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## Diverse Laws and Institutions to Maintain Environmental Balance in India

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**Abstract:** *The ancient Indian Scriptures like Vedas, Upanishads, Smiritis and Dharmas have created a sense of deep worship towards Nature Comprising Panchabhootas. Before independence the British Raj in India had devoted an important chapter in the Indian Penal Code 1860 declaring offences affecting public health, safety, decency and morals cognizable.*

*The present paper throws more light On Diverse Laws and Institutions for Maintaining Environmental Balance in India in both pre independent and post independent eras.*

**Keywords:** *Religious, Literature, Public Spring, Neighborhood, Property Rights, Atomic Energy*

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### LAWS AND INSTITUTIONS RELATING TO ENVIRONMENTAL BALANCE IN INDIA

#### Evolution of Legal Framework for Environmental Balance

##### *(i) Pre-independence period*

The ancient Indian religious literature, for example, Vedas, Upanishads, Smiritis and Dharmas preached a worshipful attitude towards earth, sky, air, water, plants, trees, and animals and enshrined a respect for nature and environmental harmony and conservation. It regarded sun, air, fire, water, earth and forest as God and Goddesses. Many animals, birds, trees and plants were associated with the names of God and Goddesses.

The Indian Penal Code 1860, enacted during the British rule, contains one chapter (Chapter XIV) on offences affecting public health, safety, convenience, decency and morals. Section 268 covers public nuisance. Sections 269 and 272 deal with adulteration of food or drink for sale and adulteration of drugs respectively. Section 277 lays down that, whoever, voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used shall be punished with imprisonment for a term which may extend to 3 months, or with a fine which may extend to Rs.500, or with both. Section 278 lays down that whoever voluntarily vitiates the atmosphere so as to make it noxious to the health of persons in dwelling or carrying on business in the neighbourhood or passing along a public way shall be punished with fine which may extent to Rs.500. Sections 284,285 and 286 deal with negligent conduct with respect to poisonous substances, combustible matter and explosive substances. Sections 428 and 429 cover mischief to animals.

The Shore Nuisance (Bombay-Kalova) Act, 1893 was enacted to check wastes and marine water pollution. The Oriental Gas Company Act, 1857 and the Bengal Smoke Nuisance Act, 1905 were enacted to prevent or reduce atmospheric pollution in and around Calcutta. The Bombay Smoke Nuisance Act, 1912 was passed to check smoke nuisance in Bombay area. For preservation of forests, the Cattle Trespass Act 1871 and Indian Forest Act 1927 were passed. The Indian Easement Act of 1882 guaranteed property rights of riparian owners against “unreasonable” pollution by upstream users.

Municipal and Public Health Acts on the pattern of Local Authorities Act of United Kingdom conferred powers on the local bodies for controlling water pollution caused by industrial effluents and for necessary action against the erring industries. These Acts prohibit the discharge of any pollutant or trade effluent from factories into municipal drains, except in accordance with the relevant byelaws. These Acts prohibit the discharge of sewage into any watercourse until it had been treated so as not to contaminate the water. These laws are applicable to large industrial cities and municipal towns. Until

1947, the environmental problem was not serious because of the low rate of population growth and lack of industrialisation, except in and around a few big cities.

*(ii) From Independence to the Stockholm Conference, 1947 - 1972 The Indian Constitution*

The Indian Constitution provides for a federal structure within the framework of parliamentary form of government. Part XI of the Constitution governs the division of legislative and administrative authority between the centre and states. Article 246 divides the subject areas for legislation into three lists, viz, Union List, State List and Concurrent List. The subject areas related to environmental balance are:

*Union List*

- 6 Atomic energy and mineral resources necessary for its production
- 14 Entering agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries
- 24 Shipping and navigation on inland waterways
- 25 Maritime shipping and navigation, including shipping and navigation on tidal waters
- 29 Airways, regulation and organisations of air traffic and of aerodromes
52. Industries, the control of which by the Union is declared by Parliament by law to be expedient in the public interest
- 53 Regulation and development of oil fields and mineral oil resources
- 54 Regulation of mines and mineral development to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest
- 56 Regulation and development of inter-state rivers and river valleys
- 57 Fishing and fisheries beyond territorial waters

*State List*

- 6 Public health and sanitation, hospitals and dispensaries
- 10 Burials and burial grounds, cremations and cremation grounds
- 14 Agriculture
- 15 Preservation, balance and improvement of stock and prevention of animal diseases
- 17 Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage and water power subject to the provisions of Entry 56 of Union List
- 18 Land
- 21 Fisheries

*Concurrent List*

- 17 Prevention of cruelty to animals
- 18 Adulteration of food stuffs and other goods
- 19 Drugs and poisons
- 20 Economic and social planning
- 20A Population control and family planning
- 29 Prevention of the extension from one state to another of infecting or contagious diseases or pests affecting, men, animals or plants
- 32 Shipping and navigation on inland waterways as regards mechanically propelled vessels
- 36 Factories
- 37 Boilers
- 38 Archaeological sites and remains other than those declared by or under law made by Parliament to be of national importance.

Under the Concurrent List, both Parliament and state legislatures can enact laws. Article 248 gives the centre the residual power to legislate on any subject not covered in the three lists. Articles 251 and

254 state that a central law on any subject in the Concurrent List generally prevails over a state law on the same subject. Article 249 states that the centre can legislate in the national interest on any subject in the State List provided it can obtain a two-thirds majority in the Rajya Sabha, the upper house of Parliament. Article 252 states that the centre can also pass laws on state subjects if two or more state legislatures consent to such legislation. Article 253 empowers the Parliament 'to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body'. These provisions of the Constitution of India give a dominant role for the central government on matters relating to environmental balance.

Even though many entries in the three lists deal with location-specific subjects which generally come under the jurisdiction of local bodies viz, municipalities and panchayats, until 1992, they were not given the necessary powers to deal with these subjects. Part IV (Directive Principles of State Policy), Article 40 provides that 'the State shall take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self government'. These are only guidelines for policy formulation. Until the 73 and 74 amendments to the Constitution in 1992, the Constitution did not assign powers to the local bodies; local government was simply treated as a subject in the State List.

### *Legislations*

Some important legislations relating to environmental balance enacted by the Parliament during this period were:

The Factories Act, 1948

The Prevention of Food Adulteration Act, 1954

The River Boards Act, 1956

The Mines and Minerals (Regulation and Development) Act, 1957

The Ancient Monuments and Archaeological Sites and Remains Act, 1958

The Atomic Energy Act, 1962

The Insecticides Act, 1968

The Factories Act, 1948 provides that the liquid effluents, gases and fumes generated during a manufacturing process should be treated before their final disposal to minimise the adverse effects. During this period the focus of economic policy was on planned economic development in a mixed economy framework. The dominant policy objectives were economic growth, employment generation, balanced regional development and equity. Environmental considerations did not play major role in policy making.

### *(iii) Stockholm Conference to the Bhopal Disaster, 1972-1984*

The UN Conference on Human Environment held at Stockholm in 1972 exerted major influence on environmental legislations in India. A National Committee on Environmental Planning and Coordination (NCEPC) was set up in the Department of Science and Technology in 1972 to make necessary preparations for the Conference. The Government of India took a number of steps to implement the decisions taken at the Conference by means of amendments to the Constitution, new legislations relating to environmental balance and creation of institutions for implementing the legislations. Many Supreme Court judgements in the late eighties and the nineties refer to the decisions made at the Stockholm Conference. The Bhopal gas tragedy claiming more than 3000 lives triggered the passage of environmental legislations and formulation of rules relating to the use of hazardous substances.

### *Constitutional Amendments*

The 42 Constitution Amendment Act, 1976, inserted specific provisions for environmental balance in the form of Directive Principles of State Policy and Fundamental Duties. Article 48A (Directive Principles) enunciates that 'the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country'. Article 51A(g) (Fundamental Duties): 'To protect and improve the natural environment including forests, lakes, rivers, wildlife and to have compassion for living creatures'. Two entries 17A - Forests and 17B - balance to wild animals and birds were added in the Concurrent List.

***Legislations***

*The Wild Life ( balance) Act, 1972*

This Act was enacted under the provisions of Article 252 to prevent the decline of wild animals and birds. It prohibits the poaching of certain animals except for the purpose of education or scientific research. In respect of certain wild animals, license is made a prerequisite for their hunting. It provides that a state government may declare any area to be a sanctuary or as a national park if it considers that such area is of adequate ecological, faunal, floral, geomorphological, natural or zoological significance for protecting, propogating or developing wild life or its environment.

*The Water (Prevention and Control of Pollution) Act, 1974*

The first important environmental law enacted by Parliament is the Water (Prevention and Control of Pollution) Act, 1974. As water is a state subject and as 12 states had passed the enabling resolutions, the Government of India, in pursuance of clause 19 of Article 252, passed this legislation. It defines pollution 'such contamination of water or such alteration of the physical, chemical or biological properties of water of such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or it is likely to create a nuisance or rend such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or to the life and health of animals or of aquatic organisms'.

This Act paved the way for the creation of Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs). The main function of the CPCB 'shall be to promote cleanliness of streams and wells in different areas of the states'. The term stream includes river, watercourse, inland water, subterranean waters, and sea or tidal waters to such extent or such point a state government may specify in this behalf. The Board may perform functions such as

- (a) lay down, modify or annul in consultation with the state government concerned, the standards for a stream or well;
- (b) plan and cause to be executed a nationwide programme for the prevention, control and abatement of water pollution;
- (c) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;
- (d) advise the central government on any matter concerning the prevention and control of water pollution;
- (e) coordinate the activities of the SPCBs and provide technical assistance and guidance to the SPCBs; and
- (f) carry out and sponsor investigation and research relating to problems of water pollution and prevention, control or abatement of water pollution.

The SPCBs have similar functions within their areas. The Act gives powers to the SPCBs to take samples of effluents from any source and lays down the procedure to be followed in connection therewith. It gives power of entry and inspection into the premises of the polluters' premises. It prohibits any poisonous, noxious or polluting matter to enter into any stream, or well or sewer or land. Consent of the Board is required to 'establish or take any steps to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; or bring into use any new or altered outlet for the discharge of sewage; or begin to make any new discharge of sewage'. Any person who is not granted the consent may, within 30 days from the date on which the order is communicated to him, prefer an appeal to the appellate authority constituted by the state government.

The SPCBs have the powers to carry out certain works stipulated in the consent order if the person fails to meet the conditions and to make application to courts for restraining apprehended pollution of water in streams or wells. In the event of accident or other unforeseen act or event, resulting in the discharge or likely discharge of polluting matter into a stream or well or sewer or land, the person in charge of such a place is required to intimate the occurrence of such an accident, act or event to the SPCB. Both central government and state governments are given the powers to make rules in consultation with their respective Boards.

### *Chapter VII of the Act prescribes penalties for*

- (a) failures to comply with the SPCBs directions restraining or prohibiting the discharge of polluting matter into the stream, well or land;
- (b) failures to comply with court's decision to restrain discharge of effluent on application by the SPCBs,
- (c) failures to comply with SPCB's directions for closure, prohibition or regulation of any industry, operation or process or the stoppage or regulation or supply of electricity, water or any other service.

The penalties for non-compliance are imprisonment from 18 months to 6 years with a fine for the first contravention and additional fine upto Rs.5000 per day till the failure continues. For non-compliance with effluent standards prescribed by SPCBs, the penalties are imprisonment from 18 months to 6 years and fine. For making new outlets and thus discharging effluent without consent of the SPCBs, the penalties are imprisonment from 2 to 6 years and fine for the first contravention and imprisonment from 2 to 7 years and fine after the first conviction.

Dwivedi (1977) points out that this Act left many grey areas that were difficult to administer. This Act does not cover groundwater contamination. Municipalities which are primarily responsible for treating residential wastes remain free from direct liability. It allows the government agencies too much flexibility. For example the Act states that the head of a polluting unit would not be punished 'if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent it'. This Act does not give the victims the right to go to the courts to punish the erring units; charges can be brought to courts only by the Boards. The penalties for non-compliance with the standards or directions are independent of the extent of violations.

The Boards are expected to depend largely on government grants for their operations. As it was found that the Boards were overburdened and underfunded, the Water Cess (Prevention and Control of Pollution) Act, 1977 was enacted. Even after revisions in 1992, the rates of water cess varied between 1.50 paise to 5.00 paise for kilolitre for various uses. These rates are too low compared with the opportunity costs of water. Many SPCBs raise large proportion of their revenues from the consent fees.

### *Forest (Conservation) Act, 1980*

This Act was passed to prevent deforestation, which results in ecological imbalance and environmental deterioration. It prevents even the state governments and any other authority dereserve a forest which is already reserved. It prohibits forestland to be used for non-forest purposes, except with the prior approval of the central government.

### *The Air (Prevention and Control of Pollution) Act, 1981*

The preamble to the Act states that 'whereas decisions were taken at the United Nations Conference on the Human Environment held in Stockholm in June 1972, in which India participated, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution; And, whereas it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution'. The central government used Article 253 to enact this law and made it applicable throughout India.

This Act defines air pollutant as 'any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment'.

The CPCB and the SPCBs created under the Water Act 1974 are entrusted with the implementation of the provisions of the Act. The CPCB may

- (a) advise the central government on any matter concerning the improvement of the quality of air and prevention, control or abatement of air pollution;
- (b) plan and cause to be executed a nation wide programme for the prevention, control or abatement of air pollution;
- (c) coordinate the activities of the SPCBs;

- (d) provide technical assistance and guidance to the SPCBs;
- (e) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution; and
- (f) lay down standards for the quality of air.

The functions of the SPCBs also include inspection of any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution. The units belonging to the list of polluting industries should obtain consents before their establishment or/and continuing their operations.

The SPCBs, in consultation with the state governments, wherever necessary, can exercise the following powers:

- (a) declare any area or areas within the state as air pollution control area; prohibit the use of certain fuels or appliances in this control area; prohibit the banning of any material (not being fuel) which may cause air pollution;
- (b) give instructions for ensuring standards for emission from automobiles;
- (c) restrict use of certain industrial plants;
- (d) disallow discharge of the emission of any air pollutant in excess of the standards laid down;
- (e) make applications to court for restraining persons from causing air pollution;
- (f) power of entry and inspection into the premises of the polluters;
- (g) obtain information from the polluting units and take samples of air or emission; and
- (h) direct the closure, prohibition or regulation of any industry, operation or process; or the stoppage or regulation of supply of electricity, water or any other service.

For failures to comply with the restriction on use of certain industrial plants, discharging emission of air pollutants in excess of the standards laid down by the SPCBs, and non-compliance with directions relating to closure, prohibition or regulation of any industry, operation or process or the stoppage of utility services, the penalties are imprisonment for a term between 18 months and 6 years and with fine; and in case the failure continues, with an additional fine which may extend to Rs.5000 for every day during which such failure continues after conviction for the first such failure. If the failure continues beyond one year after the date of conviction, the offender shall be punishable with imprisonment for a term between 2 years and 7 years and with fine.

The penalties for certain acts such as obstruction of any person acting under the orders of SPCBs, failure to intimate the occurrence of the emissions in excess of the standards, giving false information for obtaining consent to operate, are imprisonment for a term which may extend to 3 months with fine which may extend to Rs. 10000 or both. As in the case of the Water (Prevention and Control of Pollution) Act, 1974, the central and state governments can make rules. As in the Water Act, company officials may be exempted from liability if they establish due diligence and lack of knowledge about the emissions. Also, the victims cannot go to the courts to frame charges against the polluters.

#### *The Tiwari Committee, 1980*

The Government of India set up a Committee in January 1980, under the Chairmanship of N.D. Tiwari, then Deputy Chairman of the Planning Commission, to review the existing environmental legislation and to recommend legislative measures and administrative machinery for environmental balance. This Committee stressed the need for the proper management of the country's natural resources of land, forest and water in order to conserve the nation's ecological base. Its major recommendations are:

- (a) creation of a comprehensive environmental code to cover all types of pollution and environmental degradation;
- (b) constitution of environment courts in all District Head Quarters, and the appointment of experts to assist the Court;
- (c) creation of a Department of Environment;
- (d) setting up of a Central Land Commission;

- (e) provision of economic incentives to industries to encourage environment friendly products, income tax and sales tax benefits for adopting clean technology, investment tax credits for purchases of purification devices, inclusion of replacement cost of purification equipment in annual operating costs, and minimal tax or no tax on the manufacture of pollution control devices; and
- (f) environmental impact assessment (EIA) not only be a prerequisite for industry to start, but also must be repeated periodically.

The government had constituted the Department of Environment in 1980, which was transferred to the newly created Ministry of Environment & Forests (MoEF) in 1985. It had also set up the Land Commission. Fiscal incentives such as rebates on excise/customs duties for pollution control equipments, accelerated depreciation allowance on selected pollution control equipments, financial and technical assistance to small scale units in industrial clusters to set up common effluent treatment plants are now available. EIA has become mandatory for highly polluting industries since 1994.

### *(iv) Bhopal Tragedy to the 1998, 1984 to 1998*

Constitutional amendments, legislations and policies relating to environmental balance during this period were influenced by domestic events, shift in economic policy and international events. The Bhopal gas tragedy and the difficulties faced in claiming compensation from the company and disbursing compensations to the victims necessitated the need for a comprehensive environmental legislation, rules relating to storing, handling and use of hazardous wastes and a law to provide immediate compensations to the victims of industrial accidents.

Since June 1991, the Government of India announced a series of reform measures to liberalise and globalise the Indian economy. An urgent need was felt for decentralisation and debureaucratisation. The amendments to the Constitution in 1994 recognized the three-tier structure of the government and facilitated the transfer of powers and resources to the local governments. The Supreme Court and High Courts have been very active in the enforcement of legislations relating to environmental balance.

The decisions reached at the UN Conference on Environment and Development held at Rio de Janeiro in 1992 as well as the shift in economic policy led the Government of India to reexamine the command and control (CAC) type of regulatory regime for environmental balance and to explore the feasibility of combining regulatory instruments along with economic instruments for controlling environmental pollution.

### *Constitutional Amendments and Public Interest Litigation*

The 73d and 74th Constitutional amendments of 1992 recognized the three-tier structure of the government by devolution of power to the local bodies viz. panchayats in rural areas and municipalities in urban areas. With the passage of bills by the state legislatures and devolving powers and allocating revenue sources, these local bodies can become institutions of self-government. The eleventh schedule contains environmental activities such as soil conservation, water management, social forestry and non-conventional energy, that panchayats can undertake. The twelfth schedule lists activities such as water supply, public health and sanitation, solid waste management and environmental balance which the municipalities can undertake. These grass root level institutions can facilitate greater participation by the people in local affairs, promote better planning and implementation of developmental and environmental programmes and be more responsive to the needs of the people.

The Supreme Court and the High Courts have played an active role in the enforcement of constitutional provisions and legislations relating to environmental balance. The fundamental right to life and personal liberty enshrined in Article 21 has been held to include the right to enjoy pollution free air and water. In *R.R. Delavoi v. The Indian Overseas Bank* case, 1991, the Madras High Court pointed out: 'Being aware of the limitations of legalism, the Supreme Court in the main and the High Courts to some extent for the last decade and a half did their best to bring law into the service of the poor and downtrodden under the banner of Public Interest Litigation. The range is wide enough to cover from bonded labour to prison conditions and from early trial to environmental balance'. This is a new remedy available to public spirited individuals or societies to go to the court under Article 32 for the enforcement of the fundamental right to life (including clean air and water) contained in Article 21.

### ***Legislations***

#### *The Environment (balance) Act 1986*

This Act was enacted in the aftermath of the Bhopal gas tragedy in 1984 claiming more than 3000 lives. The Statement of Objects and Reasons of this Act refers to the decisions taken at the Stockholm Conference in June 1972 and expresses concern about the decline in environmental quality, increasing pollution, loss of vegetal cover and biological diversity, excessive concentrations of harmful chemicals in the ambient atmosphere, growing risks of environmental accidents and threats of life system.

According to this Act environment includes 'water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro organism and property'. It defines hazardous substance as 'any substance or preparation which, by reasons of its chemical or physiochemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment'

This Act gives the following powers to the central government:

- (a) coordination of actions of the state governments, officers and other authorities under the Act or any other law which is relatable to the objects of the Act;
- (b) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (c) laying down standards for the quality of environment in its various aspects;
- (d) laying down standards for emission or discharge of environmental pollutants from various sources;
- (e) restriction of areas in which any industry, operations or processes or class of industries, operations or processes shall not be carried out subject to certain safeguards;
- (f) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (g) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (h) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (i) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider to take steps for the prevention, control and abatement of environmental pollution;
- (j) establishment or recognition of environmental laboratories and institutions;
- (k) collection and dissemination of information in respect of matters relating to environmental pollution; and
- (l) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution.

The central government may constitute an authority or authorities for the purpose of exercising such of the powers and functions under this Act.

The central government may make rules covering the following matters:

- (i) The standards of quality of air, water or soil for various areas and purposes;
- (ii) The maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
- (iii) The procedures and safeguards for the handling of hazardous substances;
- (iv) The prohibitions and restrictions on the handling of hazardous substances in different areas; and
- (v) The prohibitions and restrictions on the location of industries and the carrying on the process and operation in different areas and;



- (vi) The procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

The Environment (balance) Act is a comprehensive piece of legislation. Under this Act, Environment balance Rules were announced in 1986. Schedule VI contains specification of standards of different types. Hazardous Wastes (Management and Handling) Rules 1989; Manufacture, Storage, and Import of Hazardous Chemicals, Rules 1989, Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996; Bio-medical Waste (Management and Handling) Rules, 1998 were framed using the powers given in this Act. Under Rule 14 of the E.P. Rules 1986, the government evolved guidelines for submission of yearly environmental audit/statement by units requiring consent under the Water Act, Air Act and authorization under Hazardous Wastes (Management and Handling) Rules. However, submission of an environmental statement by polluting units seeking consent under the Water Act 1974 or the Air Act, 1981 or both and authorization under the Hazardous Wastes Rules, 1989 to the concerned SPCBs was made mandatory only in 1992.

Khan (1998) notes that the definition of environmental pollutant in this Act does not include heat energy, sound and nuclear radiation or even pollution caused by deforestation and unrestricted development. This Act gives wide range of powers to the central government. Padia (1996) suggests a suitable entry in the Concurrent List in respect of environmental pollution by specially referring to air, water and land pollution in all forms, prevention of hazards to human beings, other living creatures, plants, microorganism and property.

### *The Public Liability Insurance Act, 1991*

The Statement of Objects and Reasons mentions the need ‘ to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims. Such an insurance apart from safeguarding the interests of the victims would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. If the objective of providing immediate relief is to be achieved the mandatory public liability insurance should be in the principle of “no fault” liability as it is limited to only relief on a limited scale. However, availability of immediate relief would not prevent the victims to go to courts for claiming larger compensation. Hazardous substance means any substance or preparation which is defined as hazardous substance under the Environment (balance) Act, 1986, and exceeding such quantity as may be specified, by notification, by the central government.

As per this Act the owner shall be liable to pay relief as specified in the Schedule:

- (i) Reimbursement of medical claim upto Rs. 12, 500 in each case;
- (ii) Relief of Rs.25,000 per person for fatal accident in addition to the reimbursement of medical expenses upto Rs. 12,500;
- (iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred upto a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs.25,000;
- (iv) Compensation for loss of wages due to temporary disability will be Rs. 1000 per month for a maximum of 3 months; and
- (v) For damage to property upto Rs.6000 depending on the damage.

The claimant shall not be required to plead that the accident was due to any wrongful Act. The owner is also liable to pay other compensation, if any.

This Act stipulates that every owner shall take out before he starts handling any hazardous substance, one or more insurance policies and renew it or them from time to time before the expiry of validity. As per Rule 10 notified in May 1991, the extent of liability is Rs.50 million / one accident or Rs. 150 million per year for a number of accidents. Rule 11 states that an owner shall contribute to Environmental Relief Fund a sum equal to premium.

Every application for claim should be filed to the Collector within 5 years of the occurrence of accident. The Collector should decide the amount and inform the parties within 15 days. The insurer shall pay within 30 days. The Collector shall have the power of Civil Court and the case should be disposed off within 3 months.

This law is comparable to the laws enacted by the Member States under the Council of European Community's Directive on Civil Liability for Damage caused by waste since 1991. Article 3 of the Directive states that the producer of waste shall be liable under Civil law for the damage and injury to the environment caused by the waste, irrespective of fault on his part.

The Public Liability Insurance (Amendment) Act, 1992 states that the 1991 Act could not be implemented on account of the insurance companies not agreeing to give insurance policies for unlimited liability of the owners. This Amendment limits the liability of insurance companies to the amount of insurance policy but the owner's liability shall continue to be unlimited under the Act. It provides for creation of an Environment Relief Fund with the additional money collected from the owners having control over handling of hazardous substances.

#### *The National Environment Tribunal Act 1995*

The aim of the Act is to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accident, with a view to giving relief and compensation or damages to persons, property and the environment and for matters connected therewith or incidental thereto. It cites the decision reached at the U.N. Conference on Environment and Development held at Rio de Janeiro in June 1992 which called upon the countries to develop national laws regarding liability and compensation for the victims of pollution and other environmental damages.

#### *Rio Conference*

The U.N. Conference on Environment and Development held at Rio in 1992 specifies the following objectives of environment policy:

- (i) to incorporate environmental costs in the decisions of producers and consumers and to pass these costs on to the other parts of society, other countries or to future generations;
- (ii) to move more fully towards the integration of social and environmental costs into economic activities, so that prices will appropriately reflect the relative scarcity and total value of resources and contribute towards the prevention of environmental degradation; and
- (iii) to include, wherever appropriate, the use of market principles in the framing of economic instruments and policies to pursue sustainable development.

#### *Policy Statement for Abatement of Pollution, 1992*

The Policy Statement for Abatement of Pollution issued by the Ministry of Environment and Forests (MOEF) in February 1992 identifies the environment problems and admits that 'the state of the environment continues to deteriorate'. It favours a mix of instruments in the form of legislation and regulation, fiscal incentives, voluntary agreements, educational programmes and information campaigns. It recommends the polluter pays principle, involvement of the public in decision making and new approaches for considering market choices 'to give industries and consumers clear signals about the cost of using environmental and natural resources'.

#### **Implementation of Laws Relating to Environmental balance**

The nodal agency for implementing various legislations relating to environmental balance at the centre is the MoEF. Besides giving directions to the CPCB on matters relating to prevention and control of pollution, the MoEF is responsible for designing and implementing a wide range of programmes relating to environmental balance. The Annual Report of the MoEF for 1996-97 states that 'the focus of various programmes of the Ministry and its associated organisations, aimed at prevention and control of pollution is on issues such as promotion of clean and low waste technologies, waste minimization, reuse or recycling, improvement of water quality, environmental audit, natural resource accounting, development of mass based standards, institutional and human resource development etc. The whole issue of pollution prevention and control is dealt with a combination of command and control methods as well voluntary regulations, fiscal measures, promotion of awareness, involvement of public etc' (p.63). Based on the environmental laws and directions given by the Supreme Court, the central government has created a number of authorities for designing, implementing and monitoring its environmental programmes. At the state level, most states have set up Departments of Environments and the SPCBs.

**CONCLUSION**

In conclusion, the issue of maintaining Environmental Balance in India has become more and more serious attracting wider attention of the people in power both at the center and the states. The legislation of diverse laws and the establishment of several institutions with constitutional authority though paying some dividends are not fully serving the purpose. It is the attitude of the people at large that matters in implementing these laws by which alone it will bear fruits of maintaining Environmental Balance in India.