
pilot projects

NON-GOVT ORGANISATIONS
Voluntary Organisations
Scheme preparation, execution,
maintenance, public participation

Source: An Action Plan for Prevention of Pollution of Ganga, Deptt. of Environment, Govt. of India, New Delhi, July 1985
The Action Plan has laid down in detail the names of towns situated on the Ganga, their population, quantity of sewage generated, costs of installation, maintenance and operation of sewage pumping and treatment plants and revenues to be generated from "resource-recycling units." The operation is claimed to have a bright possibility of remaining economically viable. The Project Directorate has already identified 140 schemes and sanctioned 80 schemes for renovation or construction of sewers stations and treatment plants etc., in three states of Uttar Pradesh, Bihar and West Bengal.

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73 For details see, n.66, Appendices A/1, A/2, A/3 and B.

74 The Times of India (New Delhi) 6 September 1986. Some of the major schemes include Kanpur, Allahabad, Varanasi, Patna, Chandernagar, Bhatpara, Serampore and Titagarh. The time schedule has been given as follows:

<table>
<thead>
<tr>
<th>Scheme</th>
<th>Cost</th>
<th>Completion</th>
<th>Executing Agency</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jajmau</td>
<td>2.11</td>
<td>March 1988</td>
<td>GM, UP Jal Nigam, Kanpur</td>
</tr>
<tr>
<td>Gaughat</td>
<td>1.66</td>
<td>June 1988</td>
<td>GM, UPJN, Allahabad</td>
</tr>
<tr>
<td>B.H.U.</td>
<td>2.64</td>
<td>March 1989</td>
<td>GM, UPJN, Varanasi</td>
</tr>
<tr>
<td>Diesel Locomotive Works</td>
<td>2.25</td>
<td>March 1988</td>
<td>GM, DLW</td>
</tr>
<tr>
<td>Patna</td>
<td>0.80</td>
<td>Dec., 1987</td>
<td>State Water Sewage Bd.</td>
</tr>
<tr>
<td>Chandernagar</td>
<td>2.79</td>
<td>June 1988</td>
<td>GM, DA, Calcutta</td>
</tr>
<tr>
<td>Bhatpara</td>
<td>0.73</td>
<td>Sept., 1987</td>
<td>CMDA</td>
</tr>
<tr>
<td>Serampore</td>
<td>1.98</td>
<td>March 1989</td>
<td>C.M.W.S.A.</td>
</tr>
<tr>
<td>Titagarh</td>
<td>0.77</td>
<td>Sept., 1987</td>
<td>C.M.W.S.A.</td>
</tr>
</tbody>
</table>
It may be seen that the main thrust of the Ganga clean-up is renovating the existing sewerage system and setting up of sewage treatment plants, since most of the cities situated on the banks of the river do not have sewerage system and are practically lacking in sewage treatment system. Each of these units is to be given the shape of a factory, which will provide by-products in the form of methane biogas, manure rich digested sewage-sludge, algae, fish and the final effluents being used for irrigation purposes.

Ostensibly, the Ganga Action Plan, seeking to channelise national effort for the purpose, is to prove an acid test for the water pollution control strategy in India. It would, however, be a fallacy to expect the CGA to be able to clean-up the acute pollution in the Ganga, with a wave of the proverbial wand. This is especially so, both because of the gigantic nature of the work as well as because of the constraints of financial resources and technological capability.

The Ganga clean-up is likely to face difficulty as regards the maintenance of a minimum flow in the river, since the pollution level also depends upon the degree and velocity of the flow of water, especially at critical points along the river, where large industrial units and
large urban settlements are located. Further, the maintenance of the resource-recycling units, around which the whole of the clean-up operation would revolve, may turn out to be the weakest link.

The success of the entire operation will largely depend upon the coordinated efforts of various agencies involved in it. The high-level apex body of the CGA will ensure quick decision-making, nevertheless, the ultimate implementation as well as monitoring of the task is expected to rest with the concerned state level agencies in the states of Uttar Pradesh, Bihar and West Bengal. In view of the long-term nature of the Ganga clean-up operation, it appears that the Central Ganga Authority needs to be given a statutory status rather than creation of merely a government resolution, as it is today. This may especially be useful, both in view of the complicated nature of the whole operation and its dealings with various ground-level agencies. The conferment of "teeth" on the CGA would prove to be a great asset in increasing its clout too. Its example would become a torch-bearer for heralding into the era of regional river authorities in India to deal with the problem of water pollution on a priority basis in the coming years.