

- (c) some major areas of environmental hazards are not covered by them.
- (d) the laws lack statements of explicit policy objectives.
- (e) the laws lack adequate provisions for implementing them.
- (f) there is no set procedure and time limit for reviewing the performance of the laws.

There is need for an authority to:

- (a) co-ordinate the activities of other agencies.
- (b) frequently review these legislations.
- (c) study, plan and implement long term requirement of environmental safety keeping in view the extent of environmental pollution and its hazards.
- (d) ensure speedy and efficient handling of emergency situations threatening the environmental degradation.

In view of all these shortcomings and requirements, the Parliament passed the Environment (Protection) Act in 1986 as a general legislation.

6.16. THE ENVIRONMENT (PROTECTION) ACT, 1986

6.16.1. Objectives of this Act

The Environment (Protection) Act, provides for the following objectives:

- (a) Protection and improvement of environment (water, air, land) and,
- (b) Prevention of hazards to all living creatures (humans, plants, animals) and property.
- (c) Maintenance of harmonious relationship between humanbeings and their environment.

6.16.2. Definition of important terms used in this Act

- (a) "Environment": Includes water, air and land and the inter relationship which exists among them and property.
- (b) "Environmental Pollutant": Includes any solid, liquid or gaseous substance present in such concentration as may be injurious to environment.
- (c) "Environmental Pollution": Means the presence of any environmental pollutant in the environment.
- (d) "Hazardous Substance": Means any substance which is liable to cause harm to humanbeings, other living creatures and property or environment by reason of its chemical or physio-chemical properties or handling.

U.S. Details about the Act

General powers of the Central Government

for the protection and improvement of environment and, for the prevention, control and abatement of pollution, under Section 3.1, the Central Govt. has the power to take the following measures:

co-ordination of actions by the State Govts. officers and other authorities under this Act and under any other related law.

planning and execution of a nationwide programme to prevent, control and abate environmental pollution.

laying down the standards for the different aspects of environmental quality.

laying down the standards for the emission or discharge of environmental pollutants from various sources.

restricting areas in which industries, operations or processes shall not be carried out.

laying down procedures and safeguards for handling of hazardous substances for prevention of accidents causing environmental pollution and remedial measures.

examination of manufacturing processes, materials and substances likely to cause environmental pollution.

carrying out and sponsoring investigations and research in environmental pollution problems.

inspection of any premises, plant, manufacturing process, equipment or machinery and giving directions to prevent, control and abate environmental pollution.

establishment and recognition of environmental laboratories and institutes.

preparation of manuals, codes or guides to disseminate collected information in matters relating to environmental pollution and its prevention, control and abatement.

any matter, necessary or expedient for the implementation of the provisions of this Act.

if necessary, the Central Govt. may constitute an authority for the purpose of performing such functions and powers of Central Government under Section 4.2 of this Act.

to regulate environmental pollution, under Section 6.3, the Central Govt. may, by notification in the official gazette, make rules in respect of all or any of the matters referred to in Section 3 above [from (a) to (m)].

Provisions in this Act, for the Prevention, Control and Abatement of Environmental Pollution

Under Section 7.1, no person carrying on any industry, operation or process shall be permitted to discharge any environmental pollutant in excess of prescribed standards.

- (b) Under Section 8.2, no person shall handle hazardous substances without complying with the prescribed procedural safeguards.
- (c) Under Section 9.3, a person is responsible to mitigate environmental pollution and to intimate the fact of any occurrence relating to environmental pollution to the concerned authorities and also assist those authorities in preventing or mitigating environmental pollution.

The expenses incurred with respect to remedial measures shall be recoverable from the persons responsible.

(III) Powers of the Central Government

(1) Power of entry and Inspection : According to Section 10, the Central Govt. officers have the power to enter and inspect any place for the purpose of performing any function entrusted under the legislation.

Any person carrying on an industry, operation or process or handling any hazardous substance shall have to render all assistance to the Central Govt. and its appointed officers failing or obstructing which will be a punishable offence under this Act.

(2) Power to take samples : Under Section 11, the Central Govt. and its officers have the power to take samples of air, water, soil or substances from the factory or place, for analysis according to the following procedure:

- (a) giving notice to the occupier of the place or his agent.
- (b) collecting sample in the presence of the occupier or his agent.
- (c) placing the sample in a sealed container, signed by the officer and occupier or agent.
- (d) immediately sending one part of the sample to a laboratory for analysis after giving one part to the occupier, and, producing the third part in the court.

In case the occupier or the agent refuse to sign the container, the person collecting the sample may himself do so after reporting the refusal in writing to the government analyst.

(3) Power to establish laboratories : Under Section 12, the Central Govt. has the power to establish environmental laboratories or recognise any laboratory or institute as an environmental laboratory.

Under Section 13, the Central Govt. has the power to appoint or recognise government analysts for the purpose of analysis of samples of air, water, soil or any other substance.

Under Section 14, the report signed by a government analysts may be used as evidence of the facts stated therein in any proceeding under the legislation.

The Central Govt. has the power to close, prohibit or regulate any industry or operation or to stop or regulate the supply of electricity or water or any other service.

(4) Penalties for violating the provision in this Act : According to Section 15.5, any person failing to comply with any of the provisions of the Act shall be punishable with imprisonment for a term which may extend upto five years or with fine which may extend to one lakh rupees or both.

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In case the violation or contravention continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term of seven years.

According to Section 16, in case of an offence being committed by a company, the criminal liability is fixed on the company's directors and principal officers also.

Under Section 17, criminal liability is also fixed on the heads of department of government where an offence is committed by the concerned department and the head of the department is unable to prove that the offence was committed without his knowledge or that he exercised all diligence to prevent the commission of such an offence.

For the effective implementation of this Act, the various provisions of the Environment (Protection) Act, 1986 have been amended from time to time by the Government of India.

Table 6.2. : Chronology of Environmental Legislation in India

Year	Environmental Legislation
1974	The Water (Prevention and Control of Pollution) Act
1975	The Water (Prevention and Control of Pollution) Rules
1977	The Water (Prevention and Control of Pollution) Cess Act
1978	The Water (Prevention and Control of Pollution) Cess Rules
1981	The Air (Prevention and Control of Pollution) Act
1982/1983	The Air (Prevention and Control of Pollution) Rules
1986	The Environment (Protection) Act
1986	The Environment (Protection) Rules
1989	The Hazardous Wastes (Management and Handling) Rules
1989/1994	Manufacture, Storage and Import of Hazardous Chemical Rules/Amendment Rules
1989	Manufacture, Use, Import, Export, and Storage of Hazardous Micro Organisms, Genetically Engineered Micro-organisms or Cess Rules
1991	The Public Liability Insurance Act
1991	The Public Liability Insurance Rules
1992/1993	Environmental (Protection) Rules — "Environmental Statement"
1993	Environmental (Protection) Rules — "Environmental Standards"
1994	Environmental (Protection) Rules — "Environmental Clearance"
1995	The National Environment Tribunal Act
1996	The Environment (Protection) Rules — "Environmental Standards"

17. ISSUES INVOLVED IN ENFORCEMENT OF ENVIRONMENTAL LEGISLATION

In pursuance of the Water (Prevention & Control of Pollution) Act, 1974, the Central Government set up a Central Board for the Prevention and Control of Water Pollution. Similar Boards were set up in various States at different points of time when the Act was adopted by the State Legislatures. Subsequently, the

responsibility for enforcement of the Air (Prevention & Control of Pollution) Act, 1981 was also entrusted with these organisations which were renamed as the Central and State Pollution Control Boards. With the enactment of the Environment (Protection) Act, 1986, which is an umbrella legislation, the Central Government assumed the overall responsibility of "environmental protection and improvement". Although the Act empowered the government to designate Authorities for specific tasks, separate machinery for enforcement of the Act was not set up or designated except the Central Ground Water Board which was designated as the Central Ground Water Authority. It is only in recent times, empowered Authorities have been constituted for specific assignments which include the following :

- (1) Environment Pollution (Prevention & Control) Authority for National Capital Region set up in January, 1998;
- (2) Loss of Ecology (Prevention of Pollution and Payment of Compensation) Authority, Tamil Nadu.
- (3) Coastal Zone Authority.
- (4) Dahanu Taluka Environment (Protection) Authority, Maharashtra.
- (5) National Environment Appellate Authority.
- (6) Taj Trapezium Zone Pollution (Prevention & Control) Authority.

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

6.17.1. Legal Loopholes

It is often argued that our enforcement mechanism is very weak although the laws are very well drawn up. But, a careful analysis of the laws may reveal their inherent deficiencies which are closely linked to lapses in enforcement. To make clear this issue, let us refer to the Water Act, 1974. The key person for enforcement of this Act is the Chairman of the State Pollution Control Board who should be professionally qualified and appointed on a full time basis. However, the Act does not stipulate such requirement. Several State Pollution Control Boards are headed by part-time Chairmen without requisite qualifications and experience. Also, the Member Secretaries of the Pollution Control Boards are often drawn either from administrative service or even forest service who do not have the requisite technical background in pollution control. As a result, it becomes difficult for them to provide proper leadership and guidance to their sub-ordinates. Besides the Chairman and Member Secretary, as per provisions of the Act, the State Pollution Control Board is supposed to have 15 members nominated by the Government. Most of these part-time members are drawn from Government Departments and local civic authorities. Many of these members, as pre-occupied as they are with their jobs, find very little time for making any constructive contribution towards effective functioning of the State Pollution Control Boards. On the contrary, the State Pollution Control Boards are

6.17.2. Institutional

Over the years, the Policies for enforcement