CHAPTER - 7

CONCLUSION AND SUGGESTIONS
Conclusion

'By destroying nature, environment, man is committing matricide, having in a way killed Mother Earth. Technological excellence, growth of industries, economical gains have led to depletion of natural resources irreversibly. Indifference to the grave consequences, lack of concern and foresight have contributed in large measures to the alarming position.'

Justice Arijit Pasayat.

Ever since the inception of mankind, man has shared and intimate relation with the environment. It is in the lap of the mother earth that man has taken birth, nourished himself and grown into a strong being, capable of meeting the needs of life. The entire physical, intellectual and spiritual development of man has been actualized in the backdrop of a peaceful and harmonious environment. Its contribution and dedication in the upliftment of humankind is priceless.

However, with the growth of civilized society, man has felt the urge to transform his surroundings to meet his increasing material needs and desires. A transformation was witnessed in the ideology of man - from 'preserver', to 'destroyer'. He exploited the resources of the earth, restructured them to fulfill his demands, created new scientific technologies to smoothen the path of life and hasten the developmental process. But, in his endeavor to conquer the earth and establish his supremacy, unfortunately, he lost sight of the need to protect and conserve the natural resources. The resultant effect was the unprecedented depletion of the ecology posing serious threat to the existence of 'life' on the earth.

Today, pollution and degradation of the environment has become a burning problem. It has invited serious attentions of the entire world. Different countries have come together to chalk out global plans to put an end to the disaster, and thereby safeguard the lives of the present and coming generations.

1. KM Chinnappa and TN Godavarman Thirumalpad v. Union of India and Ors AIR 2003 SC 724.
They have acknowledged that the roots of this problem lie in the developmental process. The fervor for rapid industrialization, urbanization, unscientific use of natural resources, increasing use of chemicals, nuclear tests to establish worldwide pre-eminence etc, have significantly contributed to the deterioration of the fragile environment. It has resulted in concentration of greenhouse gases and carbon dioxide in the atmosphere, depletion of the ozone layer, desertification, deforestation, rising of sea level and change in seasonal cycles. States have, therefore, entered into several conventions and declarations to make a consolidated effort to protect the environment, at the international and national levels.

India, being a party to the global environmental consciousness, has hitherto enacted three anti-pollution legislations, namely, the Water (Prevention and Control of Pollution) Act the Environment (Protection) Act 1986. These Acts have included persons, natural as well as legal, as the potential polluters of the environment, and subject them to criminal liabilities for failing to adhere to the prescribed environmental standards. However, it may be contended that, while the quantum of liability imposed on individuals appears to be appreciable and adequate to curb their activities injurious to the environment, in case of corporations (ie. Legal person) it is not so. The liabilities fixed by law, are grossly inadequate to bring the desired changes. They have failed in their basic task of deterring the big enterprises and transnational corporations, preventing them from causing further harm and restoring the damage caused to the environment.

The environmental laws in India have provided for the establishment of Central and State Pollution Control Boards to, inter alia, prosecute the environmental delinquents (individuals and corporations) and to take preventive steps to check further degradation and deterioration of the water, air, land etc. These Boards are constituted of experts in this field and are expected to carry out their tasks efficiently. But the expectations are far from reality. Very often, these Boards are restrained from discharging their functions due to political interference. Political big shots are often reluctant to prosecute the multinational and domestic corporations form which the country receives huge
taxes and are, therefore, inevitable for the economic development of the nation. They, most of the times, escape liability for flagrant violations of the pollution laws.

Another significant aspect of the above Acts is that, few provisions, not only overlap but also are pregnant with conflicting outcomes. The presence of such conflict poses a difficulty. It hinders the proper functioning of the laws. Moreover, these law prescribe different punishments for similar environmental pollution, and lay down that the benefit of it should go to the accused. This operates as a negative factor as it facilitates the corporations to flee with minor or no penalties. To be precise, the policy of sentencing in anti-pollution legislations is not very clear.

The legislative response to environmental problems has, thus, been inadequate in India. It has failed to restrict or desist corporate bodies from their deleterious activities because of defective sentencing policy for environmental offences. The judicial contribution, however, has been comparatively praiseworthy. It has read the right to 'life' as encompassing the right to a 'wholesome environment'. It has consistently emphasized upon the Constitutional responsibility of man and state towards sustainable environment. To that end, it has formulated diverse principles, ordered the closure of industries, imposed liability on directors of erring corporations, and directed them to pay compensation to the helpless victims of environmental disasters. The Indian judiciary has also called upon the legislators so frame laws providing for the establishment of specialised environmental forum.²

² The Parliament has responded to this call promptly and enacted the National Environment Tribunal Act 1995 and the National Environmental Appellate Authority Act 1997. The former seeks to impose strict liability on the owner of an industrial establishment for damages arising out of environmental accidents and payment of compensation to the victims. To that effect, it has made provisions for the establishment of environmental tribunals. The latter mandates the establishment of environment appellate authority to give speedy remedy to an aggrieved person.
The apex court in *Vellore Citizens Welfare Forum's*\(^3\) case propounded the following principle:

We are....... Of the view that "The Precautionary Principle" and "The Pollutes Pays Principle" are essential features of "Sustainable Development". The "Precautionary Principle" – in the context of the municipal law – mans:

(i) Environmental measures - by the State Government and the statutory authorities - must anticipate, prevent and attack the causes of environmental degradation.

(ii) Where there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

(iii) The “onus of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign'.

An attempt has been make in this study to examine the various problems of environmental pollution and need for protection of human environment, the growth of environmental legislation – both substantive and procedural aspects and implementation of those environmental laws in perspectives of West Bengal. However, the position of environmental laws in other countries and under International law have been referred whatever information available here. This study is based on ethnographic research and in general does not deal with questions of impact (what works?) but rather with questions of process (How does it work?). Thus in our discourses naturally we had to resort to find out how various legislations developed in national and international levels and finally tried to evaluate the various implementation process in perspective of West Bengal. On the basis of this study the following conclusions and suggestions can be made for improvement.

The problem of environmental pollution is now assuming a dangerous proposition throughout the world and global concern is discernible to protect environment. Today is late, tomorrow may be too late. Therefore, an earnest

\(^3\) AIR 1996 SC 2715.
effort to control environmental pollution is necessary to prevent 'crucifixion of humanity'. Law is regarded as a means of controlling human conduct. So first charge on the legal system is to eliminate or control sources of pollution for human survival and the second task is to impose appropriate sanction against polluters.

As pollution is of various types, so legislations are also varied to combat different types of pollutions. However, environmental laws have been classified into three components such as: (i) developmental legislation (Controlling Development); (ii) legislations relating to the disposition and conservation of natural resources; and (iii) environmental protection related legislation. The growth of environmental laws may be divided into two periods – early stage prior to Stockholm Conference, 1972 and present stage of post-Stockholm Conference. In the early state of environmental regulations were mostly enshrined with many other legislations, main object of which is not to protect environment. But after Stockholm Conference many countries including India passed specific legislations to protect our environment. In India after Stockholm Conference of 1972 three major environmental pollution. But in implementing environmental laws besides legal mechanisms other means are necessary such as proper administrative policy and process, public participation, international cooperation.

Growth of Environmental Laws in India in its strict sense gets momentum from U.N. Conference of 1972 at Stockholm and thereafter, Environmental Laws in India prior to independence was scattered in various legislations which may be called environmental-related legal provisions rather than environmental laws. Theoretically though under tort law principle of 'strict liability' developed in Rylands v. Fletcher⁴ was applied in the past, only in the last decade Supreme Court of India applied this principle of liability in modified form⁵. The present legal framework of environmental laws in India has been developed in various stage from water Act, 1974 to National Environment Appellate Authority Act,

⁴ 1868 L.R. 3 H.L. 330.
⁵ M.C. Mehta v. Union of India, AIR 1987 SC 1086
1997 and Procedural Rules also framed thereunder. The Supreme Court of India's wide interpretation of Art 21 of the Constitution widen the scope of application and implementation of environmental laws through PIL. In addition to supreme and subordinate legislations the Environment Deptt. and Central as well as State PCB in India are taking an active role in developing many Guidelines for strengthening a viable legal framework of environmental laws in India.

The Government of India has declared a National Policy statement for Abatement of Pollution on 01.09.1992 and formulated various steps to be taken to protect environment and to implement that policy with a decentralized process. The environment policy as declared by the Government of India has, in fact, attempted to integrate environment and development. The process of prevention of pollution has relied upon public co-operation as far as practicable. The standards of pollution effluents and emission shall be designed as 'mass-based'. The policy envisaged a shift from curative to preventive measures in phased manner. The policy also envisaged a concept of 'environmental audit' for polluting industries. The policy acknowledged the increasing difficulties in enforcement and proposed an integrated approach among the implementing agency, law enforcement and local authorities with a decentralized process. But on the basis of the present state of affairs in the implementation of this policy in perspective of West Bengal it may be said that most of the policy statements have been accepted in the implementation process. Some of such instances are: (a) declaration of procedural rules by the Government whereby it has been made obligatory by rules to process all development projects through the Environment Department and to have an Environmental Impact Assessment; (b) the WBPCB has adopted principle of public co-operation in the implementation process by evolving Public Hearing System in its public grievance cell; (c) the recognition of NGOs to help in the implementation process; (d) identification of polluting industries as red, orange and green, etc. However, the concept of 'environmental audit' could not be implemented yet.
In the procedural aspects both central as well as state Government formulated many subordinate legislations in the form of rules, regulations, notifications and guidelines. The procedural laws reveals that the principle of natural justice has been well accepted in those rules. The procedural rules empowered the public as well as NGOs to file any objection in the establishment of new hazardous industries. The rules framed under the two major Acts mainly the Water Act and Air Act incorporated principle of natural justice as part of administrative process. The National Environment Tribunal Act, 1995 codified the principle of strict liability in respect of all cases where damage is caused while handling hazardous substances.

In West Bengal the agency to implement environmental laws is WBPCB. Besides the basic organization as provided in the Water, Air and Environment Act the Board has developed planning cell, no objection certificate cell, hazardous waste management cell, legal cell, public grievances cell, as well as a technical advisory committee to scrutinize the activities of the scientific aspects in the implementing process. But still now the structural set up is not at par with the recommendation of Beliappa Committee. So there is need and scope of further development of organizational set up of the implementation agency for proper implementation of environmental laws. The WBPCB is efficient but is structural set up and administrative process need change to make it more effective.

The WBPCB has taken active role in monitoring air quality, noise pollution, Ganga Water quality and auto-emission standard. The relevant data as published in the Annual Report of the WBPCB in 1997-98 clearly indicated the need for immediate action to be taken to prevent further deterioration of pollution level. The WBPCB has already developed the technical infrastructure and human resources to control and monitor the pollution problem in the urban areas particularly in the CMDA area. From the information and data it may be said that WBPCB is organizationally good but the man-power is inadequate making the implementation process more and more difficult.
In West Bengal for the purpose of preventing environmental pollution industries have been identified into red, orange and green categories and very carefully issuing consent to operate those industries. The data revealed that on an average 50% of the applicants in the red and orange categories of industries have been granted consent to operate and the rest have been asked to satisfy the preventing measure before issuing consent to operate. Moreover, the WBPCB is making a continuous surveillance and established a Data Bank regarding the management of hazardous substance.

The WBPCB has expanded its area of operation to combat environmental problems of new sector of industries such as (a), Brick Kilns, (b) small and medium hotels and restaurants, (c) automobile service stations, (d) bio-medical waste. Board has also provided technical assistance and guidance to various industries to develop its pollution control mechanism. The Board has also identified two mostly industrial pollution towns in the state, namely, Howrah and Durgapur and constituted working groups to study in detail to monitor the progress and implementation of prescribed environmental standards formulated under different environmental laws.

The ‘Right to life’ guaranteed in the Indian Constitution under Article 21 has been extended in the protection of environment by the Supreme Court and High Courts through PIL under various cases. But the delay in deciding or delivery of judgment still demands new forum of procedural laws for speedy justice, an essential element in matters of environment protection. The number of PIL cases filed in the “Calcutta High Court in the Green Bench” are gradually increasing and creation of separate Bench of environmental cases becomes almost an eye wash without any substantial effect in the delivery of justice. At the initial stage it was effective but now the working of ‘Green Bench’ has very little impact in the problem of environment pollution.

There is a very vital question on the role of Court in the implementation of environmental laws. There is a general criticism that the judges decide cases without much going in the technical questions. But if we study the reported cases it would revel that judges decide cases on legal principles such as whether
the agency acted arbitrarily, or whether there is a violation of natural justice or balance of ecology and development, etc. Some of the emerging legal principles developing by the Courts in India relating to implementation of environmental laws are follows:

(i) It is now a settled law that when an enactment creates an obligation and enforces the performance in a special manner that performance cannot be enforced in any other manner and no benefits can be claimed contrary to the provision of environmental laws, such as Water Act, Air Act or Environment Protection Act, by any person taking wide and beneficial construction of Art. 14, 19 or 21 of the Constitution.

(ii) ‘Specified industry’ under the Water (Prevention and Control of Pollution) Cess Act, 1977 does not include a tourism corporation drawing water for its own consumption and supplying the same to the person coming or staying in its complexes.

(iii) A mere conditional consent order under the Water (Prevention and Control and Control of Pollution) Act, 1974 does not entitle the incumbent to discharge the trade effluents.

(iv) Through there is no comprehensive law relating to noise pollution in India, the court held that under Art. 21 read with Art. 19 (1)(g) of the Constitution a citizen of India cannot be made captive listeners to bear the tremendous sound caused by fire works or microphone.

All the above principles of law which are developing by the courts in India are clearly indicating that the criticism against the Judges as generalists, is not wholly true. The Courts in India, in fact, is activist enough to see that environmental laws are properly implemented in the country. Moreover, where the existing environmental laws are not sufficient or silent courts in India brought Art. 21 (Right to life) as remedial measures. 6

6. The case of Burrabazar Fire Works Dealer's Association and Others v. The Commissioner of Police, Calcutta and Others (AIR 1998 Cal 121) in Chapter IV.
Though there are procedural rules and regulations for implementation of environmental legislations but from the study of its application or implementation process in West Bengal it reveals that implementation is very poor and almost negative in respect of ultimate conviction and punishment. After establishment of WBPCB no suit has yet been completed after full trial punishing any polluter in the lower judiciary.

In the procedural aspects the Courts are trying to be more legalistic, or in other works, it may be said that as regards procedural aspects the courts, particularly the lower judiciary, have accepted 'rule of law' principle rather than 'rule of life' principle. Let us look into some decisions by Courts in the procedural aspects which are more legalistic than realistic.

(i) On the procedural question relating to proceedings under Section 33 of the under Water Act, it was held that proceedings under section 33 of the Act be treated as criminal in nature and once the complaint was dismissed as no body appeared on behalf of the complainant, the complain cannot be restored or reviewed under Order 9 of the CPC.

(ii) As regards question of application of principles of Natural Justice in exercise of power by administrative authorities, held that the agency implementing environmental legislation shall follow the principles of Natural Justice.

(iii) The discretionary power of the Member Secretary of a Board as provided under Section 31A of the Water Act includes to issue any direction, but that direction must be within the jurisdiction or area where the Act has been declared as enforced.

(iv) On the question of 'who can file a complaint' under Section 49 of the Water Act regarding taking cognizance by a criminal court, the Allahabad High Court held that an Assistant Environmental Engineer of a Board or any other officer may file a complaint and sign the complaint as authorized by the Board.
The role of court in interpretation and application of procedural aspects of environmental laws, thus revealed that court is bound to follow the present legal order of Indian Criminal Justice System which is too soft and lengthy procedure leaving the accused ample opportunity to linger the litigation by way of revision, appeal, etc. The accusatorial system of justice is not effective, at least, in environmental litigation and need changes to suit need of the time and society. 7

It is now well recognised that to control environmental pollution there is a vital role of NGOs and the public in the implementation of environmental laws. In West Bengal about 205 NGOs are now working along with the WBPCB in environmental monitoring programme and they are being allowed to play supplementary role in the regulatory system where their commitments and vigilance are cost effective. Towards dissemination of informations to public and NGOs the WBPCB and some NGOs published some reports on state of environment in west Bengal and need for its protection. The WBPCB also started public hearing system and during last five years on an average more than 1000 complaints have been disposed of.

It important to note here that apex court of the country has shown a lenient attitude towards environmental pollution and relied heavily on civil liability in the seventies and eighties of the last century. Probably, the basis reason is that the courts have stressed, more on, developmental process, not wanting to stop the same, in name of preservation of environment, through, it has sufficiently cautioned against the continuous depletion of ecology and environment of country. India has witnessed massive industrial catastrophes, serious problems of groundwater pollution, pollution of river water, air pollution in cities in later part of the eighties of the last century; so, a changed judicial perception is somewhat evident since the beginning of the nineties.8 The Supreme Court of India in numerous cases emphasised that the precautionary

7. Unreported case in the Court of Chief Judicial Magistrate, Hooghly, namely, West Bengal Pollution Control Board v. Kanchan Chemical Works in Chapter V.
8. The same is evident from the trends of judicial decisions in environmental pollution cases.
principle and polluter pays principle are parts of municipal environmental jurisprudence. It has also awarded exemplary damages and quantified the same on the basis of polluter pays principle. In doing so, the Supreme Court, had taken shelter under the provisions of constitutional law and build up a code of environmental compensatory jurisprudence. Imposition of criminal liability for environmental offences has, however, remained restricted to limited number of cases, wherein the courts have either emphasised upon the significance of criminal sanction or ordered a trial to proceed or vitiated orders of magistrates on grounds of non fulfillment of criminal procedural requirements or standards.9

Suggestions

Legal control of environmental pollution is a remedial measure to protect environment. So more emphasis be given to the preventive measure, specially by strict observance of Environment Impact Assessment for new industries and development projects.

The environmental litigations should be dissolved through administrative adjudication and public hearing system as developed by WBPCB as far as practicable as disposal of a case in the ordinary court of law requires lengthy procedure. However, power of judicial review and public Interest Litigation under Articles 32 and 226, of the Indian Constitution shall be continued and given due importance.

Public participation in the implementation of environmental legislation is to be encouraged by giving financial assistance to the voluntary non­governmental agencies. To make ‘public partnership’ more meaningful right to information is required to be extended by the Pollution Boards.

To enforce legal control of environmental pollution meaningful the people are to be educated about causes of pollutions, various legal provisions and their rights and duties. Environmental NGOs and educational institutions may take the duty to educate the people by adopting awareness programmed in various forms.

As there lack of certainly of conviction for violation of environmental laws, so the prescribed punishment should be more deterrent and fine should be unlimited in the line of tortious liability which should prescribe minimum punishment and not the maximum limit as provided in the major environmental laws. There should not be any fixed amount of fine as punishment.

As most of the environmental litigations involve economic development so there should be a time limit within which litigations should be disposed of for which simple and effective procedure be developed by suitable amendment of existing substantive laws as well as new procedural rules and regulations.
The legal provisions of closure of industries manufacturing hazardous substances shall be reconciled with the question of sustainable development and need of the substance in the society.

Within the administrative agency constituted under the various environmental laws more and more administrative adjudications may be adopted to avoid unnecessary delay in court proceedings.

Awareness of the problem of environmental pollution and need for its protection should be created through use of mass media in more effective manner.

A new duty jurisprudence in its broader sense may be developed within environmental laws so that the government agencies and municipalities can be held responsible for breach of duties given to them for implementation of environmental programme as envisaged in the Constitution 74th Amendment Act in Article 243 ZD(3).

For effective and efficient implementation of environmental laws intensive in-service training and orientation course for the agency personnel engaged in the enforcement of law is of utmost necessity.

Continuous protection of human environment requires proper perception, economic strength and more research on legal principles relating to environmental laws.

All the environmental legislations be consolidated in one enactment and the Act itself shall prescribe new procedural aspects for enforcement of the law.

The procedural laws on environment be made in such a way that the court may take experts opinion wherever it thinks fit for speedy as well as proper justice to human society as a whole.

In the light of the discussion outlined in the preceding pages, the author, in addition to the suggestions made at appropriate places, would like to make the following suggestions:

(i) The comprehensive preservation, protection and development of the environment in India may be vested upon three agencies, namely National Environmental Commission, Central & State Pollution
Control Board and Environmental Court. The National Environmental Commission will be responsible for developing the environmental policy, advising Ministry of Environment and Forests about appropriate changes in law, framing rules and regulations under the parent anti-pollution legislations after undertaking continuous research in the area of ecology, environment etc.\footnote{Presently, this function is generally discharged by Ministry of Environment and Forests.} The Central & State Pollution Control Board will act as the monitoring, investigating and enforcing agencies. Special Environment Courts may be set up under the regular judiciary, where in the judges will be assisted by experts. The experts may be chosen and nominated by the National Environmental Commission from throughout the country. At the Central Government level, the Ministry of Environment and Forests will only co-ordinate the three agencies, without interfering in their independence. It will also be responsible for facilitating these agencies in financial and administrative matters.

(ii) The legislature, based on the German Environmental Code,\footnote{German Environmental code is an umbrella legislation which covers almost every aspect of the environment.} should frame one consolidated environmental code, instead of enacting various laws dealing with diverse environmental aspects. It would prevent the overlapping of provisions, environmental policies and eco-management. The code should enumerate the constitution, powers and functions of all the agencies, so, that functional and jurisdictional overlapping can be avoided. In constituting all these agencies, special care should be given on choosing the human resources for these agencies. People from different fields of knowledge, who are directly and indirectly involved with the environment, should be appointed, instead of political and preferential appointment.
(iii) The definition of ‘environment’ in the proposed environmental code should be generic in nature and inclusive in approach. ‘pollution’ in the code should be categorized from the point of its impact over the environment, and it should also categorize the sources of pollution. That would help in formulation of appropriate sanctions for environmental offences. The matter of sentencing for environmental pollution should be entrusted upon the National Environmental Commission which would periodically review the same based on factual situation available throughout the country and suggest changes in law to the government. The regulatory function regarding permission for establishment of the industries should be vested with the Commission on the basis of the report given by the Central and State Pollution Board.

(iv) As environmental pollution is complex in nature, so strait jacket formulation of criminal sanction would not suffice the purpose. As started earlier, the act of pollution may be, because of, individual act, group activities, activities of fictitious entities like corporation, governmental agencies etc. In imposition of sanction, the court should not lose sight of the victim of pollution and the harm which it has caused to nature. The suggested code should provide for appropriate criminal liability on the basis of ‘sentencing policies for environmental law’\(^{12}\), when environmental crimes are committed by companies, with or without knowledge. In other words. Whenever any environmental crime is perpetrated by a company, it is official must be held liable.\(^{13}\) It would have the effect of increasing the responsibility of the management. The code should provide stringent punishments for

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12. For details, see ch 5.

13. The present anti-pollution laws impose on officials, subject to certain exceptions. These may be deleted in the suggested code, but care should be taken that the innocent should not be punished.
industrial corporations violating the environmental policies. The present law prescribe fines, which are meager, compared to the huge profits earned by them. It is necessary to enhance the quantum of fines, so that it has deterrent effect on the large corporate bodies. It is equally necessary that the code should direct the transnational corporations to follow the same standards of safety which they are expected to observe in the host country. Special incentives should be bestowed on corporations which abide by the prescribed environmental regulations. Such benefits may be in the form of tax exemptions etc.

(v) Reversing the harm caused and compensating the victim are not possible by imposing the pre-determined fines under the statute; so, the courts are required to be given liberty regarding the quantification of compensation on set parameters. The code must specify those parameters for the purposes of calculation of compensation to the victims. An environmental assistance fund may be set up for the purpose. It would include the contributions of the Central and state governments, mega-corporations, environmental and the general people of the country. Such a fund would facilitate immediate payment, in case of environmental disasters, to the victims to avoid the long term effects of the trauma. The minimum amount of compensation may be mentioned by the code, which may vary, according to the intensity of the injury suffered by the victims.

(vi) Need for change in policy
It was in early 90s the environmentalists were looked down upon as anti development. The reasons were many for this kind of attitude. Most important of them is lack of total understanding of the fragile balance of nature. Secondly the costs involved in internalizing the costs of pollution prevention. Thirdly lack of required technologies.

14. There is a need to revisit the Public Liability Insurance Act 1991.
However, with increased understanding of science, and technology, now the thought process has changed. It is no more, environment versus development rather it is development and environment. With hidden costs of pollution being realized by industry, this particular stake holder by now are agreeable to the idea of internalization of pollution costs, and with the advent of better technologies, the present policy of government shall be recast. It should be adjusted not towards the controlling pollution but should steer us towards development wherein the environmental concerns are very much part in the process of development. The idea of environmental protection should not be viewed anymore as negative costs of development. Unless these changes are brought in to our policy, the present ills in the pollution control will remain. Since the core of present policy – the command-control system is in itself is source of many a problems. Hence the change in policy is most needed in the present situation.

(vii) Implementation

The foremost change that should be brought into the existing system is the thought process of implementational agencies. The mind set should be changed from that of policing. For instance, there should more interaction between the industries and the Board not only at the time of consent giving and periodic inspection but also at regular interval. Board should take the initiative to keep the industries in touch with latest developments so as to facilitate further improvements in pollution control measures.

Structure of Regulatory Agencies: The structure of regulatory agencies needs to be strengthened along several dimensions. Since, present set of setting standards is non-participative, non consensual, and non-transparent, there is a need to have a multiple perspective approach that will involves all the affected parties and interest groups in designing and deciding on standards.
Organisational Structure: The second strategy to improve implementations is through strengthening the organizational structure at both central and state levels. Additional resources (financial, technical, and human) need to be mobilized to improve the state pollution control boards capacity in policy analysis. An important element in capacity building is upgrading the skills of field staff of the pollution control boards, since these individuals, must simultaneously negotiate with firms to secure compliance while performing a police function. In addition more authority should be provide to the Boards to allow them to negotiate with violating facilities on pollution control plans. This needs to be combined with an effective mechanism of public accountability, to avoid possible conclusion between the regulators and the regulated.

The manpower of the Pollution Control Board also needs the revamping. So far, in the recruiting, the Board has preferred the technical people. Function of the Board is not to crate the treatment plants, but to grant consent for operation. And through the research and development, to suggest the better standards which could be applied. However, given technological skills the Boards are nowhere near the capacity to carry out the latter function that is to carry out the research and development. Hence most of the research projects were given out for various research organizations and Universities and as it happens with all when the outside agency is involved, the results generally do not match the requirements.

The legal manpower is the least represented in the implementation agencies. Just for namesake, we can fine few legal officers in the Board. But the need for the legal officers is more than that can be handled by the in-house legal officers. Few State Pollution Control Boards should have the technical persons trained in the law with a
objective to meet the demands. The result is highly qualified technical person is given charge to take care of the judicial matters with help from the outside lawyers/in-house lawyers. It is common feature that when a outside layer is approached for pleadings, for the board in the court of justice, the decision is generally against the boards.

The government should also encourage the development of private sector organizations in areas such as environmental audits, environmental impact assessment, environmental quality analysis, and design of pollution control systems. In the long run, this approach will facilitate the development of environmental service organisations which will act as a separate interest group to promote the broad goal of environmental quality, rather than relying only on the regulatory approach of pollution control boards.

Poor awareness of environmental problems persists among industrial executives, politicians, and engineers. Elitist attitudes are changing to some degree, due to combined efforts of the mass media, environmental action groups and international agencies. To support and accelerated this process of attitudinal change, major efforts at environmental law education need to be introduced at various levels.

(viii) Public Participation and Access to Information
Members of the public are most often the suffered victims of noncompliance of environmental standards and despite this, the public are nowhere in the pollution control mechanism. However, in section 19(b) of EP Act, provides for the public participation, providing for any member of the public after giving a notice of not less than 60 days in the manner described can file a suit against the Board. Though the provision is welcome step, the effect has been whittled

15. For example in Andhra Pradesh State Pollution Control Board.
16. Interaction with Legal Officer, Maharastra Pollution Control Board
down by fact that requirement of 60 days notice. In recent years there has been some movement towards greater openness. 1992 policy statement on the abatement of pollution stated the MOEF readiness to ‘involve the public in decision making’ and promised that ‘access to information to enable public monitoring of environmental concerns, will be provided for’. These good intentions, however, have tended to remain only on paper, and the government has continued to show little inclination to encourage non-governmental inputs to policy.

(ix) Environmental Courts

It has been suggested that to speed up the environmental related cases, a special branch in the Court may created as Green Bench. As under the existing legal setup a citizen in India has a choice of judicial remedies to invoke the abatement process of pollution. With increasing awareness about the importance of environment, the legal requests will be increasing with every passing day. Hence there is need to meet the demands, and to speed up the proceedings of Green Courts.

Fiscal incentives to encourage control and prevention of pollution. The Government provides several incentives to ensure compliance with the various statutory environmental standards. Steps have to be taken for further improvisation of these incentives.

ECO mark scheme in India. A praiseworthy lead has been given by MOEF by promulgating a Gazette Notification announcing the scheme of ECO mark which states that a product which has been made, used, or disposed of in a way that significantly reduces the adverse effect it would otherwise have caused on the environment may be called environment friendly. The scheme is voluntary in nature. The Bureau

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17. a writ petition to compel the agency to enforce the law a citizen’s suit to enforce statutory compliance and a common law tort action against the polluter.

18. Sec. 35 CCN, Subsection (2C) in Sec 32 A, Income Tax Act, 1961
of Indian Standards, the National Standards Body of India has been notified as an agency for operating the ECO mark certification scheme for products covered under its scope of work. So far, the scheme has not yet received the expected response from the industry and not many units have come forward to opt for the ECO mark.

(x) The industries should be encouraged to recycle water for its own use both to avoid pressure on water and to lessen water pollution.

(xi) It was stated that the Act did not go far enough to control pollution through storage of material on land or other activities carried on land which ultimately resulted in pollution through percolation. It was felt that the Act should specifically provide for such situations.

(xii) The necessity to have coordination between irrigation authorities and the boards was needed to control pollution.

(xiii) The boards should operate through small committees for efficiently discharging some of their functions like imposing civil penalties, great of consent orders, etc. The legal element may be associated with such committees. The boards should give fair hearing in taking these actions.

The existing anti-pollution laws, though effective on paper, suffer from practical difficulties, defeating legislative objective. To make them more effective, changes must be made at the appropriate places, taking clue from the laws of other jurisdictions. The writer, also, would like to emphasise that there is pressing need for spreading environmental awareness among the people. Various organizations and agencies must be encouraged to lend the people. Various organizations and agencies must be encouraged to lend their support towards the setting up of a clean pollution free environment.

'The Earth is the mother and we are her children.......

Human destinies are inseparably, linked with that of the Earth.

It is, therefore, our duty to maintain the nature of Nature.

It is in our self-interest, if nothing else.'