CHAPTER – VIII
CHAPTER – VIII

1. INTRODUCTION

The present chapter critically inquires into the role of enforcement agencies in curbing environmental degradation. The focus is on the functioning of the Regulatory Authorities. The aspects which came for scrutiny before the courts, are functioning of (a) Pollution Control Boards with all the powers vested in them; (b) Specifying certain levels of pollution which can be regularised by boards; (c) the enactment of penal provisions so, that standards set are observed; (d) the licensing control mechanism.

The legal regime further envisages and demands two things; (a) before setting up any industry, permission to start the same is required from the concerned authority (b) the on going industry should maintain the specified standards and if the same are not met then (a) close down the industry (b) revocation of consent orders or (c) direction to comply with the norms. This Chapter deals with the aspect of regulatory mechanism under major Environmental laws in vogue in India.

In this Chapter emphasis is on the functions of enforcing agencies in Gujarat, namely, working and functioning of Gujarat Pollution Control board.

2 THE SETTING UP OF POLLUTION CONTROL AUTHORITIES UNDER WATER ACT, AIR ACT AND ENVIRONMENT PROTECTION ACT

In the year 1972, The National Committee on Environmental Planning and Coordination (NCEPC) was established as the Apex Advisory Body so far as
environment protection was concerned. The NCEPC did not play a very significant role because the responsibility of execution was divided between various Ministries and Departments of the Government of India. The Tiwari Committee was appointed in 1980. The Department of Environment was, thereafter, created on 1st of November 1980. The Department of Environment and Forests replaced the Department of Environment in the year 1985, which is now known as Ministry of Environment and Forests.

The Control Mechanism under the Water Act, Air Act, Environment Protection Act, the Municipal legislations vested with powers for enforcing the Anti-pollution Laws either directly or under the specific legislation or under the Municipal Laws are now entrusted to specific regulatory authorities. (Pollution Control Boards)

The following institutions exist in India for the purpose of environmental pollution control at the National and State levels:

2(A) **National Level Set Up / Institutional Mechanism:**

(A) Ministry of Environment and Forests;
(B) Central Pollution Control Board;
(C) Council of Scientific and Industrial Research (CSIR) under the Department of Science and Technology in the Ministry of Human Resource Development and the National Environmental Engineering Research Institute (NEERI) under the CSIR.
2(B) State Level Setup / Institutional Mechanism:

(A) State Department of Environment; (B) State Pollution Control Board; 
(C) A few State Governments including the Government of Gujarat have 
created separate institutions to deal with Ecological Education and Research 
work as well as the Environmental Management / Training / research 
Institute, in the State.

2(C) Department of Environment in the States:

Due to the initiatives of the Government of India, many State Governments 
have created Environment Departments with Technical and Administrative set up.

The main theme of the Water Act can be said to have empowered the 
pollution control boards with tremendous powers. There have been 
notifications for laying down emission standards and licensing system. The 
Act envisages giving powers of criminal sanctions to the Boards as well as 
provisions for appeal.

Under the Water Act and the Air Act the role of Gujarat Pollution Control 
Board is important. The Boards are empowered to refuse or withdraw 
consent. The Board has the authority to issue prohibitory orders for use of 
stream or well and for disposal of polluting matter. The Board has also the 
power to restrict new out lets and new discharge areas, subject to the 
provisions of the Act. The 1988 amendment to the Water Act gave powers to 
the State Board to carry out the functions, to impose conditions on any 
industry while granting permission.
GUJARAT POLLUTION CONTROL BOARD
A STATUTORY BOARD CONSTITUTED UNDER THE WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974

2(D) Functions of the Board:

The main functions of the Board are to enforce the provisions of the following Acts:

- The Water (Prevention & Control of Pollution) Act, 1974.
- The Air (Prevention & Control of Pollution) Act, 1981.
- The relevant Sections / Provisions of the Environment (Protection) Act, 1986 and the Regulations framed there under.
- GPCB functions as a facilitator for clearance under Environmental and Pollution Laws for all major Industrial and Infrastructure Projects.²

The committee on human environment came to be set up by the Government of India under the Chairmanship of Shri Pitambar Pant, a member of Planning Committee. The committee had to prepare a report to be presented at the conference to be held in Stockholm in 1972. The committee suggested that there was a need for better coordination and integration so as to solve environmental problems as far as the country’s environmental policy was concerned. The Pollution Control Boards stands recognised under the Water and the Air Act but so far as the Environment Protection Act is concerned no such provision is made in the Act.
The Pollution Control Authorities, and Institutional Mechanism at the Central and State levels and the reasons for their formation are figuratively described below in Figure 8.1:

**Figure: 8.1**

1972: The Stockholm Conference. Need to address the issues related to prevention and control of air pollution.

1972: The Stockholm Conference on 'Human Environment'.

1984: Bhopal Incidence. Management of Hazardous Waste. Need was felt for a comprehensive law to protect the environment and restrict sitting of industries.

1964: Draft Act circulated to various States.

1972: The Stockholm Conference on 'Human Environment'.

PCBs

The Water Act, 1974

The Air Act, 1981

Environment (Protection), Act, 1986

- Hazardous Waste
- Hazardous Chemicals
- CRZ, EIA, Ozone Depleting
- MSW, Biomedical, Use of Flyash, Recycled Plastic

International Treaties.
Judgments of the Courts in PILs.
Regulation on development and sitting.

Causes of the Legislation.

Major Environmental Legislation.

Enforcement Authority created / designated

Central Govt.

Various Prescribed Authorities, PCBs, State & Central Govt.
CONSTITUTION OF BOARD:

All measures and management of pollution revolve around the Water Act 1974. The Central Government has established Central Pollution Control Board under the Water Act. The Gujarat Pollution Control Board came into existence in 1974 with a Chairman, Member Secretary and some members – official and non-official. States were authorized to reconstitute the Board as per requirement.

The Constitution of the Gujarat Pollution Control Board (GPCB) regulates at least four Acts: Water Act, Air Act, Environment Protection Act and Water (Prevention and Control of Pollution) Cess Act. The Water Act and Air Acts have empowered the State Authority to have a common board for both the legislations. Under Section 2, Central and State boards are constituted so as to prevent and control Water Pollution. Under Section 3, the Central Government, has entrusted the Central Pollution Control Board with powers whereas Section 4 directs the State Government to constitute a board, which would consist of a Chairman and Members.

The Box 8.1 annexed as Annexure – VIII-A specifies the Nodal Agencies under various legislations.

Critical Analysis of Functions of Nodal Agencies:

- Section-5 of the Act empowers the Central Government or the State Government to issue directions to any person, officer or authority, which is bound to comply with the directions issued under this Act. Section-25 empowers the Central Government to frame rules but the State has no powers to make rules. Section-11 read with Section-5
gives wide powers to any officer to take samples of water, soil or other substance from any factory.

There are no provisions for revision. Powers to give directions to close are enumerated in Section-5. Section-15 has the penal provisions. The Environment Protection Act requires the nodal agencies to carry out the objects of the Act.

The Supreme Court in *A.P. Pollution Control Board vs. Prof. M.V. Nayudu;* (2001) 2 SCC 624 held that having laid down the policy prohibiting location of industries within 10 kms., the State Government could not grant exemption to any person to install industry in a prohibited area against the opinion of the State Pollution Control Board. Such exemption would be without statutory backing and wholly arbitrary and violative of Article 21 of the Constitution.

The State Board shall also establish or recognize laboratory or laboratories to help in performing its functions and to analyse the samples of water. The directions given by the Central Board or the State Government bind every State Board.

Under Air Act and the Water Act, the State Government can restrict the areas for the application of the Act. The board can seek information from the industries or a person. The board has the power to take samples of effluents and follow the procedure under the Acts. In P.J. Patel’s case, it is held that the board is empowered to prohibit the use of stream or well and stop pollution matter being dumped therein. The Hon’ble High Court of Gujarat in a number of decisions relating to environmental problems has held that it
is the function of the board to restrict new outlets for discharge or even new industries being established. There is a time limit fixed under Section 25 (7) which envisages that if the consent is not refused or granted within four months, it would be deemed to have been granted unconditionally.

Under Section 26 even industries already established have to take permission from the State Board after coming into force of the Act. The Board is under mandate to provide for appeal to the appellate authority. The Board can approach the Courts for suitable directions, for implementation of provisions of the enactments; provisions to lodge criminal complaint are also entrusted to the Boards, both under the Air Act and the Water Act. The State Government has powers to notify any area as an air control area in official gazette, in a manner prescribed by rules framed under Section 54 (2) (k) of the Act. Absence of rules would not curtail the powers of the Government to declare the area as pollution control area, as held in *Orissa State Prevention and Control of Pollution Board vs. Orient Papers Mills; AIR 2003 SC 1966*. The boards are under obligation to hear and give reasonable opportunity before the consent is granted or cancelled for continuing the operation of the industry or starting a new industry. The directions given by the Pollution Control Board in Mahavir Industry were upheld by the Apex Court so as to direct the company to conform to the required standards or establish air pollution control devices. Refer *U.P. Pollution Control Board vs. Mahavir Coke Industry; 2000 (9) SCC 545*.7

2(E) Why a Good Enforcing Machinery:

Despite all these nodal agencies often the Apex Court has to constitute committees. In *Almitra H. Patel vs. Union of India*,8 the writ petition was
concerned with Solid Waste Disposal. By order dated 16th January 1998, the Supreme Court had constituted a committee to look into the aspects of Urban Solid Waste Management. The Apex Court in *Maneka Gandhi vs. Union of India*, sent the warning in the following words.

"Remember, even democracies have experienced executive lawlessness and eclipse of liberty on the one hand and 'subversive' use of freedom by tycoons and saboteurs on the other, and then the summons to judges comes from the Constitution, overriding the necessary deference to government and seeing in perspective, and overseeing in effective operation the enjoyment of the 'great rights'." Thus, an efficient nodal agency is a must for proper implementation of laws. In *Narula Dyeing & Printing Works vs. Union of India* the Hon'ble High Court of Gujarat held that Board had the exclusive power to give directions for (a) closure (b) prohibition (c) regulation of industry (d) stoppage or regulation of any service. In *GPCB vs. Indian Chemicals* the Hon'ble High Court of Gujarat held that the Chairman could delegate power to any officer for lodging criminal complaint. The Chairman has powers to delegate. The Central Pollution Control Board has the power to denotify greenbelts. The three Judge Bench of the Apex Court held that the Board is under obligation to bring about environmental awareness. Refer *M.C. Mehta vs. Union of India*; 2000 (9) SCC 411.

The legislature in its wisdom had visualised a situation where industry might be set up without consent. The court observed that in the case of deemed consent, the board is not left without any power. Referring to Section 25 (5) of the Water Act, the court held that where a developer took any steps without consent, the board could issue notice imposing such conditions as it might have imposed on the application for consent. In the present case the
board should have followed the procedure envisaged under Section 25 (5) of the Water Act. The board as a statutory body with expert infrastructure facilities has the power to regulate when there is a threat of 'uncertain or non-negligible risks' to environment. To identify whether or not an area is environmentally sensitive is an essential part of this power to regulate. No interference is possible unless the identification is proved to be biased, prejudicial and subjective in nature. The provision in the Water Act for deemed consent brings a conflicting situation. Whatever be the ideal behind incorporation of deemed consent in the early seventies when the legislation was framed, it is time to reverse the position so as to fall in line with the British law. In past, the Apex Court had held that *fait accompli* was no answer to a substantial challenge against ecological assaults. 13,14

**Dependence of Board**

It is believed by the authorities that under the Act, the Board or its officials are required to obtain from Court, injunction to restrain acts causing pollution or likely to cause pollution. The Hon’ble High Court of Gujarat held that the board could take action.

The EPA and pollution control laws have endowed the pollution control boards with significant powers. It is a tragedy that on many occasions in the past, courts had to remind the Boards of their powers. *Suo Motu vs Vatva Industries Association, Ahmedabad*15 Presents a peculiar situation in which a note prepared by the board official is submitted to the court requesting for a direction to one of the respondents to stop unauthorized movement of wastes to its unit members. It often happens that courts issue *mandamus* and direct boards to take action when the latter fail in their duties. Strangely, this case
presents a reverse process. The board asks the court to take steps. According to the Gujarat High Court, such a course is nothing but dereliction of duty on the part of the board. It is the function of the board to take immediate and stringent action against units, which dump hazardous waste and release untreated effluents. If the board waits for a direction from court, the situation will help nefarious activities to continue under the pretext that the case is pending before the High Court.

The Rajasthan High Court in Residents of Sanjay Nagar and others vs. State of Rajasthan; AIR 2004 Raj 116 directed the nodal agency to close unauthorised slaughterhouses by invoking the provisions of Section 236 of Rajasthan Municipalities Act read with Section-3 of Environment Protection Act. Once again the action of the nodal agency was deprecated in the following words:

"From the affidavit of the Pollution Control Board declaring that the blood of the slaughtered animals runs on the land and in the drains without the same being treated. It has also been shown in the reply of the Pollution Control Board with the trade effluent released by these slaughter houses is not according to the norms. It has also not denied and rather it is admitted that a strong stench emanates from the area.

It is surprising as to how the State can allow residents to live in such unhygienic conditions. The State and the Municipal Council are not helpless and have the mandate of the law to stop such activities."

Thus the nodal agencies under the three legislations have wide powers conferred on them.
The Apex Court in various judgments has held that the provisions of Section 3 of the Environment Protection Act lay down certain powers on the Central Government and also enjoins it with duties for protection of the environment. The Apex Court accepted the prayers of the petitioner in principle and directed that keeping the citizens informed is an obligation of the Government.\textsuperscript{17} It is directed by the Apex Court that Commercial vehicles should not to be registered in Delhi unless they comply with directions issued by Supreme Court in 1998.\textsuperscript{18} Thus, it can be seen that the powers of the nodal agency are very wide.

It has been held by the Supreme Court that a tannery, which cannot set up a primary treatment plant, cannot be permitted to continue. The adverse effect on the public at large which is likely to be caused, by the discharging trade effluents from a tannery to river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure.\textsuperscript{19}

Under the Air Act and the Water Act the Apex Court had held that the State Board has been enjoined with various powers enumerated in the Act.

3. AUTHORITIES FOR SAFEGUARDING FOREST WILDLIFE MANAGEMENT

Under the Indian Forest Act, 1927 Forest Officers are invested with certain powers as they are deemed to be public servants. The Act is administered by Forest Officers, who are authorised to compel attendance of witness, production of documents, to issue search warrants or to take evidence in inquiry of forest offences. They have been authorised to file complaints under the Act. The Forest Conservation Act, 1980 amended in 1988
empowers the Central Government to de-reserve the reserved forests. The Wildlife Protection Act, 1972 has added a chapter on Central Zoo Authority for recognition of Zoos in the country. The Chief Wildlife Warden and other officers have been appointed for implementing the provisions of the Act. Complaint filed after obtaining sanction is maintainable. The Wildlife Advisory Board is the nodal agency. The Authorities are empowered to prohibit hunting, protect certain specified plants, and grant permission for special purposes, to declare sanctuaries. *Ajit D. Padival vs. Union of India; 1996 (1) GLR 382* and *Consumer Education Research Society vs. Union of India; AIR 1995 GUJ 133* are two decisions which hold that orders made without jurisdiction can be set aside. There are certain powers vested with the Collector under Section 23, 25 and 26 of the Act. The State Government is the nodal agency for declaring national parks. An Officer authorised by the Director has the power to enter, search, arrest and detain under Section 20. The State Government is empowered to frame rules under the Act.

An exhaustive amendment to WLPS was made in the year 2002. This amendment came into force in 2003. It envisages a new administrative mechanism of management of wildlife. It provides for the constitution of a National Wildlife Board instead of an advisory institution, as was done in the past. The National Wildlife Board takes up measures for the promotion and development of wildlife and forest, and shall be responsible for impact assessment of various projects and activities on wildlife and its habitat. Every state and union territory shall have Boards to look after selection and management of protected areas. The amendment is such which has brought transferring and selling of wild animals within the umbrella of the regulation. The authorities are given power to extend the area declared as National Park or wild life sanctuary.
4 HIERARCHY OF ENFORCEMENT AUTHORITIES

4(A) Judicial Authorities

The below mentioned figure 8.2 shows the hierarchy of Enforcement Agencies (Judicial) for directing Nodal Agency to implement Anti Pollution Laws.

4(B) Administrative Set up

Different ministries, boards, organisations and institutes entrusted with the responsibility for stoppage of degradation of environment are described below:

Government of India authorises (a) Planning Commission; (b) Ministry of Science and Technology; (c) Ministry of Environment and Forest. Under Ministry of Environment and Forest, the following wings are constituted (i) Environment Wing; (ii) Forestry and Wildlife Wing (d) Central Pollution Control Board with its regional and zonal offices.

The State Government has the Department of Environment and the State Pollution Control Board with its regional offices.

5. CRITICAL APPRAISAL OF LITIGATION BY G.P.C.B. AND CASES DECIDED BY TRIAL COURTS.

The litigations preferred by GPCB from 1987 to 1991 show that out of the 212 total cases under the Air Act, only 76 matters were decided before 10/03/1995. Under the Water Act 136 cases were decided which shows that under the Air Act 36% and under the Water Act 64% cases were decided whereas there was a huge backlog of undecided cases pending before the Courts in Ahmedabad under these two Acts. (Source of Information: 'A Study of Cases Decided Under the Water Act and Air Act in the Criminal Courts of the City of Ahmedabad.') The situation has not improved even in 2004 the scenario practically remains the same, which would be clear from the Graphs, and the Statements tabulated herein under.
<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>The Law</th>
<th>Number</th>
<th>%</th>
<th>Number</th>
<th>%</th>
<th>Number</th>
<th>%</th>
<th>Number</th>
<th>%</th>
<th>Passing of conviction order or punishment (injunction)</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Water Act, 1974</td>
<td>2409</td>
<td>100</td>
<td>1169</td>
<td>48.5</td>
<td>1240</td>
<td>51.5</td>
<td>17+(194)=211</td>
<td>18.0</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
<tr>
<td>2</td>
<td>Air Act, 1981</td>
<td>352</td>
<td>100</td>
<td>208</td>
<td>59.1</td>
<td>144</td>
<td>40.9</td>
<td>48</td>
<td>23.1</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
<tr>
<td>3</td>
<td>Criminal Procedure Code</td>
<td>247</td>
<td>100</td>
<td>205</td>
<td>83.0</td>
<td>42</td>
<td>17.0</td>
<td>150</td>
<td>73.2</td>
<td>Quick but not being used since last few years as no powers to punish</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
<tr>
<td>4</td>
<td>Environment Protection Act, 1986</td>
<td>30</td>
<td>100</td>
<td>3</td>
<td>10.0</td>
<td>27</td>
<td>90.0</td>
<td>0</td>
<td>0.0</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
</tbody>
</table>

Table 8.1: Status of Criminal Cases filed by the Gujarat Pollution Control Board up to 31-03-2002
Table 8.2  Trends of cases filed and actions taken by the Gujarat Pollution Control Board under different Acts.

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Law</th>
<th>Cases filed</th>
<th>Legal Notice Issued</th>
<th>Closure Orders Issued</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Water Act, 1974</td>
<td>2401</td>
<td>2405</td>
<td>2409</td>
<td>326</td>
</tr>
<tr>
<td>2</td>
<td>Air Act, 1981</td>
<td>333</td>
<td>335</td>
<td>352</td>
<td>2896</td>
</tr>
<tr>
<td>3</td>
<td>EP Act, 1986**</td>
<td>29</td>
<td>29</td>
<td>30</td>
<td>1729</td>
</tr>
</tbody>
</table>
The chart below shows the actions taken by the board under the Water Act, the Air Act and the Environment Protection Act and the allied Acts till 31/03/2004 are as under:

Table :8.3.:-

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>The Law</th>
<th>Cases filed Number</th>
<th>Cases disposed off Number</th>
<th>Cases pending Number</th>
<th>Remarks</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Water Act, 1974</td>
<td>2411</td>
<td>1287</td>
<td>1124</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
<tr>
<td>2</td>
<td>Air Act, 1981</td>
<td>352</td>
<td>217</td>
<td>135</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
<tr>
<td>3</td>
<td>Criminal Procedure Code</td>
<td>247</td>
<td>205</td>
<td>42</td>
<td>Quick but not being used since last few years as no powers to punish</td>
</tr>
<tr>
<td>4</td>
<td>Environment Protection Act, 1986</td>
<td>32</td>
<td>4</td>
<td>28</td>
<td>Poor rate of disposal of cases and poor rate of conviction</td>
</tr>
</tbody>
</table>

Source :- Annual Report 2003-04, Gujarat Pollution Control Board.
Chart 8.1

**Status of Cases under the Water Act, 1974, filed by the GPCB up to 31-3-2003**

Chart 8.2

**Status of Cases under different laws by the GPCB up to 31-3-2003**
Chart 8.3

Trend of cases filed and actions taken by the GPCB under Water and Air Acts

- Cases filed
- Legal Notice Issued
- Closure Orders Issued

Water Act, 1974
Air Act, 1981
Chart 8.4

Trends of Cases filed Vs Other Actions by the GPCB under different Laws

<table>
<thead>
<tr>
<th></th>
<th>Mar-00</th>
<th>Mar-01</th>
<th>Mar-03</th>
<th>Mar-00</th>
<th>Mar-01</th>
<th>Mar-03</th>
<th>Mar-00</th>
<th>Mar-01</th>
<th>Mar-03</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cases filed</td>
<td></td>
<td></td>
<td></td>
<td>2000</td>
<td>2500</td>
<td>3000</td>
<td>2000</td>
<td>2500</td>
<td>3000</td>
</tr>
<tr>
<td>Legal Notice Issued</td>
<td></td>
<td></td>
<td></td>
<td>1500</td>
<td>2000</td>
<td>2500</td>
<td>1500</td>
<td>2000</td>
<td>2500</td>
</tr>
<tr>
<td>Closure Orders Issued</td>
<td></td>
<td></td>
<td></td>
<td>1000</td>
<td>1500</td>
<td>2000</td>
<td>1000</td>
<td>1500</td>
<td>2000</td>
</tr>
</tbody>
</table>

Box 8.2

Details of NOC Granted
(Consent to Establish under the Water Act, 1974)

<table>
<thead>
<tr>
<th>Sr. No.</th>
<th>Year</th>
<th>NOC (Cumulative figures)</th>
<th>Water Consent (Cumulative figures)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td>Received</td>
<td>Granted</td>
</tr>
<tr>
<td>1.</td>
<td>1979-80</td>
<td>137</td>
<td>92</td>
</tr>
<tr>
<td>2.</td>
<td>1984-85</td>
<td>1539</td>
<td>1091</td>
</tr>
<tr>
<td>3.</td>
<td>1989-90</td>
<td>5628</td>
<td>4445</td>
</tr>
<tr>
<td>4.</td>
<td>1994-95</td>
<td>12940</td>
<td>10253</td>
</tr>
<tr>
<td>5.</td>
<td>1999-2000</td>
<td>17394</td>
<td>13930</td>
</tr>
<tr>
<td>6.</td>
<td>2003-04</td>
<td>20746</td>
<td>16002</td>
</tr>
</tbody>
</table>

Box 8.3

WORK OF GPCB

<table>
<thead>
<tr>
<th>Activities</th>
<th>Up to 31/12/2000</th>
<th>2001</th>
<th>2002</th>
<th>2003</th>
</tr>
</thead>
<tbody>
<tr>
<td>Notices of Improvement Under Various Acts &amp; Rules</td>
<td>6162</td>
<td>1625</td>
<td>1149</td>
<td>942</td>
</tr>
<tr>
<td>Directions for Closure under Water Act – 74</td>
<td>282</td>
<td>353</td>
<td>201</td>
<td>169</td>
</tr>
<tr>
<td>Directions for Closure Under Air Act – 81</td>
<td>679</td>
<td>76</td>
<td>64</td>
<td>116</td>
</tr>
<tr>
<td>Directions for Closure Under EPA – 86</td>
<td>140</td>
<td>29</td>
<td>31</td>
<td>81</td>
</tr>
<tr>
<td>Criminal Proceedings Instituted (Cases in Court)</td>
<td>3014</td>
<td>24</td>
<td>1</td>
<td></td>
</tr>
<tr>
<td>Vigilance Inspections</td>
<td>1436</td>
<td>534</td>
<td>559</td>
<td>915</td>
</tr>
</tbody>
</table>


The tables 8.1, 8.2 and 8.3, 8.4 would show that the implementation of the legislation is very tardy. The table at 8.1 shows that though the number of Criminal matters filed from 1974 till 31-3-2003 under the Water Act is 2409, in only 18% of the matters conviction was ordered. This shows that the trial Courts had acquitted on the basis of interpretations of the provisions of the
Act. The aforesaid Tables show that the cases under the Water Act are more than under other legislations but the rate of conviction is second lowest, the lowest being under the Environment Protection Act. The status of cases goes to show that more than 1000 cases are still pending that is only 50% of the cases have been disposed off till date. While analyzing table 8.2, it will be seen that number of cases filed under the three legislations and the number of cases disposed off is minimal and the pendency is alarmingly high. The statistics reveals that the rate of conviction is very low compared to the rate of acquittal. The numbers of cases pending are alarmingly high. As can be seen from the statistical data in Chart 8.1, 8.2, 8.3 and 8.4 the cases are pending since more than 10 to 12 years. The reasons for pendency are attributed to several factors like appeals in the higher courts, over burdening of the trial courts with other matters, the judges are less sensitized towards environmental matters. The delay ranges from 5 to 10 years or even more. The polluters in most of the cases approached the Hon’ble High Court to take the advantage of provisions of existing procedural law. The rate of filing the cases was on the increase till the year 1991 but from 1991 the filing of cases has decreased. Refer to: - Abhijit Joshi, A Study of Cases Decided Under the Water Act and Air Act in the Criminal Courts of the City of Ahmedabad, p. 52. While referring to the statistical data, it would be seen that of late complaints are not lodged, however, from Chart at 8.3 and 8.4, the Board has issued orders for closer and legal notices have increased.

The cases filed and decided go to show that hardly 3% rate of conviction is there. In certain cases courts have acquitted the accused on grounds of jurisdiction. Under criminal jurisprudence once a criminal complaint is dismissed for non prosecution, the same cannot be restored as held by the Rajasthan High Court in Maharaja Shri Umain Mills Limited, Pali and
others vs. State of Rajasthan and others; AIR 1998 Rajasthan 924. Refer:—
Mostt. Simrikhia vs. Smt. Dolly Mukherjee @ Chhabi Mukherjee; AIR 1990
SC 1605,25 Major General A.S. Gauraya vs. S.N. Thakur; AIR 1986 SC
1440,26 Pramatha Nath Taluqdar vs. Saroj Ranjan Sarkar; AIR 1962 SC
876.27

6. CONCLUDING OBSERVATIONS

The Pollution Control Boards are not equipped with necessary work force 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
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budgetary support and restrictions imposed on recruitment of personnel
besides lack of training and career opportunities for the existing staff. The
inadequacy in our enforcement mechanism is evident from a comparison
with other countries. In USA, the Environment Protection Agency (EPA) has
more than 101000 employees while the Central Pollution Control Board
(CPCB) in India has to make do with less than 500 personnel. 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.28
Recently there are 19 CETPs in Gujarat located in different industrial areas. The monitoring results show that, in Gujarat most of the CETPs are not meeting the prescribed standards stipulated by the GPCB.\(^\text{29}\)

The delay and lack of enforcement of criminal liability does not have desired deterrent effect on the accused, this also adds to the difficulties of the prosecuting agency in criminal matters. The factors, which are responsible for delay, are mostly because of the attitude of the polluting units. The units try to scuttle legal process at the preliminary stage itself by technical arguments. A reference to the following decisions would substantiate the aforesaid submission. *Medwin Hospital vs. State of AP; 1999 Cri LJ 782*, *H.S. Board, P&C of Water Pollution vs. Jai Bharat WF Works, 1993 Cri LJ 384*; *Mahmud Ali vs. State of Bihar; AIR 1986 Pat 133*.\(^\text{30}\)

The problems in the implementation of existing legislations are because of the following reasons:

1. Inadequate resources with CPCB/SPCBs.
2. SPCBs are not in direct control of CPCB.
4. Overlapping responsibilities.
5. Lack of Market based Instruments.
6. Power to impose penalties.

The functioning of GPCB was criticized in P.J. Patel’s decision 1995 (2) GLR 1210 and in the Writ petition initiated *Suo Motu vs. Vatva Industries Association; 1999 (3) GLR 2758*.\(^\text{31}\) The High Court deprecated the action of the Pollution Control Board in approaching of the courts for seeking directions. The judgments are eye opener for the Pollution Control Board
Authorities to take action. So far as the Criminal Sanctions are concerned, the matters are pending before the Courts and they are increasing.

The difficulties for monitoring are found even while taking samples as seen in the chapter on Water, breach of procedure results in acquittal of the polluting units if there is an error in collection and/or separation of components of pollutants. The atmospheric sampling may be by meters; and by various devices like absorbers. Suitable absorbers should be taken so that control and monitoring would be simple and easier. The automobile pollution requires lot of monitoring as done by the Apex Court in the case of Delhi Vehicles. The Air Environment Management if taken in a positive manner and monitored by GPCB regularly would bring about the desired results. The firm stand of the Hon'ble High Court and also Supreme Court and the hazard of air pollution go to show that the Courts do not pass one time order but a continuing mandamus as done by the Hon'ble High Court in SCA 8016 of 1992. Monitoring is done since a decade, which means that the Court also monitors the actions taken pursuant to the orders, they have passed, which has been successfully done by the Hon'ble High Courts in various litigations.

The overall view of the problem would show that the pollution control boards have not been functioning very satisfactorily as is clear from the observations made in P.J. Patel's judgment and the photo plates annexed. The national forest policies have also failed to awake the implementing authorities and it is only because of the court intervention that the authorities have started working.

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