KULR

KASHMIR UNIVERSITY
LAW REVIEW

Vol. XVII **No. XVII**

2010

Department of Law

UNIVERSITY OF KASHMIR
Srinagar

Vol. XVII **No. XVII** **ISSN 0975-6639**

Patron

Prof. (Dr.) Riyaz Punjabi

Vice – Chancellor
University of Kashmir
Srinagar

Chief Editor

Prof. Mehraj Ud Din Mir
Head and Dean
Faculty of Law
University of Kashmir
Srinagar.

Editor

Dr. Farooq Ahmad Mir
Associate Professor, Department of Law
University of Kashmir

Editorial Board

Prof. G. Q. Mir
Prof. A.A Mir
Prof. A. L. Wani
Prof. N.M. Bilal

The editor, publisher and printer do not claim any responsibility for the views expressed by the contributors and for the errors, if any, in the information contained in this journal.

CONTENTS

S. No.		Page No.
Articles		
1	Medical Profession: Moral, Ethical and Legal Values: Islamic Perspective — **Mehraj Uddin Mir**, **Iqra Mehraj**	1
2	Defamation in the Cyberage: the Emerging Problems — **Mohd Altaf Hussain Ahangar**	24
3	International Criminal Court: Policy and Issues — **Noor Mohd Bilal**	53
4	The New Horizons of Green Justice under the National Green Tribunal Act, 2010: Does it Lock Environmental Class Actions to Civil Courts? — **Mohd. Ayub Dar**	69
5	Juvenile Delinquency and Dislocated Parenting: A Sociological Context — **Lalita Dhar**	95
6	Protection of Differently-Abled Persons in India: A Legal Quagmire — **Fareed Ahmad Rafiqi**	108
7	Istihsan and Its Place in Islamic Legal Theory: An Approach — **Abdur Rashid Bhat**	139
8	Status of Crime – Victims in the Indian Criminal Justice System: An Appraisal — **Mohd Ashraf**	153
Notes And Comments		
1	Wakfs for the Maintenance of Orphans: A Social Obligation Perspective — **Ms Beauty Banday**	169
2	Hindu Matrimonial law: A Plea for Reforms — **Ms Shahnaz**	184

enormity. The dilemma underlying the debate about ICC jurisdiction over non party nationals stems primarily from the conflicting needs for the ICC to have sufficient Jurisdictional powers to bring to justice perpetrators of genocide, war crimes and crimes against humanity, and simultaneously, for states to retain appropriate discretion regarding methods of dispute settlement when the lawfulness of their official acts is in dispute.

In the ultimate working of the ICC some institutional problems are bound to arise but that does not mitigate the real need and significance of such an institution. To date, the court has opened investigations into five situations: Northern Uganda, Democratic Republic of Congo, Darfur (Sudan) and the Republic of Kenya. The court has indicted 16 persons seven of whom remain fugitives, two have died, four are in custody and three have appeared voluntarily before the court. Its first trial of Congolese militia leader lubanga began on 26 January, 2009.[44] On 14th July, 2008 the prosecutor accused Sudanese president Omar al Bashir of genocide, crimes against humanity and war crimes on a reference by the Security Council under chapter VII of the chapter of United Nations. Al Bashir has been the first sitting head of the state indicted by ICC. The court issued an arrest warrant in this regard in march, 2009 in July, 2009 members states of the African union agreed not to cooperate in this arrest. However, South Africa and Uganda declared that he might be arrested if he entered their territory. Lacking its own enforcement machinery or executive power, the court depends on the effective and speedy international cooperation and judicial assistance with member states. States are not allowed to refuse such cooperation with the court or to make reservations thereto. Every state party is obliged to comply with requests for arrest and delivering up of a person to the court.[45] In July and August, 2010 Al basheer traveled to Chad and Kenya, neither of which returned him over to ICC despite being state parties. ICC has reposted both member states to the UN Security council and the ICC Assembly of state parties.

---

44 htp/wikipedia. Org/ icc.

45 Article 59 of the statute

National Green Tribunal Act, 2010: Does it Lock Environmental Class Actions to Civil Courts?

Mohammad Ayub Dar*

Abstract

Courts and other adjudication tribunals that specialize in environmental and developmental issues have become the subject of a global comparative study. The enactment of the National Green Tribunal Act, 2010 by the Parliament of India has put an end to the debate over retention of ordinary civil courts for environmental adjudication in India. The Act seeks to penetrate green justice notions deep into the environmental laws operating in India. It introduces a specialist adjudicatory mechanism for environmental matters, with a blend of judicial and environmental expertise aimed at achieving the objectives of distinct green jurisprudence in India. The Act, however, introduces some controversial jurisdictional issues and misses to link the new adjudicatory mechanism with some environmental laws. This article seeks to consider the above dimensions and explores questions of composition, jurisdiction and procedures of the Green Tribunal recently established under the Act.

Keywords: Green Tribunal, Precautionary Principle, Polluter Pays Principle, Jurisdiction, Environmental Justice.

Amidst global debate over whether environmental cases shall be allowed to be handled by the traditional courts or that specialized courts/tribunals shall be created for the purpose, India has opted for the latter. The enactment of the National Green Tribunal Act, 2010 has ushered in new horizons of green justice in India[1].The Act has completely changed the outlook of environmental justice delivery mechanism under the major environmental laws enacted by the Parliament of India after the Stockholm Declaration of June 1972.The

---

* LL.M, Ph.D, Associate Professor, Department of Law, University of Kashmir, Hazratbal-190006.

1 The Act received the assent of the President of India on 2nd June 2010 and was published in Gazette of India on 02-06-2010, Pt.II-S.I, Ext.P.I (No.25).

Act amends half a dozen of major environmental legislations and provides higher appellate machinery which was not available under the legislations amended by it. The Act has, however missed to link the new appellate mechanism with the wide variety of sets of Rules that regulate multiple dimensions of environment in India. The power to try acts declared as offences under the environmental Acts has not been changed and continues to be vested with traditional criminal courts, though higher punishment with sentencing options have been prescribed under the new Act.

Above all the Green Tribunal envisaged and now established under the Act has been invested with a novel jurisdiction to settle all civil cases involving substantial questions relating to environment including those where enforcement of any legal right to environment is involved. This is in addition to the jurisdiction to provide relief and compensation which the earlier Environment Tribunal under the repealed National Environment Tribunal Act, 1995 enjoyed .The new jurisdiction conferred upon the Green Tribunal raises a number of issues which may assume much significance in prospective environmental litigation in India. This paper is an attempt to view the novel features of the Act; various procedural rights for enforcement of environmental rights especially those where jurisdiction of civil courts under the new Act seems to be apparently barred.

The Environmental Court/Tribunal (ECT) Debate

The need for the establishment of a specialized environmental court has been stressed and reiterated by the Supreme Court of India[2] and the Law Commission of India[3].The justification for the establishment of such special court given by the Supreme Court is lack of requisite technical and scientific expertise to deal with complex environmental

2 See *M.C.Mehta v.Union of India* 1986 (2) SCC176;*Indian Council for Enviro-Legal Action v. Union of India* 1996 (3) SCC 212;*A.P.Pollution Control Board v.M.V.Naydu* 1999 (2) SCC 718 and *A.P.Pollution Control Board v.M.V.Naydu* ,2001 (2)SCC 62.

3 Law Commission of India, *One Hundred Eighty Sixth Report on Proposal to Constitute Environment Courts* (Sept. 2003), *available at* http://www.law commission of india.nic.in/reports/186th%2 0report.pdf.

issues. It has been argued, however, that the need for a special jurisdiction in environmental matters is not based merely on technical and legal complexity issues because such complex issues can be found in other areas of the law as well[4]. The nature of the evidential and judgmental issues involving complex technical/scientific questions is usually quite different from other types of decisions. The science involved in many environmental and public health questions (such as pathways of exposure to pollutants or effects of chemicals on human health) is often characterized by inherent uncertainties distinct from those found in disciplines such as engineering or surveying .Further some of the fundamental principles like precautionary approach, polluter-pays, prevention at source, and procedural transparency which are still in a developing stage have already entered the language of environmental law and policy[5]. Likewise the emergence of principles concerning third party access to environmental justice and the need for review procedures that are timely and not expensive are other pressing reasons warranting special jurisdiction in environmental matters[6].There is an overlapping of remedies (civil and criminal) as well as interests(public and private).The validity of licenses and regulatory notices in environmental law are critically connected with the subsequent enforcement of environmental standards under criminal law. 'Environmental law is thus qualitatively different from other areas of the law in terms of the values and interests that are engaged-many of which are not properly represented'[7].

The most motivating goals for the establishment of specialized tribunals are case-management and scope for an alternate jurisprudence. Special tribunals can improve the quality and quantity of case-handling over that provided by general courts and can move ahead from the

4 See ' Modernizing Environmental Justice-Regulation and the Role of an Environmental Tribunal' edited by Professor Richard Macrory et.al, Centre for Law and the Environment, Faculty of Laws ,University College London at p.20.

5 Id.

6 Id.

7 Id.

traditional legalistic adjudications to much desirable 'problem solving or therapeutic or interdisciplinary approach'[8]. The other most frequent reasons advanced[9] to prefer a separate ECT for environmental cases are as under:

1. **Efficiency**: ECTs decrease time necessary for decisions.
2. **Economy**: ECTs decrease costs for all concerned with more efficient handling of cases.
3. **Expertise**: ECTs obtain higher quality decisions from judges more expert in complex environmental laws, scientific-technical questions, and value-laden issues than general jurisdiction judges.
4. **Access to Justice**: Such specialized courts/tribunals improve access to justice for business, government, and the public by having an identified forum to handle environmental complaints.
5. **Case Processing**: They improve case processing and reduce backlog of undecided cases in the general court system.
6. **Commitment**: They demonstrate government's commitment to protection of the environment, sustainable development, compliance with international treaties and agreements, etc., by creating a visible court symbolic of that commitment.
7. **Flexible Solutions**: The specialized courts/tribunals open up more flexible ways to solve environmental problems, including alternative dispute resolution, collaborative planning and decision-making, hybrid civil-criminal prosecution, creative sentencing and enforcement options, court appointed special commissions, and facilitated settlement agreements.

8 G Pring and C Pring, Greening Justice - Creating and Improving Environmental Courts and Tribunals (The Access Initiative, Washington DC 2009) p.9.

9 Id at pp.14-16;.see also George (Rock) Pring And Catherine (KItty) Pring, 'Specialized Environmental Courts and Tribunals at the Confluence of Human Rights and the Environment' Oregon Review Of International Law (2009)[Vol. 11, 301 at p.p.308-9.

8. **Public Participation**: They encourage g[reater] participation and support for the decision-making process through more open standing, use of community expert committees, etc.
9. **Public Confidence**: They increase public confidence in the government's environmental and sustainable development efforts by having a transparent, effective, expert decisional body.
10. **Increase Administrative Accountability**: The creation of an ECT with reasonably open standing can result in the executive branch being more thorough and transparent in making decisions which affect the environment, because the decisions are open to scrutiny and legal challenge.

The counter-arguments[10] against creation of specialized tribunals are equally impressive. These include:

1. **Competing areas needing expertise**: There are so many other area of the law with equal or even greater fact and law complexity (e.g. health and employment) and environment is not in any way different from those types.
2. **Marginalization of environmental cases and fragmentation of judicial system**: Separating environmental cases from the mainstream will result in their getting less attention, less qualified decision makers, and inadequate budgets and thus cripple the effectiveness of the tribunal. It also results in fragmentation of the judicial system and isolates both judges and the subject matter from the mainstream. Specialized environmental courts/tribunals may be viewed as non-stream, inferior and not adequately respected, resourced or supported. This results in step-child perception about such courts/tribunals which has been reported from several jurisdictions with ECTs.
3. **Reform from within**: There can be incremental reform from within the general judicial system. For instance if knowledge of environmental law is critical, all decision makers can be given an opportunity to be trained. Further cases can be informally directed to

10 Supra Note 8 at pp.17-18.

those who are particularly interested or experienced in the field of environment.

4. **Insufficient case load**: It does not make administrative sense to have a separate tribunal without there being a case load of sufficient size and complexity to warrant time and experience. Uneven workload compared with the rest of the judiciary has other administrative problems associated with it.

5. **Cost**: A separate tribunal entails separate budget for judges, staff, space equipment, and training. This will dilute the existing budget for an already underfunded or overburdened judiciary and may practically reduce access to justice.

6. **Public confusion**: The general public, especially when different laws deal with different components of environment and resources, may be confused about where to file a complaint or find a relief.

7. **What is environmental**: An environmental case involves non-environmental issues and non- environmental cases may have subsidiary environmental issues. Where shall such mixed cases go in the face of the argument that only a regular court generalist judge can address all the non-environmental issues in a case effectively?

8. **Judicial activism**: Specialized courts/tribunals often go beyond the mandate of rule of law in their decision making and develop jurisprudence unique to the case which approach is frowned upon as policy making. This approach is simply an intrusion into an arena vested in executive and legislative branches and amounts to substitution of a judgment for that of the responsible government. Observers of the judicial activism in India argue that such an approach has restricted the growth of a responsible and independent bureaucracy.

To help planners in designing an ECT, researchers have identified a decision framework that consists of 12 distinct ECT 'design decisions'- structural and operational 'building blocks'. Table- 1, based on the said design, provides an insight into these building blocks and shows the countries whose ECTs are the appropriate instances of these design decisions.

Table-1

The 12 Building Blocks or Design Decisions for creating ECTs[11]

	BUILDING BLOCK	DECISION DEFINITION	INTERESTING EXAMPLES
1.	**Type of Forum**	Judicial court, quasi-judicial tribunal, ombudsman or other	Vermont Environmental Court, Tasmania Resources Management and Planning Appeals Tribunal, Hungary's Office
2.	**Legal Jurisdiction**	What laws included under ECT's authority; civil, administrative, criminal or combined jurisdiction	Land and Environment Court of New South Wales, Australia Environmental Commission of Trinidad and Tobago
3.	**ECT Level**	Internal agency review, trial, intermediate appellate or final appellate	Supreme Court of India, United States Environment Protection Agency
4.	**Geographic Area**	Area included in jurisdiction: municipal regional state, provincial, national or other	Amazonas Environmental Court in Brazil, Planning and Environment Court of Queensland, Australia
5.	**Case Volume**	Number of cases needed to justify type of ECT selected	Environmental Court of Dhaka, Bangladesh
6.	**Standing**	Plaintiff credentials needed to file a complaint	Republic of South Africa• Republic of South Africa Supreme Court Philippines
7.	**Costs**	Variety of costs and	Environmental Court of

11 G Pring and C Pring , Greening Justice ,supra note 8 at p.20.

		risks to parties fi ling an environmental complaint	New Zealand
8.	**Access to Scientific -Technical Expertise**	Methods for assuring decision-makers have access to unbiased experts	Environmental Court of Appeal in Sweden, Environmental Board of Appeal in Denmark
9.	**Alternative Dispute Resolution (ADR)**	Incorporation of various types of ADR in ECT process to save money and generate better outcomes	Multi-door courthouse of Land and environment Court of New South Wales, Australia
10.	**Competence of ECT judges and decision makers**	Need for selection processes, qualifications, training, tenure and salary to support competence	Finland's Supreme Administrative Court, Supreme Court of Thailand, New York City, Brazil
11.	**Case Management**	Administrative tools to increase efficiency, effectiveness, and access	Planning and Environment Court of Queensland, Australia
12.	**Case Management**	Powers of ECT to use the right remedy(ies) to solve the problem	Federal prosecutors of Brazil

National Green Tribunal Act, 2010 –an appraisal

The National Green Tribunal Act is India's response to the decisions taken at the international level at Stockholm in June 1972 and the U.N Conference on Environment and Development held at Rio De Janeiro in June 1992[12].While the Stockholm Declaration urges the States to take appropriate steps for the protection and improvement of the human environment, the Rio Declaration calls upon the states to provide effective access to judicial and administrative proceedings including

12 The National Green Tribunal Act, 2010, the preamble.

redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage. The preamble of the Act shows equal regard to the judicial pronouncements construing right to healthy environment as part of the right to life under Article 21 of the Constitution and the need for a nationwide Green Tribunal to resolve multi disciplinary issues relating to the environment. With these objectives the Act envisages establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected or incidental thereto[13].

The Tribunal is to consist of a full time chairperson who is or has been a judge of the Supreme Court or Chief Justice of a High Court[14]. The Tribunal, in addition to a chairperson ,is to consist of not less than ten and not more than twenty Judicial Members who are or have been judges in the Supreme Court or any High Court[15]. Likewise the Tribunal is to consist of not less than ten and not more than twenty Expert Members who must have a masters degree in physical sciences or life sciences with a doctorate degree or masters of engineering or technology and fifteen years experience in the relevant field including five years experience in the field of environment and forests or fifteen years administrative experience including five years experience in dealing with environmental matters in the Central Government or a State Government or in a reputed national or state level institution[16].The chairperson is to be appointed by the Central Government in consultation with the Chief

13 The National Green Tribunal Act, 2010, the preamble and s.3.

14 Id. s.4(1) (a) and s. 5(1).

15 Id. s.4(1) (b) and s. 5(1).

16 Id. s.4 (1) (c) and s. 5(2) (a) and (b); see also Law Commission of India, supra note 3 , the Commission had recommended statutory panel, with an advisory role, to be known as commissioners, (as in Australia and New Zealand) not as permanent members but to be present in the court during the course of hearings.

Justice of India[17].The Judicial and Expert members are to be appointed by the Central Government on the recommendations of a Selection Committee[18]. The Chairperson and the members are to hold office for a period of five years and are not eligible for re-appointment[19]. Sitting or retired judges of the Supreme Court cannot hold office in the Tribunal beyond the age of seventy years[20]. Judges of a High Court including those who have held the office of the Chief Justice in a High Court cannot hold office beyond the age of sixty seven years. In case of Expert Members, the age has been restricted to sixty five years[21].

The Tribunal is to have four circuit benches. The Tribunal is to apply the principle of sustainable development, polluter pays principle and the Precautionary Principle[22] but in procedural matters it is to apply the principles of natural justice[23]. The Green Tribunal is conferred with power to pass an order requiring any person to cease and desist from committing or causing any violation of any enactment specified in Schedule- 1[24]. This provision considerably reduces the efficacy of the referral scheme of Sec.24 of the Environment (Protection) Act, 1986 which has otherwise been accused of making the Act teeth- less tiger, despite its high penal provisions[25]. Violation of any order of the Tribunal would entail a punishment under the Act and not under the violated Act specified in the Schedule -1[26].This may result in disparity in the award of

17 The National Green Tribunal Act, 2010, s.6(2).
18 Id. s.6(3).
19 Id s.7.
20 Id.
21 Id.
22 Id.s.20
23 Id.s.19
24 Id. S.19(J).
25 D'Monte ,Environment Law Has No Teeth,1 Ecology No.4,24-25 (Sept.1986).
26 The National Green Tribunal Act, 2010, s.26 prescribes a punishment for three years or fine up to ten crore rupees or both and an additional fine up to twenty five thousand rupees for each day of deviation after first conviction. A company can be fined up to rupees twenty five crores for

punishment for similar types of violations or acts of pollution of equal magnitude with the sole difference of conviction under the Green Tribunal Act and conviction under other respective environmental Act. The scales of punishment prescribed under the Green Tribunal Act and other environmental Acts being disproportionate, award of punishment for similar acts under the two systems may not befit the principles of fairness and equality .It is therefore, advisable to bring the scales of punishment for similar acts or violations under the other environmental Acts at par with the punishment scale under the Green Tribunal Act so that violations of similar magnitude are punishable similarly.

Jurisdictional Issues

The Tribunal is conferred with three types of jurisdictions. These include jurisdiction in respect of:-

1) Settlement of environmental disputes –section 14;
2) Relief, compensation and restitution -section 15 and
3) Statutory appeals -section 16,where an application under section 14 is pending before the Tribunal an appeal under section 16 would not lie.

I. Settlement of environmental disputes

This jurisdiction covers power to decide all civil cases where

i. a substantial question relating to environment is involved and such question arises out of the implementation of the enactments specified in Schedule- I appended to the Act[27] or

ii. enforcement of any legal right relating to environment is involved.

The Act does not provide a one-stop- shop type definition of what constitutes a substantial question relating to environment. However,

any deviation and rupees one lakh per day deviation after the date of conviction.

27 The National Green Tribunal Act, 2010,the Acts listed in the Schedule are the Water (PCP)Act,1974; the Water (PCP) Cess Act,1977;the Forest (Conservation)Act,1980;the Air (PCP)Act,1981;the Environment (Protection)Act,1986;the Public Liability Insurance Act,1991 and the Biological diversity Act,2002.

instances of such substantial questions are given in an inclusive manner as under[28]:-

i) where there is a direct violation of a specific statutory environmental obligation by a person by which:-
   a) the community at large other than an individual or group of individuals is affected or likely to be affected by the environmental consequences; or
   b) the gravity of damage to the environment or property is substantial; or
   c) the damage to public health is broadly measurable.

ii) the environmental consequences relate to a specific activity or point source of pollution;

Substantial questions relating to environment which do not arise out of the implementation of the Acts specified in schedule- 1 may continue to be litigated in the ordinary civil courts.

The Law Commission had recommended the following jurisdiction to be vested in the court proposed by it:[29]

a) to protect the right to safe drinking water and the right to an environment that is not harmful to one's health or well being and
b) to have the environment protected for the benefit of present and future generations so as to
   i) prevent environmental pollution and ecological degradation,
   ii) promote conservation and
   iii) secure ecologically sustainable development and use of natural resources while promoting justifiable economic and social development.

In order to bring more clarity in what the jurisdiction of the court on the original side includes, the Commission had suggested addition of an explanation on the following lines[30]:

(a) the protection of natural environment, forests, wild life, sea, lakes, rivers, streams, fauna and flora;

28 The National Green Tribunal Act, 2010, s.2 (m).

29 The Law Commission of India , supra note 3 at p.146.

30 Id.

(b) preservation of natural resources of the earth;

(c) prevention, abatement and control of environmental pollution including water, air and noise pollution;

(d) enforcement of any legal or constitutional rights relating to environment and pollution under the Constitution of India or under any other law for the time being in force;

(e) protection of monuments and places, objects of artistic or historical interest of national importance as declared by the law made by Parliament.

Procedural Rights of Environmental Enforcement and the jurisdiction of the Tribunal

i) Criminal Law

The Indian Penal Code contains various provisions relating to public nuisance and other offences[31] which were widely invoked during the latter half of the nineteenth century especially in relation to air and water pollution[32]. These sections contain an implicit right for individuals to lay information before the police which may lead to investigation and prosecution.

31 Under the Indian Penal Code, 1860 (IPC), the ordinary criminal Courts exercise powers under various sections dealing with offences relating to environment. Chapter XIV of the IPC refers to offences under sections 268 (Public Nuisance) 269, 270 (neglecting or doing malignant acts likely to spread infectious diseases dangerous to life, disobedience of quarantine rules (sec. 271), fouling water of public spring or reservoir (sec.277), making atmosphere noxious to health (sec. 278), negligent conduct with respect to poisonous substances, fire or combustible matter, explosive substances, machinery, and pulling down or repairing buildings; animals (sec. 291), endangering life or personal safety of others (sections 336 to 338), mischief (sec. 425), mischief by injury to works of irrigation or by wrongly diverting water (sec. 430), mischief by injury to public road, bridges, river or channel (sec. 431), mischief by causing inundation or obstruction to public drainage, attended with damage (sec. 432), and culpable homicide (sec. 299 to 304A).

32 See Michael R. Anderson, SOAS Law Department Working Paper No.1.

Another distinct but concurrent procedural right is contained in section 133 of the Code of Criminal Procedure where under an individual or group of individuals may initiate an action before a District or Sub-Divisional Magistrate and seek a conditional order for the removal of a public nuisance. The power conferred under the section is mandatory and not discretionary i.e., wherever a Magistrate is presented with evidence of public nuisance, an order for its removal has to be made. In England the Royal Commission had recommended the environmental court proposed by it to exercise jurisdiction in respect of subjects such as contaminated land and all statutory nuisances where currently magistrates' courts exercise powers on the basis of complaints[33]. In India, however, the remedy under section 133 Cr.P.C is not pre-empted under the Water Act, 1974 and the Air Act, 1981[34] nor does the National Green Tribunal Act, 2010 bar such actions before the magistrates. This remedy has been held as supplementary to remedies under the environmental laws[35].

ii) Civil Law

The Code of Civil Procedure provides for a civil remedy relating to public nuisance where an individual has suffered special damages. Thus a public nuisance which may be abated by a conditional order under

33 Royal Commission on Environmental Pollution, 23rd Report, 'Environmental Planning' (Cm 5459, 2002) para 5.38.

34 *State of M.P v.Kedia Leather & Liquor Ltd.*, AIR 2003 SC 3236 at p.3239; see also *Harihar Polyfibers v.Sub-Divisional Magistrate* 1997CRI.L.J.273.

35 Id. See also *Free Legal Aid Cell v. Government of NCT of Delhi* AIR 2001 Del.455 at 462-463;*N.Ramasamy v. Sub-divisional Magestrate, Coimbatore*,1988 (1) Com.L.J 169;*Abdul Hamid v.Gawalior Silk Mfg. (Wvg.)Co.Ltd.*1989 CRI.L.J.2013,;*Ganesh Pd. Sarangi v.State of Bihar*,1997 (1); *Krishna Panicker v. Appukuttan* BLJR 382 (Pat.)holding s.133 Cr.P.C. as an emergency provision and *Ramlal v. Dharam Vir* (2001) Cri.L.J4507 at 4508 holding the jurisdiction under the provision invokable despite availability of alternative remedy; see also *Krishna Panicker v.Appukuttan Nair*,1993 (1)KER.L.T.771 overruling a contrary opinion expressed in *Tata Tea Ltd. v.Sub-divisional Magestrate and Divisional Officer,Sangareddy*,1987 CRI.L.J.2071

section 133 Cr.P.C may also lead to individual rights to damages or an injunction under the civil law. But if such public nuisance is as a result of any activity, operation or process under any of the Acts specified in Schedule-I of the Green Tribunal Act,the claim for damages ,it is submitted, cannot be tried in a civil court but has to be preferred before the Green Tribunal by operation of sections 14,15,17 and 29 (2) of the Green Tribunal Act.

A third legal right of enforcement against public nuisance is provided under section 91 of the Code of Civil Procedure. Under this section two or more than two persons with the leave of the court, may institute a suit for declaration, injunction or similar relief in the case of a public nuisance. This remedy for public interest has been available in India from 1908 and despite being an effective and speedy remedy has been used little over the past more than a century[36].

The Code provides for initiation of similar class actions under Order 1 rule 8.The jurisdiction of civil courts to settle the disputes involving substantial questions relating to environment which otherwise could be tried under section 91 or by way of class actions under Order 1 rule 8 seem to be barred under section 29(2) of the Green Tribunal Act. This conclusion is strengthened by the language of section 29(2) which provides:

'No civil court shall have jurisdiction to settle dispute or entertain any question relating to any claim for granting any relief or compensation or restitution of property damaged or environment damaged which may be adjudicated upon by the Tribunal ,and no injunction in respect of any action taken or to be taken by or before the Tribunal in respect of the settlement of such dispute or any such claim for granting any relief or compensation or restitution of property damaged or environment damaged shall be granted by the civil court'.

The Law Commission of India did not propose to oust the jurisdiction of ordinary courts as in the opinion of the commission it

36 See Michael R. Anderson , 'Individual Rights to Environmental Protection in India' in Alan Boyle et.al., ed. " Human Rights Approaches To Environmental Protection " Oxford University Press (1998 paperback) at p.206.

could deprive citizens of the benefits of easy access to courts as ordinary villagers could not, on each adjournment, afford to travel all the way to the remotely located seat of the court proposed by it[37]. It had, therefore, proposed a speedy type of court as provided under the Consumer (Protection) Act, 1986 which could exercise jurisdiction in addition to the remedies under the law before the ordinary civil courts[38]. In the commission's view this was the position in Australia and New Zealand and similar proposals had been made in England as well. But in order to obtain finality, once adjudication had become final, it shall be binding and a person could not be allowed to move before a fora, not approached before, a civil court or the environmental court as the case might be. Where a matter is already pending before a civil court or the environment court, a party could always rely upon section 10 of C.PC in obtaining a stay of the latter proceedings attempted to be initiated in the same matter[39].

However the bar under the above section does not seem to be absolute. It is necessary for the bar to operate that the action to be initiated must have been necessitated as a result of the implementation of the provisions of the Act specified in the Schedule -1, irrespective of whether the powers exercised under the said Acts are exercised rightly or wrongly . But would the bar operate even in cases where legal action needed to be taken in a civil court is necessitated as a result of non-implementation of any provision of any of the specified Acts may become a subject of judicial interpretation in future.

In the case of Jammu & Kashmir the law relating to conservation of forest stands changed from 1980.An Act different from the Central Forest (conservation) Act, 1980 is applicable in the state. Would J&K Forest (Conservation) Act,1997 need a special incorporation inSchedule-1by way of a notification to be issued by the Central Government under section 34 of the Green Tribunal Act? Can Green Tribunal exercise its powers in the state regarding forest conservancy laws until such

37 The Law Commission of India supra note 3 "Jurisdiction of ordinary civil courts and Conflict of decisions" at p.147.

38 Id.

39 Id. at p.148.

inclusion? The answer to these issues, it is submitted, seems to be that in the state of J&K civil courts will continue to have jurisdiction in the forest conservancy matters until requisite overhaul in the relevant law.

iii) Constitutional Right to environment and remedial Mechanism

It has been argued that in countries with a constitutional right to life/ environment, decision should be made whether or not environmental tribunals should have jurisdiction over claims of violations of those constitutional human rights. India is cited as an example of why care should be taken as to how broad the jurisdiction of an environmental tribunal need to be made in order not to actually prevent access to justice. The open access to the Supreme Court in India to file environmental petitions (with no more than a post card) has caused a huge backlog of cases, such that the Justices may "hear" and dispose of 70 cases in a single day[40].

Article32 and 226 of the Constitution of India provide constitutional remedies to challenge violation of any fundamental right, including the right to a wholesome environment. The writ jurisdiction of a high court under Article 226 can be invoked not only for the enforcement of fundamental rights as is the case with the Supreme Court under Article 32 but may be invoked 'for any other purpose' also. A high court under Article 226 can entertain a petition against violation of ordinary legal rights as well. The remedy under Article226 has proved an effective means of obtaining judicial review of administrative action[41]. Being a constitutional provision the remedy under Article 226 can neither be curtailed by an enactment nor made subservient to a statute. The writ being an extra ordinary remedy, courts show reluctance in allowing petitioners to bypass an available alternative statutory remedy. Availing of alternative remedy may be waived in suitable cases where the impugned action violates the principles of natural justice or where an administrative authority has exceeded its jurisdiction.

In tune with the above practice the availability of the alternative remedy under the National Green Tribunal Act, 2010 would be a ground

40 G Pring and C Pring, Greening Justice,supra note 8 at p. 27.

41 Shyam Diwan and Armin Rosencranz, Environmental Law and Policy in India, (2001 ed.), Oxford University Press at pp.128.

for reluctance of high courts to entertain public interest environmental petitions. A remedy by way of writ is to be pursued by a petitioner within a reasonable time on arising of the cause of action and can be rejected on the ground of inordinate delay. The doctrine of laches has been applied even in cases involving breach of a fundamental right and where the impugned action is manifestly erroneous or unauthorized[42]. The courts measure petitioner's lack of diligence by referring to the statutory limitation period fixed for initiation of similar actions under the Limitation Act,1963.The Green Tribunal Act ,2010 prescribes its own period of limitation[43] for institution of cases before the tribunal which may become a prospective tool for the application of the doctrine of laches.

The New Appellate Mechanism

An appeal is considered as the first opportunity to an aggrieved party to seek relief. To achieve the long term significance of an appeal provision it is being stressed in some jurisdictions that it need to introduce new concepts of access to justice in environmental decision – making and facilitate inexpensive review procedures to members of the public and environmental organizations[44]. To improve public confidence and ensure that environmental considerations are given their proper

42 Id. at .129

43 The National Green Tribunal Act,2010,s.14(3)prescribes a period of six months for an application involving civil disputes relating to environment; s.15(3)prescribes a period of five years as limitation period for grant of relief, compensation and restitution against pollution or other environmental damage, the period to be reckoned from the date of accrual of the cause of action and s.16 prescribes a period of thirty days for filing an appeal, period to be reckoned from the date of communication of the order .

44 See the UNECE Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters(Aarhus Convention) signed 0n 25thJune 1998 in Aarhus, Denmark, by the European Community, available at http:www.euep.org/DEC/OnLine/Manual/Resources/Glossary/tabid/69 /Default.aspx? high=Arhus +Convention #high.

weight, the appeal mechanism must facilitate third party appeals. Further, governments need to provide public information on access to review procedures and consider appropriate assistance mechanism to remove or reduce financial and other barriers to access to justice[45].

Prior to the enactment of the Green Tribunal Act,2010the Water Act, the Air Act and some of the Rules framed under the Environment (Protection)Act,1986 provided for an appellate mechanism but there was no uniformity maintained by the states in the constitution of appellate authorities especially under the Water Act and the Air Act. The states had given preference to bureaucrats rather than legal or environmental experts .The Supreme Court of India had viewed the matter seriously and recommended an examination of the matter by the Law Commission of India so as to bring uniformity in the structure of the quasi –judicial bodies[46].Keeping the practice in several other countries in view the Law Commission recommended that the 'appeals must lie to Court manned by persons with judicial knowledge and experience, assisted by experts in various aspects of environmental science'[47].

The Green Tribunal Act does not satisfy the above standards altogether in its appellate mechanism. The appeal provision is restricted to 'any person aggrieved'[48] and a restricted interpretation of these words would not permit 'third party' appeals to fall within its ambit. The Act does not, except in the case of Biological Diversity Act, 2002, touch the initial appellate mechanism provided under respective environmental legislations, it only gives a second and third appellate mechanism under some environmental legislations in the manner shown in **Table -2.**

45 Id., see also Modernizing Environmental Justice, supra note 4 at p.p.25-27.

46 A. P. Pollution Control Board v. M.V. Nayudu: 2001(2) SCC 62.

47 The Law Commission of India ,supra note 3 at p.99.

48 The National Green Tribunal Act, 2010, S.16.

Table -2
Environmental Appellate Mechanism- Reformed

Legislation	Decision – making Body	Appeal/ Provision	Revision	Appellate Body		
		Appeal Section	Revision Section	First Appeal	2nd/ Direct Appeal/ Appeal Provision under NGT Act*,2010	2nd/3rd Appeal under NGT Act*,2010 ,s.22on any ground/s specified in s.100 C.PC,1908
The Water (P&CP) Act, 1974	SPCB/PCC/ State Govt. */Administrat or Union Territory	ss.13, 25,26 ,27,28,29 and 33-A	s.29	Appellate Authority provided under the Act	National Green Tribunal /s33-B*	Supreme Court of India
The Water (P&CP) Cess Act, 1977	Member secretary SPCB/PCC/C PCB*	s.13	Not available	Chairman SPCB/PC C/CPCB	National Green Tribunal /s.13-A*	Supreme Court of India
The Air (P&CP) Act, 1981	SPCB/PCC/S tate Govt./Admini strator Union Territory	s.31	Not available	Appellate Authority provided under the Act	National Green Tribunal /s.31-B*	Supreme Court of India
The Forest (Conservation) Act,1980	State Govt.	s.2	Not available		National Green Tribunal /s.2-A	Supreme Court of India
The Environment (Protection)A ct,1986	Central Govt./Prescri bed Authority	s.5	Not available	Not available	National Green Tribunal /s.5-A	Supreme Court of India
EIA Notification of 2006	Central Govt./State Govt.		Not available	Not available	National Green Tribunal	Supreme Court of India
The Biological Diversity Act,2002	National Biodiversity Authority/State Biodiversity Board	s.52(now omitted)	Not available	High Court (now omitted)	National Green Tribunal /s52-A	Supreme Court of India
The Wetlands (Conservation and Management)	Central wetlands Regulatory Authority	Rule 9	Not available	Not available	National Green Tribunal	Supreme Court of India

Rules,2010						

*SPCB: State Pollution Control Board ;PCC: Pollution Control Committee(Union Territories) ;CPCB: Central Pollution Control Board; MOEF: Ministry of Environment and Forests.; Govt: Government; NGT Act,2010:National Green Tribunal Act,2010

There is a disparity in the number of appeals available after the new reforms under the Green Tribunal Act; in some cases the number goes up to three. In respect of legislations indicated in **Table-2** the appellate mechanism guarantees adequate remedy in the form of judicial redress against administrative decision-making. But the legislation has not extended the reformation in respect of various sets of Rules shown in Table-3.Consequently administrative decision –making under the said Rules remains without an adequate mechanism for judicial redress and may need further over- hauls to bring uniformity in the system. The new judicial redress mechanism in the shape of appeals to the Green Tribunal and the Supreme Court would not apply in respect of Jammu and Kashmir where the state has its own Forest (Conservation)Act,1997 as there is no express reference to the said Act in the Green Tribunal Act,2010.The provisions relating to appeals do not refer to employment of ADR techniques which is considered as one of the essential building blocks in some countries(see **Table -1**).

Table -3

Environmental Appellate Mechanism- Unreformed

Legislation	Decision –making Body	Appeal/ Revision Provision		Appellate Body		
		Appeal Rule	**Revision Rule**	**First Appeal**	**2nd Appeal/ Appeal Provision under NGT Act,2010**	**3rd Appeal under NGT Act*,2010 ,s.22 on any ground/s specified in s.100 C.PC,1908**
Hazardous Wastes (Management and Handling) Rules, 1989.	SPCB/PCC/CPCB*	Rule 12	Not available	State Govt. /Union Territory/Central MOEF.	Not available	Not available
Manufacture, Storage and Import of Hazardous chemicals Rules of 1989	Prescribed Authorities under Schedule 5	Not available	Not available	Not available	Not available	Not available
Municipal Solid Wastes (Management and Handling) Rules, 2000	Municipal Authority, State Govts*., Union Territories, Central Pollution Control Board and State Pollution Control Board or Committee	Not available	Not available	Not available	Not available	Not available
Ozone Depleting Substances (Regulation & Control) Rules, 2000	Authority specified in Schedule V of the Rules	Rule 13	Not available	Secretary, Central MOEF, or in certain cases, the Dy. Secretary in the same Ministry.	Not available	Not available
Noise Pollution (Regulation & Control) Rules, 2000	Authority prescribed by the Central /State Govt.	Not available	Not available	Not available	Not available	Not available
Bio-Medical Waste (Management & Handling) Rules, 1998	SPCB in States and PCC in Union Territories	Rule 13	Not available	To be notified by the State Govt./Union Territories	Not available	Not available
Batteries (Management and Handling) Rules,2000	Joint Secretary to Central MOEF*	Rule9 (9)	Not available	MOEF or any officer or agency designated by it	Not available	Not available
Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms Genetically Engineered Organisms or Cells,1989	Genetic Engineering Approval Committee/ State Biotechnology Co-ordination Committee	Rule 19	Not available	To such Authority as may be appointed by Central MOEF	Not available	Not available
E-waste (Management and Handling) Rules, 2010	SPCB/CPCB	Rule 23	Not available	Secretary Environment of the State Govt./secretary Central MOEF	Not available	Not available

*SPCB: State Pollution Control Board ;PCC: Pollution Control Committee(Union Territories) ;CPCB: Central Pollution Control Board; MOEF: Ministry of Environment and Forests.; Govt: Government; NGT Act,2010:National Green Tribunal Act,2010

Conclusion

The judiciary in India has made a strong case for special treatment of environmental cases initially by creating special green benches and subsequently by advocating special courts for the purpose. The Law Commission of India has also fallen in line and recommended special courts, though not a tribunal, on grounds, inter alia, of need for special expertise and speedy adjudication of environmental matters. The Legislature too has responded quickly in the matter. In this way the two vital organs of the state have placed the environment above all other concerns. Whatever the reasons for opting for a tribunal rather than a special court, the special forum envisaged under the new legislation is befitting the Indian conditions where traditional courts are heavily over-loaded with work and speedy disposal under the adversarial system has become almost impossible. To overcome the difficulties associated with the existing system the legislation has fixed a time frame of six months for disposal of environmental cases by the Tribunal[49] , and its circuit functioning and mobile character is expected to accelerate its accessibility otherwise associated with traditional courts.

The success of the Tribunal would depend upon the structural improvements needed in accordance with the building blocks suggested by some studies (see Table-1above).Such improvements as would ensure access to third parties, employment of ADR techniques, clarity in what precisely falls within the jurisdiction of the Tribunal so as to avoid conflict on account of inconsistency with civil jurisdiction of courts, can become the subject matter of Rules to be framed under the Green Tribunal Act. However inclusion of some state laws like the J&K Forest (Conservation) Act, 1997 in Schedule1 of the Act needs a notification to be issued by the Central Government under section 34 of the Act. Similarly the different sets of Rules (shown in Table -3) where access to judicial redress against administrative decisions is not presently guaranteed can be

49 The National Green Tribunal Act, s.18(3).

reformed by clubbing their respective appellate mechanism with the appeal provision of the Green Tribunal Act. Where sets of environmental Rules do not have any appeal provision, an appeal to the Green Tribunal need to be facilitated by way of amendments to the respective sets of Rules. Reforms in the scales of punishment under all environmental laws in order to bring uniformity with the scales prescribed under the Green Tribunal Act can redress the possible issues of discrimination in the award of punishment by courts for environmental violations of equal magnitude. Governmental interferences in the functioning of ECTs in some countries have associated the stigma of captive tribunals[50] to such institutions. Although the Act provides a proper selection mechanism for the appointment of members of the Tribunal, judicial and others[51], care needs to be exercised in this behalf lest the institution may be reduced to the status of being another extension of a governmental department[52].It has been suggested that an ideal tribunal with general responsibility for overseeing and enforcing the safeguards provided for the protection of the environment needs optimum discretion in order to determine its procedure so that it is able to bring to bear its specialist experiences of environmental issues in the most effective way[53].such an approach can ensure

50 G Pring and C Pring, Greening Justice, supra note 8 at p.26 ,defining such captive tribunals as in-house environmental agency tribunals with selected political appointees, required to carry out the policies of the administration in power.

51 The National Green Tribunal Act, 2010.Section3(3).

52 Gitanjali Nain Gill, 'A Green Tribunal for India' Oxford Journal of Environmental Law 22:3 (2010), 461-474at474, arguing that there is no guarantee of resolution of wider systemic problems of environmental enforcement in India or of freedom from capture of the Tribunal by narrow sectoral interests.

53 Sir Harry Woolf ,Are the Judiciary Environmentally Myopic? (1992) 4 JEL; also see Environmental Law Foundation's Prof David Hall Memorial

quality environmental dispute resolution and advance the cause of a distinctly green jurisprudence.

Lecture (May 2001) 13 ELM 131 titled 'Environmental Risk: The Responsibilities of Law and Science.

Juvenile Delinquency and Dislocated Parenting: A Sociological Context

Parul Parihar [*]

Lalita Dhar [**]

Abstract

There is a reason to attribute juvenile conduct to conditionalities around the child. As such the problem of dislocated parenting assumes significance. At contemporary times most of the children who confront law enforcing agencies generally belong to families that are not necessarily poor but juvenile conduct is the result of parental faults spreading from alcoholism, violence, neglect, poor nutrition, schooling, displaced education and lack of parental skills. This is particularly true of the children who on account of failure of parental care prefer to run away from homes and finally end up in juvenile courts or observation homes run by the government.

Institutional failure to rehabilitate or treat them aggravates the situation. The subject assumes importance as it has not been so far developed much. Need arises to deal with the neglected areas in a bid to evaluate whether children generally are victims of dislocated parenting are a genuine stuff of the juvenile courts. Furthermore conventional family construct wherein every member of the joint family took interest in the child and its welfare is gradually crumbling and the emergence of nuclear family has genuine nexus with the juvenile behaviour on account of neglect and lack of parental care.

The issues related with delinquent behaviour are many, mostly of psychological and social significance. It is in this background that an attempt is made in this paper to discuss Juvenile Delinquency and Dislocated Parenting in its sociological context.

Key words: Juvenile Delinquency, Dislocated Parenting, Sociological Context, psycho-social conditions.

Introduction

The concern shown by the international community with regard to aggregate rights of the child is comparatively a recent trend. It is rather an after effect of the rethinking that has dawned upon human rights

* M.Phill Sociology (JNU), New Delhi.

** Prof. & Director, The Law School, University of Jammu.

CHAPTER -IV

Air Pollution: Legal Control Mechanism

In India, independent of the statutes creating regulatory agencies at the central, state and union territory level, there are multiple laws, rules and regulations assigning to these agencies powers and functions to prevent and control varieties of pollutants other than air pollution. These rules and regulations at times deal with the problem of air pollution as well. For instance the rules relating to mines, bio-medical waste and municipal solid waste contain provisions directly related to the prevention and control of air pollution from such sources. Such types of rules and regulations continue to flow from the central MOEF which resorts to the provisions of the Environment Act, 1986 to legislate in new areas of pollution. Though the Air Act, 1981 contains an exhaustive regulatory mechanism for air pollution control, here an attempt is made to throw light on all aspects of the air pollution control law derivable from multiple recent legislations operative in this behalf in India.

(1) Legal Machinery:

(a) Central Pollution Control Board (CPCB)

To prevent and control the menace of air pollution the Air Act, 1981 establishes two tier machinery, one at the Central level and one each at the state level. The Act adopts an integrated approach to tackle the pollution problem. The Central Board for the prevention and control of water pollution constituted under section 3 of the water Act, 1974 is to exercise the powers and perform the functions of the Central Board for prevention and control of air pollution under the Air Act, 1981[1] In situations where the Central Government supersedes the CPCB constituted under the Water Act, 1974 and confers powers of CPCB under the said Act upon any person or persons, such person/ persons shall during the period of super session exercise powers under the Air Act as well[2]. Likewise in states where Boards for the prevention and control of water pollution existed and were established prior to 1981, they are entrusted with the powers and

1. The Air Act, 1981, section 3
2. Id., section 4B

functions of Air Pollution Control Boards as envisaged under the Act[3]. However where no such Boards, existed, the Air Act, 1981 mandates the states to establish Boards for the prevention and control of air pollution as contemplated under the Act[4]. In relation to a Union Territory, the Central Board constituted under section 3 of the Water Act, 1974 is to exercise the powers and perform the functions of a state board under the Air Act, 1981 for that union territory[5]. The CPCB is empowered to delegate all or any of its powers and functions in respect of a union territory to such person or body of persons as the Central Government may specify[6]. The CPCB has delegated these powers under the Act to the local administration of seven union territories/ type 'C' states up to 1992[7].

To maintain the federal supremacy the legislation confers exclusive arbitral powers upon the Central Government to decide whether a direction given by a state board is inconsistent with a direction given by the CPCB[8]. It is being argued that although it is implied that after the decision of the Central Government, the relevant direction of the state Government would be cancelled or modified to bring it in conformity with the CPCB direction, it is desirable that this implication should be brought out explicitly in section 18 (1) proviso in a suitable manner and without prejudice to any thing done previously under the state direction[9]. The CPCB is bound to follow the written direction of the Central Government; the SPCBs are however bound to follow the directions given in writing by the CPCB and the respective state governments[10]. Where the Central Government opines that any SPCB has defaulted in complying with any direction of CPCB giving rise to a grave emergency and making it expedient in the public interest to divest such a state board from any of its functions, the Central Government may by order direct the CPCB to perform any of the functions of the state board in relation to such area, for such period and for such purpose as it may specify in its order[11]. The CPCB is

---

3. Id., section 4
4. Id., section 5 (1)
5. Id., section 6
6. Id., Proviso
7. Central Pollution Control Board (hereinafter CPCB), Annual Report, 1993-94 p. 95 and CPCB, Annual Report 1999-2000 p.2
8. The Air Act, 1981 section 18 (2) (b) Proviso
9. See Bakshi, P.M., "The Air (Prevention and Control of Pollution) Act, 1981", (ILI 1983 ed.) pp 18-19 providing a suitable re-draft of the proviso
10. Id., Section 18 (1) (a) and (b)
11. Id., Section 19 (2)

empowered to recover the expenses incurred by it with reasonable rate of interest in only those situations in which the state board is empowered to recover such expenses from the person or persons concerned[12]. The Act however does not provide an answer for the situations where CPCB itself has defaulted in complying with the directions given to it in consequence of the default initially committed by the State Board in complying with the same[13]. Likewise the Act does not contemplate to provide for situations, where CPCB commits defaults in complying with the instructions in writing of the Central Government or a State Board Commits such a default in complying with the instruction given to it by the State Government, resulting in emergencies and making it expedient to move in the direction in public interest.

The CPCB has a two tier administrative structure to carry out its functions under law. At the first tier, the Board is constituted by the Central Government by nominating two executive members, the chairman and the member secretary, and fifteen other members both official and non-official or honorary. Among the fifteen members, five officers are to be nominated by the Central Government to represent that Government, five members of the State Boards to be nominated by the Central Government, of whom not exceeding two shall be members of the local authorities functioning within states[14]. Three non-official members are to represent the interests of agriculture, fisheries, industry or trade or any other interest and two persons are to represent the companies or corporations owned, managed or controlled by the Central Government[15]. A full time chairman and member secretary are to be appointed solely for their expertise and special knowledge in respect of environmental matters[16]. The Boards is a legal corporate entity with perpetual succession and a common seal, with power to acquire, hold and dispose of property and to contract[17]. The CPCB is to meet at least once in every three months and

---

12. Id., section 18 (3); see also section 18 (4) providing that where the order precludes the State Board from exercising specified function in respect of a particular area the State Board would not be precluded from exercising its functions in any other area in the state or any of its other functions in the specified area.
13. See Chaturvedi, C.B., et. al., Law on Protection of Environment and Prevention of Pollution (1993), the Law Book Co. (P) Ltd. pp. 184-85.
14. The Water Act, 1974, section 3(2) (b) and (c) read with section 4(2)(c).
15. Id., section 3(2) (d) and (e) as substituted by Act 44 of 1978, section 3.
16. Id., section 3 (2) (a) and (f) as substituted by Act 53 of 1988, section 2.
17. Id., section 3 (3).

the chairman is empowered to convene urgent meeting at any time to transact any business of an urgent nature[18]. The members of the Board other than the member secretary are to hold office for a term of three years and are eligible for re-nomination[19]. Amongst a set of disqualifications the noteworthy are those that prohibit members to directly or indirectly have any interest or share in any firm or company carrying on the business of manufacture, sale or hire purchase of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents and the one that prohibits members to abuse the office or act as a director or a secretary, manager or other salaried officer or employee of any firm or company having any contract with the Board or with the Central Government[20].

At the second tier, the day to day activities of the Board are carried out by the appointed regular staff (technical and administrative) of the Board under the guidance of the chairman and the member secretary[21]. There is no representation to voluntary agencies or NGO's in the Board and environmental activists may or may not find representation. The constitution of the Board is however such that the problems of the states can be articulated through representatives of SPCBs. Such a representation of states can also help in proper coordination of policies. CPCB has also seven zonal offices covering the entire country which helps it to monitor and control the functioning of SPCBs[22]. Under the Air Act 1981 the CPCB is directly entrusted with the main function of improving the quality of air and preventing, controlling and abating air pollution in India[23]. To achieve this objective it may advise the Central Government on matters

18 Id., section 8.
19 Id., section 5 (1) and (7).
20 Id., section 6 (1) (c), (f) and (g).
21 As on 31-3-2000 the CPCB had 525 technical and administrative posts with 373 filled and 152 vacant; see CPCB Annual Report 1999-2000 pp. 170-71.
22 The Zonal office for North Zone at Chandigarh covers J & K, Haryana, H.P., Punjab and Chandigarh, the Zonal office for Central Zone covers the states of M.P., Rajasthan and U.P., the Zonal office for East Zone at Kanpur covers Bihar, Orissa, Sikkim, West Bengal, Andaman and Nicobar Islands; The Zonal office at Shillong for North East Zone covers Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura; The Bangalore (South Zone) office covers Andhra Pradesh, Goa, Karnataka, Kerala, Tamil Nadu, Pondicherry and Lakshadweep and West Zone (Vadodara office) covers Gujarat, Maharashtra, Daman, Diu and Dadra and Nagar Haveli; see CPCB, Annual Report 1990-91, p.61.
23 The Air Act, 1981, section 16(1).

concerning the improvement of air quality and prevention and control of air pollution, plan and cause to be executed a nationwide programme in this behalf, co-ordinate activities of state boards, plan and organize training of persons engaged in controlling air pollution, lay down standards for the air quality, provide technical assistance and guidance and make financial contributions to SPCBs, carry out and sponsor investigations and research relating to air pollution problems and its abatement, disseminate information and collect, compile and publish technical and statistical data relating to air pollution, prepare manuals, codes or guides, prepare annual reports giving full account of its yearly activities and organize comprehensive mass media programmes of air pollution control[25]. The Board is empowered to establish or recognize laboratories for an efficient discharge of its functions[26]. It has the power not only to appoint committees but also to delegate to any of such committees any of its functions, generally or specially[27]. The Act confers wide powers upon the Board to do or perform such other acts or things which it considers necessary for a proper discharge of its functions and achievement of the legislative purpose of the Act[28]. To elicit competent opinion, and advice and involve expert assistance on air pollution matters the Board can associate any person with itself with a right of participation to such a person in the deliberations of the Board[29].

The CPCB has launched a comprehensive air quality monitoring network through out India. It started with a net work of 28 monitoring stations in 1984 covering 7 cities and this number reached to 290 stations in 1993-94 covering 92 important cities and towns of the country[30]. Monitoring air quality and identifying locations in the country with highest concentration of air pollutants is a regular feature of the Board[31]. Research and development works related to environmental monitoring, pollution assessment and

---

25. Id., section 16(2).
26. Id., section 16 (7); under Notification No. 128, dated [illegible] the Central Government has conferred powers upon the Board to recognize laboratories and analysts under sections 12 and 13 of the Environment Act, 1986.
27. Id., section 11 and 16(4)(c).
28. Id., section 16(4)(b).
29. Id., section 12.
30. CPCB Annual Report, [illegible], pp.[illegible]
31. Id. at pp. [illegible]

control, standardization of analytical techniques, analytical quality control, automatic monitoring of air and meteorological studies have been undertaken and accomplished[71]. Likewise to carry out the mandate of the Act, training in various aspects of air pollution prevention, abatement and control to the identified groups is not confined merely to PCB officers but is imparted to operators of local bodies, industrial and municipal waste treatment plants[72].

(b) State Pollution Control Boards (SPCBs)

The Air Act, 1981 provides for separate Pollution Control Boards for the states in India[73] with their composition identical to the CPCB. While constituting State Boards the states are mandated to ensure that not less than two of the members are persons having special knowledge or practical experience in respect of matters relating to the improvement of the quality of air or prevention and control of its pollution[74]. Although there are a number of such Boards throughout India with different geographical, political, social and economic conditions, it is not unfair to view the Boards together as a type of legal institution. The Boards, representing a common reaction to the menace of air on the state level, operate in varying degrees against the background of the concept of economic progress. The State Governments have been conferred with the paramount power of guarding the functioning of State Boards in tune with the Act[75] and in case of default and circumstances necessitating super-cession in the public interest, a State Government may, after a reasonable hearing to Board, supersede it by a notification in the official gazette for a period not exceeding six months[76]. After the expiry of the period of super-cession, the period may again be extended for further six months or the State Government may reconstitute the Board by fresh nomination or appointment as the case may be[77]. Unlike the Water Act providing for constitution of Joint Boards by agreement between or among two or more contiguous states or a state/s and one or more union territories to tackle inter-state water pollution matters[78], the Air Act has no provision for the constitution of

71. Id., at pp. 48-56.
72. Id., at pp. 57-58.
73. Id., section 5(1).
74. Id., section 5(2)(f), Proviso.
75. Id., section 47(1).
76. Id., section 47(1)(b).
77. Id., section 47(3).
78. The Water Act, Sections 13, 14 and 15.

such Joint Boards which could otherwise ensure a joint and a coordinative effort to deal with inter-state air pollution matters. Although there is nothing in the Water Act preventing such Boards to take an integrated view of all environmental matters once such Boards are constituted, a separate mechanism within the Air Act, 1981 to constitute such Boards may become a felt necessity once inter- state air pollution problems assume graver proportionality.

The SPCB's are under a dual control of the respective State Governments and the CPCB[39]. Their chairmen and member secretaries are nominated by the respective State Governments and can also be removed by them[40]. The Boards are answerable to CPCB and through it to the Ministry of Environment and Forests, Government of India[41]. Without any prejudice to the performance of their functions under the Water Act, the SPCB's are to plan comprehensive programmes as well as advise their respective State Governments on matters concerning the prevention, control and abatement of air pollution, collect and disseminate information relating to air pollution, collaborate with CPCB in organizing training programmes for persons engaged in air pollution prevention activity and organize mass media programmes in this behalf[42]. The Boards are to inspect the air pollution control areas, industrial plants and manufacturing processes to assess the air quality and give necessary direction for the prevention, control or abatement of air pollution[43]. They can lay down stringent standards in consultation with CPCB in respect of industrial, automobile or any other emissions but have no power to do so in respect of emissions from a ship or an aircraft[44]. The Boards are to advise the State Governments with respect to the suitability of any premises or location for carrying on any industry likely to cause air pollution[45]. New functions may either be prescribed or entrusted to them by the CPCB or the respective State Governments[46]. The Boards have a general and incidental power to do such other things or acts as are in their opinion necessary for a

39 The Air Act, 1981, section 18
40 Id., section 5(2)(a) and (f)
41 Id., section 18
42 Id., section 17(1)(a) to (d)
43 Id., section 17(1)(e) and (f)
44 Id., section 17(1)(g)
45 Id., section 17(1)(h)
46 Id., section 17(1)(i)

proper discharge of their functions and to carry out the purposes of the Air Act, 1981[77]. Each SPCB is to have its own fund and all sums paid by Central Government or received, by way of contributions from State Government, fees, gifts, donations, benefactions or otherwise are credited towards the said fund. A state board may also borrow money from any source by way of loans or issue of bonds, debentures or such other instruments as it may deem proper for the discharge of all or any of its functions provided the same is done with the consent or in accordance with the terms of any general or special authority given to a board by the Central Government or as the case may be, the State Government.

2. Air Pollution: Prevention, Control and Abatement Techniques

(a) Standards

Air quality standards are the legal limits placed on levels of air pollutants in the ambient air during a given period of time[78]. These standards, as such, characterize the allowable level of a pollutant or a class of pollutants in the atmosphere and thus define the amount of exposure permitted to the population and /or to ecological systems. The standards are expressions of public policy and requirements for action. They are not solely based on air quality criteria but are also based on a broad range of economic, social, technical and political considerations[79]. Being dependent on exposure conditions, the socio- economic situation and the importance of other health related problems, air quality standards have evolved differently in different countries.

The legislative approach for the regulatory effort to control air pollution is contained in the definition of 'air pollutant' which is defined 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'[80]. A number of perplexing questions confront this initial approach e.g., should air pollution be considered as any human alteration of the natural atmosphere? What is the natural atmosphere and what are the impurities worthy of

---

77 Id., section 17(1)(j).

78 Ambient air quality standards are permissible exposures of all living and non-living things for 24 hours per day, 7 days per week and are distinct from threshold limit values (TLV) for work room atmosphere which are permissible levels of exposure for healthy adult worker for eight hours per day, five days per week-See Rao, M.N. and Rao, H.V.N., 'Air Pollution', (1989 Tata McGraw-Hill Pub. Co. Ltd.) 4th Reprint 1993, p.256.

79 Id., p.258.

80 The Air Act, 1981, section 2(a).

control? Can the substances that are introduced into the air by natural forces such as volcanoes and high winds be ignored? Should air pollution be defined identically in every state or must there be local or regional designations of unacceptable air? Is air pollution an immutable, unchanging condition or is the term to be redefined over a period of time[81]? Without adequately answering these questions the Air Act,1981 however establishes the concept of the National Ambient Air Quality Standards (NAAQS) as a central idea and organizing principle of the legislative scheme of air pollution control and sets the achievement of the NAAQS as the ultimate regulatory goal and measure of pragmatic success. The Indian Air Quality Standards are much higher than the World Health Organization's guidelines and expose the public to serious health risks[82]. The WHO has applied guidelines for 1-hour, 8-hour and12-hour averages, in India only annual mean and 24-hour average standards have been prescribed, except for carbon monoxide (co), for which 8-hour and 1-hour standards have been notified. Separate standards have been notified for industrial, residential and sensitive areas[83]. This classification does not explain how the standards can satisfy the primary objective of protecting public health as it allows more lax limit for industrial areas. As a result of this classification, separate standards operate in Indian cities whereas WHO guidelines are common for all land-use areas. Medical experts are of the opinions that as standards are set for individual pollutants; they fail to show the combined effect, all pollutants together can have an aggregate effect on health that is greater than the individual effect[84].

The primary object of the ambient air quality standards is to provide a basis for protecting public health from adverse effect of air pollution and for eliminating or reducing to a minimum, those contaminants of air that are known or likely to be hazardous to human health and well being[85]. Ideally, air quality standards should represent concentrations of chemical compounds in air that would not pose any health hazard to the human population. However, the realistic assessment of human health hazards necessitates a distinction between absolute safety and acceptable risk. Achieving

---

81 See Schoenbaum, Thomas J., and Rosenberg, Ronald H., "Environmental Policy Law, Problems, Cases and Readings" (Westbury, New York The Foundation Press, Inc.) 1991 2nd ed. at p.305.

82 See Agarwal, Anil et. al, "The State of India's Environment, the Citizens' Fifth Report", Centre for Science and Environment,1999 p170.

83 Id.

84 Id.

85 See CPCB Newsletter, 'Parivesh' Vol. 2, June, 1995 No.1 at p9.

absolute safety needs a detailed knowledge of dose-response relationship in individuals in relation to all sources of exposure, the types of toxic effect elicited by specific pollutants or their mixtures and existing health status of human population. However, such comprehensive and conclusive data on environmental contaminants are not always available, for all types of pollutants[76]. Very often the relevant data are scarce and the quantitative relationship uncertain. Setting a realistic ambient standard e.g. for lead is impossible in view of information deficiencies when all the uncertainties associated with route of exposure (inhalation, ingestion, absorption),level of exposure (terrain, meteorology, urbanization), and personal factors (age, race, personal susceptibility) are combined, the choice of a single numerical ambient standard presents a challenge of enormous proportions[77]. Scientific judgment and consensus therefore play an important role and the Air Act, 1981 also reflects national health protective judgments with a precautionary approach of an adequate margin of safety.

Ambient air is described as that portion of the atmosphere, external to buildings, to which the general public has access[78]. National primary ambient air quality standards define the levels of air quality which are judged as necessary, with an adequate margin of safety, to protect the public health whereas the national secondary ambient air quality standards define the levels of air quality which are judged as necessary to protect the public welfare from any known or anticipated adverse effects of a pollutant[79]. CPCB after consulting experts in the field has formulated the ambient air quality standards for most commonly found air pollutants (see **Table 4.1**) which have also been notified[80] and adopted as contained new in Schedule VII appended to the Environment Rules, 1986. As is evident from Table 4.1 different standards have been laid down for industrial, residential and sensitive areas to protect human health and the national resources from the effects of air pollution.

---

76 Id.

77 See in this behalf the study by National Academy of Sciences (U.S.A.), "Lead in the Human Environment", 114-115 (1980). See also Anderson, Frederick R., "Environmental Protection-Law and Policy" 1984 (Little Brown and Company, Boston, Toronto) p.161, arguing that lead reaches human body through a variety of products, production processes and environmental media. The most common means of exposure is by ingestion of food, water, dust and paint flakes not by inhalation. "With lead's ubiquity in the human environment, does it make sense to give extensive attention to airborne lead?"

78 See the U.S. Clean Air Act, § [illegible] 42 U.S.C. § [illegible]

79 Id., § [illegible] (Clause (2)). See also Schedule VII to the Environment (Protection) Rules, 1986 as inserted by G.S.R. [illegible], dated 2nd April, 1998 defining NAAQS as the levels of air quality necessary with an adequate margin of safety, to protect the public health, vegetation and property.

80 See supra note 52 at pp. 9 and 10 and GSR [illegible], dated 2nd April 1998.

Table: 4.1 National Ambient Air Quality Standards*

Pollutant	Time weighted Average	Concentration in Ambient Air			
		Industrial Area	Residential, Rural and Other area	Sensitive Area	Method of measurement
(1)	(2)	(3)	(4)	(5)	(6)
Sulphur Dioxide (SO2)	Annual Average*	80 µg/m³	60 µg/m³	15 µg/m³	_Improved West and Gaeke method _Ultraviolet fluorescence
	24 hours**	120 µg/m³	80 µg/m³	30 µg/m³	
Oxide of Nitrogen as NO2	Annual Average*	80 µg/m³	60 µg/m³	15 µg/m³	_Jacob & Hochheiser modified (Na-Arsenite) method _Gas Phase Chemiluminescence
	24 hours**	120 µg/m³	80 µg/m³	30 µg/m³	
Suspended Particulate Matter (SPM)	Annual Average*	360 µg/m³	140 µg/m³	70 µg/m³	_High Volume Sampling
	24 hours**	500 µg/m³	200 µg/m³	100 µg/m³	_Average flow rate not less than 1.1 m³/minute
Respirable Particulate Matter (size Less than 10 µm) RPM	Annual Average*	120 µg/m³	60 µg/m³	50 µg/m³	_Respirable particulate matter Sampler
	24 hours**	150 µg/m³	100 µg/m³	75 µg/m³	
Lead (Pb)	Annual Average*	1.0 µg/m³	0.75 µg/m³	0.50 µg/m³	_AAS method after sampling using EPM 2000 or equivalent filter Paper
	24 hours**	1.5 µg/m³	1.00 µg/m³	0.75 µg/m³	
Carbon Monoxide	8 hours**	5.0 mg/m³	2.0 mg/m³	1.0 mg/m³	_Non dispersive infrared spectroscopy
	1 hour	10.0 mg/m³	4.00 mg/m³	2.0 mg/m³	

* Source: **Schedule VII [Rule 3(3)] to the *Environment (Protection) Rules*, 1986 as inserted by G.S.R.176 (E), dated 2 April 1994.**

Like the U.S. Clean Air Act[61], the Indian Air Act, 1981 as well as the Environment Act 1986 provide for prescribing of centrally set uniform ambient air quality standards[62]. Since these legislations envisage a policy wherein each state has the primary responsibility for assuring the air quality within respective state jurisdictions, the statutes both in America as well as in India permit states to adopt more stringent emission

61 See supra note [illegible], § 7409(a).
62 See the Air Act, 1981, section 16 (2) (h); The Environment Act, 1986, section 3(2)(iv) and section 6(2)(a).

standards within their respective geographic areas[63]. The British legislation provides for locally set and variable (i.e. non-uniform) emission standards set by reference to local environmental quality[64] but the rest of the European countries have centrally set uniform emission standards[65].

The locally set and variable emission standards enable more sensitive areas to be protected more strictly or polluters who are seen as more useful to the community to be treated more leniently[66]. A great deal of discretion is granted to decision makers in all cases. This system is favoured also on the ground that since standards can be varied to take account of local circumstances, the mechanism is economically efficient. For example, greater pollutant loads can be permitted in remote, unpopulated areas or where self cleansing properties of the local environment are greater[67]. Centrally set uniform emission standards are easily imposed, easily implemented and monitored. Such standards are fair between polluters because all are treated the same and they avoid difficult problems about allocating right to pollute amongst different polluters[68]. They may be relatively cheap for the regulator to operate because they involve less administrative discretion than variable standards. However a certain ambient level may have much higher costs attached to its attainment and/or smaller benefits in some locations than in others[69]. The principle of uniformity does not allow local conditions to be taken into account because there is no flexibility.

---

63. 42 U.S.C. § 7410(2) (1994). See also the Air Act, 1981, Section 17(1)(g) and the Environment (Protection) Rules, 1986, Rule 3(2) (hereinafter the Environment Rules, 1986).
64. Ball and Bell, "Environmental Law" 2nd ed. (1994), First Indian Reprint (Blackstone Press Ltd.) p.83, as 1989 mandatory air quality standards were introduced under the Air Quality Standards Regulations 1989 (S.I. 1989 No. 317), these regulations impose an obligation upon the Secretary of State to ensure that levels of SO2, NO2 lead and smoke do not rise above EC limits.
65. EC directives currently specify limit values in the atmosphere for SO2 and suspended particulates (Directive 80/779/EEC) lead (Directive 82/884/EEC), NO2 (Directive 85/203/EEC) and ozone (directive 92/72/EEC). See also Lowson, John D. "Environmental Law", (Pearson Professional Ltd Great Britain, 1995) p.229.
66. Supra note 64 at p.83.
67. Id.
68. Id.
69. Krier, James E., "The [illegible] National Air Quality Standards: Macro and Micro Mistakes", 22 U.C.L.A.L.REV. 323, 327 (1974) arguing that the standard that minimizes total costs for a region in one area of a State is hardly likely to do so for all the regions of other States as well. To require adherence to the same stringent standard everywhere will in many [illegible] result in the imposition of control costs which are much larger than the pollution costs avoided.

The law in India adopts a flexible style of standard setting. Being a self contained statute the Air Act, 1981 empowers the state boards to independently notify standards under section 17(g). CPCB is empowered to lay down air quality standards and being a central co-coordinating body it has to formulate uniform air quality standards under section 16 (2) (h) of the Air Act , 1981. Again the Environment Act, 1986 also empowers the Central Government to lay down emission standards. This results in an overlap. The emission standards have been formulated and are found in the Schedules appended to the Environment Rule 1986. Under section 24 of the Environment Act, rules or orders made under the Act have an overriding effect over the rules and orders made under any other legislation. The standards framed under the Environment Rules, 1986 therefore take precedence and the SPCBs in practice generally re-notify the said standards under the Air Act, 1981[70]. The rules framed under the Environment Act, 1986 prescribe emission norms for specific industries[71] and general emission standards which are concentration based, 'equipment based' and 'load mass based'[72]. Broadly the standards are of three types: source standards which require the polluter to restrict at source the emission; product standards, which fix the pollution norms for new manufactured products such as cars, and ambient standards set maximum pollutant load in the air, and guide regulators to achieve healthy living on the basis of environmental quality that ought to be maintained. Every industrial unit must comply with the norms within one year of their publication or such shorter period that the PCB may order[73]. In respect of any specific industry the Central Government may extend the lead time for compliance beyond one year[74]. In cases where the standards were prescribed prior to 16 January 1991 the industry

70 See Diwan, Shyam et.al, 'Environmental Law and Policy in India', (2001 ed., Oxford University Press) at p. 245. Some Boards have however prescribed norms varying from the EPA standards which creates confusion and has led commentators to ask for a repeal of Section 17(g) of Air Act, 1981 and an annulment of such state standards by respective Boards, as it is opined that EPA standards will prevail. The Judicial opinion in this behalf is awaited as yet but at least one leading case affecting several hundred units (i.e. Pravinbhai J. Patel v. State of Gujarat 1995 GUJ L.R. 1210) was decided by the Gujarat High court without regard to the EPA standards and on the basis of the State Board norms see id., at p 73.

71 The Environment Rules, 1986, Schedule I lays down industry specific standards for effluent discharge and emissions in respect of 87 designated industries. The mass based standards enable to set specific limits to encourage minimization of waste, promote recycling and reuse, and more specifically conservation of resources.

72 Id., Part D, Schedule VI.

73 Id., Rule 3 (3) and Rule 3 (4).

74 Id., Rule 3 (4).

was required to achieve compliance by the year end[75]. In cases where the polluter is not covered by Schedule I, the unit must comply with the general standards for discharge of environmental pollutants prescribed in Schedule VI[76]. The Environment (Protection) Amendment Rules, 2000 have prescribed air quality standards for coal mines[77]. Two types of standards have been prescribed, for coal mines as where existing prior to the commencement of the Amendment Rules and those as are to commence operation after the publication of the new rules. Stricter standards have been prescribed in Table-I of the rules for the new coal mines in comparison to existing coal fields/ mines for which Table-II and Table- III prescribe the air quality standards. Similarly for ensuring safe treatment and disposal of bio-medical wastes with minimum air pollution, operating standards, emission standards and standards for waste autoclaving have been prescribed under Schedule V of the Bio-medical Waste (Management and Handling) Rules, 1998. The emission standards compliment ambient standards and are limitations on emission that all members of a category of source can discharge into the atmosphere.

While enforcing the standards the SPCBs are to adhere to statutory annexures of Schedule VI which lay down important guidelines for the state Boards. The Boards are to ensure the use of the best available technology, recycling of waste, reuse of other materials and the implementation of clean technologies by industry to increase fuel efficiency. While permitting discharge of emission the assimilative capacity of the receiving bodies is to be kept in view so that the intended use of receiving body is not affected and all efforts should be made to remove colour and unpleasant odour as far as practicable[78]. Annexure II to the Schedule specifies some of the air polluting units which should adopt pollution control measures like dust containment- cum suppression system for the equipment, construction of wind breaking walls, metalled roads within the premises, regular cleaning and wetting of the ground within the premises and growing of green belt along the periphery[79].

---

75. Id., Rule 3 (3).
76. Id., Rule 3 (3A).
77. See G.S.R. 742 (E), MOEF, dated 25th September, 2000.
78. The Environment Rules, 1986, Schedule VI, Annexure I, Guidelines for the purposes of parts A, B and C of the Schedule.
79. Id., the guidelines in Annexure II are applicable to cement plants, stone crushing units, units with calcination process e.g., aluminium plants, lime kilns of capacity more than 5t/day, coal [illegible] units, [illegible] Grate and Spreader Stoker [illegible] boilers, [illegible] units, small boilers of capacity up to 5 tonnes/hour, integrated iron and steel, [illegible] plants.

The emission standards compliment ambient standards and are limitations on emissions that all members of a category of source can discharge into the atmosphere. In India the Bureau of Indian Standards attended to the pollution problem as early as1960 and developed nearly 250 standards[illegible]. With rapid industrialization the industry specific standards were developed by mid 1970's with the available technology, the cost of available technology and the assimilating capacity of the environment as the main considerations for evolving these standards. Being precise and representative the standards are adopted by the Government of India as "minimum national standards' (MINAS) to abate pollution at the national level[illegible]. While the Bureau of Indian standards still looks after the technical aspects of standards, the actual responsibility of fixing the standards has been taken over by the MOEF, Government of India. The Government of India has laid down industry-wise standards for various industries in respect of air, noise and vehicular emissions[illegible]. Adoption and revision of standards is, however, a dynamic process. Due to the inclusion of new industrial types under the purview of pollution abatement and up-gradation of available technology, the standards are in principle revised once in five years with industries and their associations exercising considerable influence over the process of revision[illegible]. The standards are not only a regulatory tool but also constitute a mechanism to promote technological up- gradation to abate pollution. There is a strong shift now from 'end' of pipe or clean up technologies to clean technologies[illegible]

---

commissioned after 1-1-1982, coke ovens, lead glass units and thermal power plants commissioned prior to 1-1-1982. The thermal power plants have additionally been mandated to ensure 20% (old plants) and 30% (new plants) fly ash utilization under the 1999 fly ash notification of MOEF. See [illegible], "The Fly ash Burden" Down to Earth, July 15, 2002 at p.23

[illegible] See the Indian Institute of Environment and Ecology (IIEE) (1991), 'The Indian Directory of Environment', New Delhi p.49

[illegible] Associated Chamber of Commerce and Industry of India (ASSOCHAM) (1988), 'Environmental Legislation and Industrial Development', Background Paper, New Delhi at p.21

[illegible] For the methodology adopted for development of standards see CPCB, Annual Report 1994, at pp. 64-65. See also Appendix IX-VII to the Report at pp. 103-105. MINAS were developed for nearly 70 categories of industries up to the year 1994. See also Pollution Control Law Series: PCL 1/1995-96, Standards for Liquid Effluents, Gaseous Emissions, Automobile Exhaust, Noise and Ambient Air Quality, CPCB June 1995.

[illegible] Federation of Indian Chambers of Commerce and Industry (FICCI) (1989), New Delhi, pp.69-71. See also ASSOCHAM (1991), pp.20-21

[illegible] See Kuik O.J. et al. 'Pollution Control in the South and North: A comparative Assessment of Environmental Policy Approaches in India and the Netherlands (Indo-Dutch Studies on Alternatives in Development (IDEAS)), 1997 (Sage Publication, New Delhi at p.67