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Annapurna Pattnaik

Siksha 'O' Anusandhan University, a.pattnaik82@gmail.com


Sabyasachi Das

Utkal University, sdasutkaluniversity@gmail.com

Banalata Pradhan

Siksha 'O' Anusandhan University, bnp.iter@gmail.com

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Environmental laws and restrains of criminal sanctions in India

Annapurna Pattnaik	Dr. Sabyasachi Das	Banalata Pradhan
Assistant Professor in Law	Lecturer in MBA	Asst.Librarian
SOA University, Bhubaneswar	Utkal University	SOA University
Odisha, India, 754001	Odisha, India	Odisha India

[Email-\(a.pattnaik82@gmail.com\)](mailto:a.pattnaik82@gmail.com) (sdasutkaluniversity@gmail.com) (bnp.iter@gmail.com)

Mobile no-9438733913 9438733913 9437668497

Abstract

The Issue Protection of environment has become one of the major global issues in 21st century. Man's conquest over the nature and his capacity to manipulate his environment through scientific and technological accomplishment has made him callous not only toward himself but towards other living creatures, plants, living organisms and macro-organisms. The technological advancement and economic developments have brought comforts to many, but unfavourable to our ecosystem in many ways. There are different kind of pollutions such as Water pollution, Air Pollution, Environmental pollution, Soil pollution, Oceanic pollution, food pollution, fossil fuel pollution etc. Many contaminations mixed in solid form and liquid form in water and gaseous form with the air caused Ozan depletion and global warming in the earth. In June 1992 the World Community met at the Earth Summit held in Rio de Janerio, is also known as Rio Convention to formulate new global policies to deal with the environmental degradation and to protect, promote and conserve the environment. The developed countries should help the developing countries in conservation and preservation of environment. The process of rapid industrialization, increasing population, imbalances in economic activities and exploitation of natural resources have resulted in environmental crisis in India. So this paper tries to find out the necessary legal sanctions for the polluters who are sole responsible to pollute our environment.

Key words: Environmental pollution, Industrialization, Convention, Water and air pollution, Population, Exploitation

Introduction

Environmental pollution is an alarming issue all over the globe. It includes water pollution, air pollution, soil pollution, thermal pollution, food pollution etc. Single most important factor responsible for environmental pollution is the phenomenal growth of industries in India. The incidence of discharge of industrial effluents into the rivers and emission of industrial pollutants in the air have increased substantially. In 1984 the country witnessed the World's worst industrial disaster caused by emission of methyl isocyanate gas in Bhopal taking a toll of more than 2800 lives and many were injured. Social response to the environmental pollution has been lukewarm, apathic and of ignorance. Like many countries, India has also enacted special legislations to deal with the environmental pollution. The use of criminal sanctions for environmental violations has been sanctified in all the countries which have legislations dealing with environmental matters. However, the competing demands of industries, the need for accelerated economic development, the pressure of population growth, the powerful pressure groups and the lack of political will have combined together to make the enforcement of criminal sanctions against environmental violators difficult in India. Moreover, there are several limiting factors of criminal justice system and of criminal sanctions that have made the enforcement of environmental laws, a complex and messy affair. Penal provisions are contained in not less than 300 other legislations that directly or indirectly touch the environmental matters. Most of these legislations provide for legal action against the offender involving the present machinery of criminal justice in the normal way. An examination of the enforcement of all the enactments is not intended here. It is proposed to examine the criminal sanctions contained in three important environmental legislations, namely, the Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. This Article provides a short background of the enactment of environmental legislations and makes an analysis of the nature and type of environmental offences, the nature of criminal liability, the penal sanctions for the study.

Legislative Laws

The history of environmental legislation shows that water pollutions was one of the first environmental problems to receive governmental attention. The Indian Penal Code was the

general law to prohibit fouling of water, mischief and public. The first water pollution laws were enacted at the State level. Odisha was the first state to have such a law in 1953 followed by many other states. The Water (Prevention and Control of Pollution) Act was enacted in 1974 in India. The United Nations Conference on Human Environment was Introduced at Stockholm in June, 1972. India participated in that Conference where decisions were taken to take appropriate steps for the preservation of natural resources of the earth which included preservation of environment and prevention of pollution of air and water. The Government of India was a signatory to the policy statement of the United Nations and decided to implement these decisions. The then Prime Minister Mrs. Indira Gandhi took considerable interest in environmental protection. She created at the Centre a Department of Environment under her own stewardship. In 1976 through a constitutional amendment Articles 48A and 51A (g) were added which gave direction to the state to protect environment through legislation and cast a social responsibility on the citizen to protect and improve environment. Thus, protection of environment becomes a high value which is reinforced through the rites of criminal stigmatization of those who violate the norms intended to preserve that value. With a view to giving protection to the wild animals and birds, particularly the rare species which were facing extinction, the Wild-life (Protection) Act. 1972 was enacted. The next area receiving the Governmental attention was air pollution. Concern over air pollution in Indian cities has only recently been expressed. 80 per cent of India's industries are concentrated in eight or ten large industrial centers which include Ahmedabad, Bombay, Calcutta, Cochin, Hyderabad, Jaipur, Kanpur, Madras, New Delhi and Nagpur. In 1974, a society for creation of awareness and for preservation of clean environment was established in Bombay. This society for Clean Environment (SOCLEAN) gave impetus to the creation of similar organizations in almost all major industrial cities. These non-government Organizations (NGOs) motivated the governmental machinery to introduce in 1978 the Air (Prevention and Control of Pollution) Bill which became an Act in 1981. The Department of Environment was up graded into the Ministry of Environment and Forest in 1985. Conservation of natural resources and protection of environment received judicial attention through public interest litigation. A Committee appointed by the Central Government under the Chairmanship of Mr. N.D. Tiwari dug out not less than 300 legislations which have direct or indirect bearing on the problem of environmental pollution. Next important area which has received maximum public attention is conservation of forest. Two prominent Environmentalists Mr. Sundarlal Bahuguna and Baba

Amte have vociferously pleaded for conservation of forest. The former is creator of the Chipko movement. The 1976 Constitutional Amendment put 'forests' in the Concurrent List of the Constitution which paved way for enactment by the Central Government the Forest (Conservation) Act, 1980 to supplement the Indian Forest Act, 1927 and to accommodate diverse interest associated with forest resources. The Forest (Conservation) Act was further amended in 1988 to provide for leasing of forest land or a portion thereof and introduces penal provision for contravention of the Act. Deadly gas emission from Union carbide's pesticide industrial unit in Bhopal in 1984 shook the nation as well as the whole world. The Government of India enacted another important legislation known as the Environment (Protection) Act, 1986. The Act was passed for following objectives : Protections, regulation of discharge or emission of environmental pollutants, handling of hazardous substance likely to cause harm to human beings, other living creatures, plants etc. to provide speedy action in the event of accidents threatening environment and providing deterrent punishment to polluters. Lately the Motor Vehicles Act, 1988 has replaced the earlier legislation and provided for more deterrent penalty for excessive discharge of noxious gas. The enforcement machinery for legislations dealing with pollution of water, air and environment protection is basically same. The Central Pollution Control Board and the State Pollution Control Boards are charged with the responsibility of implementation of pollution laws. The Environment (Protection) Act 1986 envisages creation of a separate authority under direct control of Central government. Three tools have been given to Water Boards : granting of license to new industries, reviewing pollution control measures in existing industries and prosecution of offenders.

Nature of Environmental Offences

The environmental offences are not homogeneous. They have been recognized as a class in itself which has a whole set of Independent characteristics. Most of the environmental violations committed by an individual or a body or an Institution are of the regulatory nature. They are enforced both by the penal sanctions as well as administrative actions. They differ from traditional crimes in more than one way. They may not possess all the attributes of a crime. A traditional crime involves the following ingredients:

- (1) Certain external consequences (harm)
- (2) which are legally forbidden

(3) conduct: mens rea

(4) a causal' relationship between the legally forbidden harms and the voluntary misconduct and

(7) punishment

In cases of environmental offences some of the above principles have been deviated from or modified. Being regulatory offences, the environmental violations are not as well defined as other offences. Further, the cause and effect relationship are underfitted in environmental pollution. It is very difficult for legislature to predetermine as to what will be the real effect, when the actual impact will occur, who will be the sufferer and what will be the character of 'harm'. One single environmental violation may give rise to multiple harm to numerous sufferers both human beings and non-human objects. The harm may not be immediate but may have remote impact. By contrast traditional crimes in great majority of cases causes a specific prescribed mode of harm to an ascertainable victim. The time lag between offence and the harm is fractional and causal relation easy to establish. The dispersion of crime is generally localised whereas environmental pollution may have wide dispersion even beyond national territories. The victim-offender relationship remains blurred in environmental violations. Generally, it is degree of social danger that is more important in environmental pollution. Types of Environmental Offences are as follows:

(1) Basic offence: The basic offence has reference to the core prohibition under a statute to secure the very object for which the statute was enacted. Such offences are in the nature of violations of prescribed standard for discharge or emission of pollutants

(2) Auxiliary Offences: They are offences auxiliary to basic offences. Usually they are in the nature of-(a) Violation of consent clause, (b) failure to comply with directions, and (c) failure to give information of an accident causing pollution.

(3) Offences against enforcement: They have reference to the class of such offence which hinder the implementation of provisions of the statute either due to failure to provide necessary information by wilful interference in due discharge of functions by the enforcement officials or agency.

Under Environment (Protection) Act , the power is vested in the Central Government under its rule-making power to prescribe 'standards of quality of air, water and soil for various areas and purposes' and 'the maximum allowable limit of concentration of various environmental pollutants (including noise) for 'hazardous substances'. The following are core offences under various environmental legislations. The water (Prevention and Control) Act, 1974 Section 24 "(1) subject to provisions of this Section-(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any stream or well, or sewer or on land (b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in contravention with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences". (The above provisions are subject to exceptions and exemptions contained in sub-section (2) and (3). The Air (Prevention and Control of Pollution) Act, 1981 Section 22 of the Act provides : "No person operating any industrial plant in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board..."

The Environment (Protection) Act, 1986 Section 7 provides : "No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess of such standards as may be prescribed". Section 8 Provides : "No person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed". Most important characteristic of these offences is that they belong to the category of strict liability offences." Except Section 24 of the Water Act which uses the word 'knowingly' other statutes do not use this word. An inference could be drawn that the legislature do not require proof of mens rea and the prohibitions are absolute in their nature. Strict liability offences do not require proof of intention, recklessness or even negligence as to one or more elements in the actus reus. The above statutes use the word 'cause' which has been interpreted as importing strict liability. In an English case *Alphacell Ltd. v. Woodward*, the House of Lords held that the defendant company was guilty of 'causing polluted matter to enter a river contrary to Section 2(1)(a) of the River (Prevention of Pollution) Act, 1951." Lord Salmon stressing the public importance of preventing pollution ruled, that prosecution need not discharge the impossible burden of proving that 'the

pollution was caused intentionally or negligently' and if prosecution is put to that burden 'a great deal of pollution would go unpunished'. The courts are greatly influenced in their interpretation of statute by the degree of social danger which they believe to be involved in the offence in question. Environmental pollution is one of such offences where the degree of social danger is always uppermost in the mind of the judge and where strict liability has to be invoked for the protection of society. The use of word 'knowingly cause' or 'permit' in Section 24 of the Water Act indicates that the accused should have prior knowledge before causing the pollution. It can not be said that use of 'particular word will import mens rea into an offence. No single word is conclusive. Even 'knowingly' is susceptible to different connotations as regards to various elements of actus reus of pollution. It may, be observed that 'knowingly' is restricted to a conscious action on the part of the offender in causing the discharge. The existence of this word does not take away the offence under Section 24 of the Water Act from the pale of strict liability as far as other elements of actus reus are concerned. A better course would be to drop the word 'knowingly' altogether from the provision for pollution caused knowingly or unknowingly has disastrous consequences. It is desirable that criminal liability for environmental offences should be 'based on 'no fault principle. These offences are part and parcel of the basic offences and are created to help in attaining the purpose of the statute. Some of them are administrative in nature. The legislature may allow an activity with leave or license of the implementation authority. An activity without such consent may amount to an offence under the statute. Section 25 of the Water Act puts restriction on a new or altered outlet for discharge or a new mode of discharge or to establish any industry, operation or process or treatment or disposal system which is likely to discharge sewer or trade effluent into a stream or well or sewer or on land without the previous consent of the State Board. Section 26 of the Water Act applies to existing industrial units which have been discharging pollutants. It makes obligatory on every person who was discharging any sewer or trade effluent into a stream or well or a sewer or on land previous to commencement of this statute to make application for consent within a specified period. The State Board may grant consent in the manner provided in Section 25 of the Act. Section 21 of the Air Act 1981, prohibits without the consent of State Board, operation of any industrial plant in any air pollution control area. Consent has to be obtained by person who starts a new industrial plant as well as person already operating any industrial plant. Consent is granted subject to conditions laid down in Sub-section (5) for installation of control equipment and its subsequent maintenance. The

conditions have to be complied within specified period. If any person transfers his interest in the industry to the other person that person shall be deemed to have obtained the consent. Both under Water Act and Air Act consent may be refused. Further the Board may after grant of consent require variation of condition in view of technological improvement or otherwise. Failure to comply with Directions Under Section 5 of the Environment (Protection) Act, the Central Government has assumed power to give directions in writing to any person, officer or any authority of the following nature. Compliance with the direction is obligatory. These directions may include : "(a) the closure, prohibition or regulation of any industry, operation or process, or (b) stoppage or regulation of supply of electricity or water or any other service". Before issuing any direction under Section 5 of the Environment (Protection) Act, the Central Government may issue notice, hear objections and pass orders. In urgent cases where grave injury is likely to result directions may be issued, for reason to be recorded, without giving an opportunity to file objections. While prohibiting or restricting any industry, operation or process the Government will give an opportunity to file objection and will take into consideration factors relevant to the protection of environment including any adverse impact likely to be caused by the industry, operation or process. Power to issue directions similar to that of Section 5 of the Environment (Protection) Act have been incorporated, through amendments in the Air Act, and the Water Act. Section 31A of the Air Act and Section 33A of the Water Act have conferred power both upon the Central Government and the Board to issue any directions in writing to any person or officer or authority with regard to closure or regulation of industry or stoppage of essential services. The direction of Central Government, if any, receives precedence over the Board's directions. Compliance with these directions is statutory obligation of such person, or officer or authority to whom these directions are issued. Contravention of these directions is an offence punishable variously under these statutes. Failure to give Information of an Accident Timely information about occurrence of an accident in any industrial unit may enable the concerned authorities and agencies to take immediate remedial measures necessary to prevent or mitigate the environmental pollution. Such remedial measures may help in controlling wide spread dispersion of the impact of environmental pollution and reduce the loss or injury to human. Section 9 of the Environment (Protection) Act, Section 31 of the Water Act and Section 23 of the Air Act require a 'person in-charge of place or premises' to intimate to the concerned authorities about the occurrence or apprehension of occurrence of the discharge or emission in excess of

standards caused due to accident or other unforeseen act or event. The person in-charge of such place is required to extend all assistance and to bear all expenses in respect of remedial measures. Failure to give information or assistance is punishable under Section 15 of the Environment (Protection) Act, Section 42(e) of the Water Act and Section 38(e) of the Air Act. The requirement of consent and compliance with specific conditions have made most of the above- mentioned regulatory offences outside the scope of strict liability principle. Knowledge or negligence is an integral part of the actus reus of these environmental violations. But the persecution need not be required to prove more than the fact that the accused knew the nature of the directions or the conditions under which consent was granted. The accused would not be permitted to say that he did not know nor had reason to know that the operation or process will cause pollution. However, the last category of offences (failure to give information about accident) may considered on a different footing for a person ought not be held guilty to report an accident, the happening of which he was unaware. In an English decision *Harding v. Prince*, Lord Goddard C.J. observed: "If a statute contains an absolute prohibition against the doing of some act, as a general rule mens rea is not a constituent of the offence, but there is all the difference between prohibiting an act and imposing a duty to do something on happening of a certain event. Unless a person knows that the event has happened, how can he carry out the duty imposed. Another view would lead to calling on a man to do the impossible is the "Offence Against Enforcement" For securing an effective implementation of environmental laws, the Central Government, the Board and its officers have been conferred with wide investigatory and preventive powers. The environmental laws enjoin upon a person who is carrying on any industry, operation or process or is in charge of a place or occupier of a premises to render all assistance to the enforcement officers in due discharge of their function in relation to investigation of an offence under those laws. The investigatory powers of the Board and its officer include rights to enter, to make inspection to search the place, to obtain information to take samples of pollutants or to require a person to carry out certain work. Any action or inaction to subvert the process of investigation has been made a punishable offence. The powers to enter and inspect have been conferred upon the officers under Section 10 of the Environment (Protection) Act, section 24 of the Air Act and Section 23 of the Water Act. The purpose of such entry and inspection is to discharge functions for or on behalf of the Board (or Central Government); to ascertain the compliance of the provisions of the Act or any notice or direction

issued under the law; to examine any plant or to test any control equipment, to examine any record, register or document with a view to ascertaining whether an offence has been committed or is likely to be committed. The Environment (Protection) Act and the Air Act specifically provide that every person carrying on any industry will be bound to give assistance to the officers and if he fails to do so, he will be guilty of an offence. The offenders are liable to be punished under Section 15 of the Environment (Protection) Act and Section 39 of the Air Act. If a person willfully delays or obstructs any person empowered to perform assigned functions, he will be guilty of an offence under these statutes and may be punished under Section 15 of Environment (Protection) Act or Section 38 (b) of the Air Act. The Water Act also penalizes these activities under Section 42 and 45A.

An essential function of the enforcement officer is to take sample of water, air (soil or hazardous substances) from the occupier of a premises or his agent for the purposes of analysis in order to establishing the commission of an offence. Such power is conferred under Section 11 of the Environment (Protection) Act, Section 26 of the Air Act and Section 21 of the Water Act. If the process of taking sample is subverted it will amount to interference in the due discharge of functions and may entail punishment under Section 15 of the Environment (Protection) Act, Section 38 (b) of the Air Act Section 42 (b) of the Water Act. Section 25 of the Air Act, Section 20 of the Water Act enjoin upon an occupier of a place or a person in-charge of any establishment to furnish information, when called upon in respect of the type or level of emission of air pollutants or any control equipment or regarding construction. or installation etc. of any disposal system. Failure to give information is punishable under Section 38 (d) of the Air Act and Section 42(d) of Water Act. If a person bound to give information makes a statement which is false he is punishable under Section 38 ((f) of the Air Act and Section 42 (f) of the Water Act. Section 30 of the Water Act has empowered the Board to require a person to carry out certain work in connection with the discharge of pollutants. The Board may itself get the work executed and recover the expenses from the person who has failed to execute such work. The offences against enforcement are also of regulatory nature. Being minor or contraventions these offences are punishable with relatively small dose of punishment.

The Penal Provisions

The penal provisions of various environmental laws have undergone several revisions. With the increasing pressure on the Government to make enforcement of environmental laws effective the Air Act, Water Act and some other Statutes dealing with environmental matters have been amended in recent years. The Environment (Protection) Act contains an omnibus in Section 15 which penalizes all contravention of the Act, rules or any direction issued thereunder "with imprisonment it a term which may extend to five years or with fine which may , extend to one lakh rupees or with both". In case of continued contravention an additional fine of rupees five thousand per day has been provided. The Environment (Protection) Act does not make any difference among the basic offence, auxiliary offences and enforcement offences. All these offences are punished with punishment. Under Section 24 (2) of the Environment (Protection) Act if any act or omission constitutes an offence punishable under the Environment (Protection) Act and also under any other Act, "the offender found quality of such offence shall be liable to be punished under the other Act and not under the Environment(Protection) Act". By virtue of this provision the above classification becomes valid and an offender may be punished under other environmental laws, which were not as stringent in 1986 as the Environment (Protection) Act but now these laws have been made more coercive. The Air Act contains three penal provisions to deal with various environmental violations. Section 37 incorporates the concept of minimum penalty in the environmental laws. This Section penalizes basic offence under Section 22 and the auxiliary offences (violation of consent clause, contravention of directions) "with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine" When the failure continues an additional fine of rupees five thousand per day may be imposed and if the failure continues beyond one year a minimum sentence of imprisonment for two years which may extend up-to seven years has been provided in Sub-section (2) of Section 37 of the Act. The auxiliary offence involving failure to report an accident as well as various enforcement offences are punishable under Section 38 of the Act "with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both". Section 39 of the Act contains penal clause to meet residual contraventions for which no specific penalty has been provided. Punishment prescribed under this provision is similar to that provided in Section 38 of the Act. For continuing contravention an additional fine of rupees five thousand per day has been prescribed in the section. The penal provisions contained in the Water Act also differentiate among different types of offences.

Higher scale is provided for the basic offence and a lower scale for punishment is provided for other contraventions. This statute also provides minimum punishment clauses. Unlike other two statutes the Act adds two additional penal measures, namely enhanced punishment after previous conviction and publication of the name of offenders. The basic offence under Section 24 is punishable under Section 43 with a minimum punishment of one year and six months imprisonment which may extend up to six years and with fine. The recent refinements have made both the Air Act and the Water Act at par in this respect. The violation of consent clause under Section 25 and 26 are punishable under Section 44 of the Act with same punishment as provided in section 43 above. Under Sub-Section (2) of Section 42 where a person knowingly or willfully interferes with a device, i.e. meter or gauge or monitoring device for the grant of consent under Section 25 and 26 on conviction shall be punished with imprisonment for a term which may extend up to three months or with fine which may extend to ten thousand rupees or with both. The offences against enforcement and failure- to intimate occurrence of an accident are punishable under various Sub-clauses of Section 42 with imprisonment upto three months and fine up to ten thousand rupees or with both. Section 45A, a recently introduced provision, takes care of such contraventions for which no penalty is otherwise provided in the Water Act. Here also the punishment prescribed is imprisonment upto three months or fine up to ten thousand rupees or with both. Continuing contraventions carry an additional fine up to rupees five thousand per day. The Water Act provides enhanced penalty for violators of Section 24 or Section 25 or Section 26 on second and on every subsequent conviction minimum term of imprisonment for two years which may extend to seven years. No such provision is contained in the Environment (Protection) Act or the Air Act.

So, all the three legislations confer power upon the Board to move the Court to prevent an industrial unit from continuing environmental pollution. Under Section 33 of the Water Act, the Board is authorized to make an application to a competent magistrate to invoke its jurisdiction under this provision and to make an order restraining any person from polluting the water. Violation of such order passed by the Court is punishable under Sub-section (2) of Section 41. Similar provision which is similar to the Water Act is contained in Section 22A of the Air Act. These provisions are in a way reincarnation of Section 133 of Criminal Procedure Code which confers power upon the Magistrate to invoke its jurisdiction to prohibit any factory, trade or industry from causing public nuisance. In 1980, the Supreme Court in *Municipal Council,*

Ratlam v. Vardhichand has discovered new content in Section 133 of the Criminal Procedure Code. The court required the Municipal Committee to provide proper sewer and drainage system to avoid the miseries of the members of locality. A new Vista in environmental jurisprudence was thus conceived. This was a Public Interest Litigation but unfortunately Section 60 of the Water Act and Section 52 of the Air Act have an overriding effect which provide that the provisions of these Acts will have an effect notwithstanding anything inconsistent therewith contained in any enactment other than these Acts. The Madhya Pradesh High Court has not allowed the application of Section 133 Criminal Procedure Code against industrial unit responsible for environmental pollution in view of the above provisions. Thus, the Court in Abdul Hameed v. Gwalior Rayon Silk Mfg. Co. Ltd. and others" has held that both under the Water Act and the Air Act sanction for prosecution of the Board is necessary. Thus, in matter of pollution of air and water by trade or industry, recourse has to be taken to the provisions of these special Acts and not to other legislations. As far as industrial Pollution is concerned Section 133 of Criminal Procedure Code may not be regarded on 'a remedial weapon of versatile use.

Conclusion

The use of criminal sanctions for environmental violations: as proved ineffective. Environmental laws contemplate: deterrent value in the imposition of punishment on the violators. Imperfection in definitions of environmental offences and the complexities involved in the prosecution of such offenders have furred the pollution Boards to go for preventive action rather than prosecution. But ineffective enforcement has reduced any threat of punishment. There has been marked increase in the penal sanctions but mere increase in the dose of punishment will act bring the desired effect. The laws providing coercive punishment are not enforced with any regularity or certainty. The criminal activity tends to increase because the people feel a threat has been removed. It is true that the courts find it difficult to deal efficiently with the issues of scientifically complex nature involved in environmental laws but then the criminal courts have always marshalled scientific evidence in other criminal violations. What is required is a will on the part of the courts to implement the true intentions inherent in the environmental laws and thereby reinforce the values contained in the Constitution through the rite of criminal sterilization. There has been criticism against the penal provisions contained in Environmental legislations. Some do not approve the imposition of sentence of imprisonment at all, others

regard punishment superfluous and plead for more severity in penal provisions. The recent increase may not be justified because the earlier penal sanctions were not fully invoked by the law enforcers and the courts. No criticism against criminal sanctions would be valid unless criminal sanctions are given a proper chance to deal effectively with the environmental violators.

References

1. Agrawal, Pradeep, (2015), "The role of exports in India's economic growth," *Journal of International Trade & Economic Development*, 24, no. 6: 835-859.
2. Agrawal, Pravin; Alok, Kumar; S.S. Hooda; N.R. Sudheendra; and A, Santhamani, (2010), "Anthropogenic carbon emissions in India: An econometric analysis," *Vision*, 14, no. 1/2: 79-83.
3. Agrawal, Arun, (2005), "Environmentality," *Current Anthropology*, 46, no. 2: 161-190.
4. Bordigoni, Mathieu; Alain, Hita; and Gilles, Le Blanc, (2012), "Role of embodied energy in the European manufacturing industry: Application to short-term impacts of a carbon tax," *Energy Policy*, 43. (April): 335-350.
5. Chappin, Maryse M.H.; Marko P. Hekkert; Marius T.H. Meeus; and Walter J.V. Vermeulen, (2008), "The intermediary role of an industry association in policy-making processes: The case of the Dutch paper and board industry," *Journal of cleaner Production*, 16. No 14: 1462-1473.
6. Chatterjee, DebaPrashad, (2008), "Oriental disadvantage versus Occidental exuberance: Appraising environmental concerns in India - A case study in a local context," *International Sociology*, 23, no. 1: 5-33.
7. "Environmental Overview: Global Environmental Concepts", *Sweden Review*, 2010. *Country Watch*.
8. Gillis, Justin and Somini Sengupta, (2015), "Limited progress seen even as more nations step up on climate" *New York Times*, (September 28, 2015):
- 7.. Greenstone, Michael and Rema Hanna, (2014), "Environmental regulations, air and water pollution, and infant mortality in India," *American Economic Review*, 104, no. 10: 3038-3072.