

CHAPTER – I

INTRODUCTION

Evolution of Pollution Control Mechanism in India

Pollution Control efforts in India have a long history dating back to the British rule. The Shore Nuisance Act, 1853, the Indian Penal Act, 1860, the Indian Easement Act, 1882, the Bengal Smoke Nuisance Act, 1905, the Bombay Smoke Nuisance Act, 1912 and the Motor Vehicles Act, 1939 were some of the pioneering legislative attempts at abatement of pollution. These were at best a piecemeal approach to environmental regulation, based on the law of torts. Action against pollution could only be taken by the courts on the basis of proper representation by the affected people. In this scenario, litigation prolonged and penalties hardly served as deterrents.

1.1.2 In the post-independence period, there was a spate of legislation which, inter-alia, attempted to deal with pollution. These included the Factories Act, 1948, the Industries (Development and Regulation) Act, 1951, the River Boards Act, 1956, the Atomic Energy Act, 1962, the Insecticides Act, 1968, the Merchant Shipping (Amendment) Act, 1970, and the Radiation Protection Rules, 1971. All these Acts dealt incidentally with pollution and proved ineffective in handling it. River pollution zoomed up while these Acts remained on paper. Absence was felt of a specialized institution to oversee and implement environmental regulation.

1.1.3 The Water (Prevention and Control of Pollution) Act, 1974, the culmination of over a decade-long deliberations between the Central and State Governments, provided for the establishment of Boards for Prevention and Control of Pollution of water. These Boards were entitled to initiate proceedings against infringement of environmental law, without waiting for the affected people to launch legal action. The Water Cess Act, 1977, supplemented the Water Act by requiring specified industries to pay cess on their water consumption. With the passing of the Air (Prevention and Control of Pollution) Act in 1981, the need was felt for an integrated approach on pollution control. The Water Pollution Control Boards were thereby authorized to deal with air pollution too and were henceforth called Central/State Pollution Control Boards.

1.1.4 The Bhopal Gas tragedy, which occurred on 3rd December 1984, precipitated the tightening of environmental law. In 1985, the Department of Environment (DOE) was transformed into the Ministry of Environment and Forests (MoEF) with greater powers. The umbrella act called the Environment (Protection) Act got passed in 1986 encompassing water, air, land and other inter-relationships. The Act identified MoEF as the nodal agency in pollution control. The Environment (Protection) Rules, 1986 were, subsequently, notified to facilitate the exercise of the powers conferred on the Boards by the Act, 1986.

1.1.5 The Hazardous Wastes (Management and Handling) Rules, 1989 requires the 'occupier' of hazardous wastes who possesses a facility for collection, reception, treatment, transport, storage and disposal of such wastes to make an application to the SPCB for grant of authorization for any of the above activities. The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989 supplemented the former. The Public Liability Insurance Act was passed in 1991 to provide for public liability insurance for the purpose of giving immediate relief to persons affected by accidents occurring while handling hazardous substances. The Public Liability Insurance Rules were promulgated in 1991 and an Environment Relief Fund was created to facilitate the exercise of the powers conferred by the Act, 1991. The National Environmental Tribunals Act was passed in 1995, to provide for strict liability for damages arising out of accidents occurring while handling hazardous substances, and, for the establishment of a National Environmental Tribunal, to ensure effective and expeditious disposal of cases arising out of such accidents with a view to giving early relief and compensation to affected persons, properties and environment. The National Environmental Appellate Authority Act, 1997, provides for an authority to hear appeals with respect to restriction of areas in which industries, operations or processes shall not be carried out.

1.1.6 Apart from the measures of command and control embodied in the above Acts and Rules, the Government of India has, time to time, offered many economic incentives for units endeavouring to control pollution. The scheme of ECO-Mark, introduced in 1991, operates on a notional basis and provides accreditation and labeling for products, which satisfy certain environmental criteria along with quality requirements of the Indian Standards. Other incentives include rebate offered on water cess to units implementing pollution control measures and meeting the standards, investment allowance to the actual cost of the new machinery or plant which assists in controlling pollution, exemptions in indirect taxes, income tax, etc.

1.1.7 Of late, judiciary has been taking active interest in matters relating to environmental pollution and in compensating for the ill effects of pollution on affected areas. In some States, 'Green Benches' have been created to dispose off environmental cases quickly.

Pollution Control - Organisational Set-up

1.2.1 The Ministry of Environment and Forests (MoEF), the apex policy making body in the field of environment, acts through the Central Pollution Control Boards (CPCB) and the State Pollution Control Boards (SPCBs). The CPCB, **a statutory organization**, was formed in 1974 under the **Water Act**. The CPCB, the nodal agency in pollution control, is to advise the Central Government on matters concerning pollution, plan and execute a nation-wide programme for prevention and control of pollution, coordinate and provide technical assistance to the State Boards, organize programmes for mass awareness, disseminate pollution-related information, lay down, modify and annul, in consultation with State Governments, the standards for **air and water quality** and so on. The CPCB has a network of zonal offices located in New Delhi, Calcutta, Shillong, Kanpur, Bangalore and Vadodara.

State Pollution Control Boards (SPCBs)

1.2.2 Each State Board has a two-tier administrative set-up. The first tier which comprises of its Chairman, Member Secretary and other members, not exceeding 15, - all nominated by the concerned State Government – meets once **in three months** unless any emergency warrants urgent meetings. The second tier consisting of appointed regular staff run the day-to-day administration of the Board. The main sources of a State Board's financial resources include grants-in-aid from the concerned State Government, funds received for specific projects from the Central Government, the concerned State Government and the CPCB, reimbursement of water cess collected by the State Board and credited to the **Consolidated Fund of India**, consent fee collection, sample testing fees/analysis charges, fines and forfeitures, interest on investments, other grants, etc. Each State Board may establish some regional offices and district level offices depending on the are of significant pollution stress. Board may constitute committees consisting wholly of members or wholly of other persons or party of members and partly of other persons for specific purposes. There is a provision for Joint Boards for two or more contiguous states. The SPCBs exercise their powers mainly through three instruments – (a) consent to establish producing units (NOC), (b) consent to operate, and (c) standards for air and water pollution.

Functions of SPCBs

1.3.1 The main functions entrusted with the SPCBs can be categorized into a) advisory / policy-related, b) administrative and c) those concerning public relations and HRD.

a) Policy- related /Advisory.

1. To plan a comprehensive programme for prevention, control and abatement of water and air pollution in the State.
2. To advise the State Government on matters concerning prevention, control or abatement of water and air pollution.
3. To lay down, modify or annul effluent standards for sewage and trade effluents and for the quality of receiving waters (not being water in an inter-state stream) and to classify waters of the State.
4. To develop economical and reliable methods for treatment of sewage and trade effluents, for their utilization in agriculture and for their disposal on land.
5. To advise the State Government in respect to the location of any industry the carrying on of which is likely to cause water and air pollution.
6. To lay down, in consultation with and having regard to the standards set by the CPCB, standards for emission of air pollutants into the atmosphere from different sources except ships and aircrafts.

b) Administrative and monitoring.

7. To inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents.

8. To grant, suspend or cancel authorizations for collection, reception, treatment, transport, storage and disposal of hazardous wastes and to allow for import of these wastes for processing and re-use as raw materials.
9. To perform such other functions as may from time to time be entrusted to it by the Central Board or the State Government.
10. The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under the Water Act, 1974 and the Air Act, 1981 efficiently.
11. To lay down standards for treatment of sewage and trade effluents to be discharged into any particular stream.
12. To make, vary or revoke any order for the prevention, control or abatement of discharges of wastes into streams or wells.

c) **R&D, Training and Awareness.**

- 13) To collect and disseminate information relating to water and air pollution and the prevention, control or abatement thereof.
- 14) To encourage, conduct and participate in investigations and research on water pollution problems.
- 15) To collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control and abatement of water and air pollution and to organize mass education programmes thereto.

Reports on Strengthening SPCBs

1.4.1 Four reports need to be mentioned in context of functioning of Pollution Control Boards. These include (a) the Bhattacharya Committee Report submitted in 1984, (b) The Belliappa Committee Report submitted in 1990, (c) the Report submitted by the Administrative Staff College of India in 1994 and (4) the Report submitted by the Sub-Group in 1994.

1.4.2 The **Bhattacharya Committee**, for assessing the requirements of SPCBs, classified them into three: (a) those Boards constituted recently which required strengthening in all areas (e.g. those of Orissa, Tamil Nadu and Meghalaya), (b) those formed in the beginning of the enactment, but remained passive due to the lack of interest of the concerned State Governments (e.g. those of Himachal Pradesh and J&K) and (c) those which had put considerable work in establishing head office, laboratory and regional offices and had achieved a good measure of success (e.g. those of Andhra Pradesh, Bihar, Gujarat, Haryana, Karnataka Kerala, Madhya Pradesh, Maharashtra, Punjab, Rajasthan, Uttar Pradesh and West Bengal). The committee proposed that the structural organization of SPCBs should consist of technical services, scientific services, planning, legal services, administrative services, accounts, training cell and research and development. The Committee, inter-alia, called for (a) delinking grants-in-aid from cess collections and reimbursing the cess amounts to the Boards without undue delay, (b) urging State Governments to allot suitable pieces of land to the Boards, (c) discouraging the flow of deputationists to the Boards, (d) upgrading regional laboratories, (e) providing

each Board with at least one mobile laboratory, (f) creating a centralised training institute, (g) providing one vehicle each for the Chairman, the Member-Secretary and divisional heads in addition to a common vehicle for staff and laboratory, (h) imposing a fine in excess of the running cost of effluent treatment plants on the erring units before legal action is initiated, (i) linking SPCBs to the State Department of Environment, (j) providing, on priority, funds to establish air control activity, (k) giving customs duty exemptions for instruments meant for measuring and analysing pollutants, (l) bestowing the power to make posts at least up to the rank of environmental engineers/scientists with the Boards, and, (m) decentralising administrative and financial powers at different levels of hierarchy within the Board.

1.4.3 The Belliappa Committee recommended for (a) categorizing Boards into four groups depending on the number of pollution sources, area, population, etc., (b) introducing elaborate monitoring, reporting and organizational systems at the national level along with four regional centres and one training cell in each Board, (d) effecting suitable changes in the Boards' recruitment policy to enable them induct persons with suitable academic qualifications, (e) ensuring adequate financial support to the Boards (which were then in variance with the allocations made by the Planning Commission) in a consistent manner and giving autonomy to Boards to utilize their resources for systematic development, (f) ensuring that the Chairman and Member-Secretary are appointed for a minimum of three years, (g) constituting a purchase committee, (h) revising the categorisation of industries, and, (i) formulating uniform and model sets of rules consistent with the corporate character of the Boards as set out in Section 4.3 of the Water Act.

1.4.4 The Administrative Staff College of India recommended that (a) the SPCBs be reoriented for implementing the instrument mix of legislation and regulation, fiscal incentives, voluntary agreements, information campaigns and educational programmes (b) an Annual Environmental Quality Report be prepared by every SPCB for the concerned State, (c) an inventory of discharges and effluents disaggregated to the district level be prepared, (d) controlling function be digitized (e) a research cell be formed in each SPCB and a network be established with the proposed clean technology centre, (f) model environmental impact assessments be prepared for major categories of industries, (g) a perspective plan be prepared to indicate industrial location sites, (h) polluters-pay-principle be progressively employed, (i) a business process re-engineering be undertaken in PCBs so that they will become technical groups with lean supporting staff structures, (j) a pollution control plan be prepared considering the marginal reduction possible at the lowest marginal cost, (k) technical staff who are on deputation from the Public Health Engineering Department be trained comprehensively, (l) a conversion plan be prepared so that the administrative staff, after re-training, may be converted into technical support staff, (m) an environmental education cell be created in each Board to create awareness among school children, professionals, decision-makers and public at large, (n) customer friendliness be ensured while dealing with polluting units, (o) on-line pollution monitoring systems be introduced for newer industries, especially for the red industries in the large category, (p) the NOC be issued in two stages such that there is a mid-term monitoring before the plant becomes operational and consent for non-red industries be given at the regional office level, (q) consent order be made available in a register so that if there are violations, public can seek redressal, (r) small water users be charged a flat rate of cess so that large

users are systematically covered, (s) the SPCBs be made the agencies for certifying Ecomark, (t) a system for institutionalizing vigilance be evolved, (u) increased use of consultants and sampling through external labs be initiated, and, (v) initiatives like rationalisation of cess collection and metering, sponsored research, services to industries for Environmental Impact Assessment (EIA) and analysis, environmental engineering, information support, environmental quality report sales, recognition charges for labs and reimbursement of inspection expenditure by industry be introduced for increasing the Board's revenue.

1.4.5 The Sub Group, towards strengthening of SPCBs, recommended for (1) creating independent sections for hazardous wastes and substances, clean technology, training programmes, collection of cess, prosecution of cases and complaints, (2) introducing a Time Targeted Action Plan for the most polluted cities in the State, (3) evolving and updating Environmental Atlas, (4) conducting regular programmes to foster awareness, (5) creating a computer-based data network, (6) establishing and maintaining a library in each Board, (7) monitoring and managing high-risk bio-medical wastes (8) establishing laboratories in Head Office and regional offices, (9) fixing the tenure of Chairman and Member-Secretary at not less than 5 years, (10) authorising the Boards to create posts and to appoint all categories of employees other than Chairman and Member-Secretary, (11) entitling the SPCBs to spend the collected amount of cess on programmes on priority basis rather than restricting them to a predetermined formula, (12) providing for retaining 82% of the cess with the Boards and for depositing the remaining 18% with the CPCB for programmes of national importance, (13) introducing a single window approach to consent management whereby units can seek consents through one single application covering aspects of both air and water pollution, (14) granting consents to small units in the Green category within 15 days from the receipt of the application and (15) empowering the regional offices to issue consent to units of the Green category. These recommendations were given in the form of "Vision Statements"

The Present Study

1.5.1 The present study was taken up at the instance of Planning Commission. India is a signatory to many global conventions on environment, which seek to foster sustainable development. It is now well established that the levels of air and water pollution have been mounting in India. The machinery, institutions, infrastructure and enabling rules, procedures and laws, created to tackle the problems of pollution is in place since the inception of the Water Act, 1974, which is now roughly two and half decades old. However, very little is known about the functioning and efficacy of the SPCBs in discharging their various advisory, administrative and advocacy roles. It would be appropriate, therefore, to review the functioning of the SPCBs with reference to the responsibilities assigned to them, to examine the efficacy of the functional tools employed by them and to identify the constraints to their effective and efficient functioning.