

Judicial activism and the environment in India. Implications for transnational corporations.

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Background to paper

The globalization of economic activity in general, and the growing role of transnational corporations (TNCs) in particular, have increasingly directed attention toward the environmental consequences of these developments. Increasingly, TNC activity in developing countries has become an issue for various normative initiatives at the international level, in the OECD and in the WTO. However, there remains a pertinent need to gain a better understanding of the environmental implications of TNC activity in developing countries. On this background, the United Nations Conference on Trade and Development (UNCTAD) and Department of Intercultural Communication and Management, Copenhagen Business School (DICM/CBS) in 1997 received a grant from the Danish International Development Agency (DANIDA) to conduct a study of environmental practices in TNCs. The project is called: "Cross border Environmental Management in Transnational Corporations". The project examines environmental aspects of foreign direct investment (FDI) in less developed countries by conducting case studies on environmental practices in Danish and German TNCs with operations in China, India and Malaysia. The project will produce a series of research reports on cross border environmental management seen from home country, host country as well as corporate perspectives. The reports will serve as input to a conference on Cross Border Environmental Management hosted by UNCTAD.

Abstract

Environmental norms have been very difficult to enforce especially on TNCs, as the Government of India has initiated several important policy reforms to induce TNCs to invest in India since the New Industrial Policy of 1991. The relatively weak enforcement capacities of environmental monitoring state agencies has led to the resurgence of a strong alternative force or the NGOs in India. The NGOs have acted as watchdogs for protecting environmental interests of the Indian populace and has often lobbied the government for a change in obscure or defunct legislation. Even more important than mass movements through NGOs have however been public interest litigations in the Supreme Court which have led to some historic judgements and change in corporate behaviour. However while both indicate the democratisation of public decision making, the capacity of these groups to induce widespread changes may be limited. They may also be hampered to a certain degree by the lack of specialised knowledge of both the law and the environment. They have nevertheless been a force to reckon with for TNCs in India.

Please note that the views and opinions expressed in this paper reflect those of the author and do not necessarily represent those of UNCTAD or CBS.

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Abbreviations

CETP	Common Effluent Treatment Plant
EIA	Environmental Impact Assessment
GRASP	Garbage Recycling and Segregation Programme
MARG	Mutual Aid and Response Group
MPCB	Maharashtra Pollution Control Board
NGO	Non Governmental Organisation
PCMC	Pimpri Chinchwad Municipal Corporation
SPCB	State Pollution control Board
SSI	Small Scale Industry
TBIA	Thane Belapur Industrial Association
TNC	Trans National Corporation

Judicial activism and the environment in India. Implications for transnational corporations.

by Veena Jha and Pranay Lal¹

I. Introduction

The last three decades (1960-1990s) have seen an unprecedented rise in the number of Voluntary Organisations and Non-governmental organisations (NGOs) in India, particularly in some states. The growth in the NGO movement is attributed to the failure of public institutions to address social and environmental problems. NGOs and grassroots institutions in India do not exclusively deal with environmental issues, but they follow an integrated approach by linking poverty, social justice, inequality, and rural development and health issues. NGOs differ from each other in their diversity of role, ideology, approach, management style and organisation.

Judicial intervention and activism by NGOs have together made industries more aware of environmental concerns. For example, in the State of Maharashtra such activism has been decisive in enforcing environmental regulation. NGOs and peoples organisations have, through careful analysis of procedures, organisational factors, functioning style and policies achieved some breakthrough in the erstwhile secretive and non-co-operative government institutions and agencies. Governments have responded to NGO pressure by simplifying unenforceable laws and cumbersome procedures.

A combination of variables, both internal (domestic environmental and social variables) and external (international trade factors) has brought about a positive change in the attitude towards environmental protection in India. Internally, new

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legal opportunities, restructuring of government institutions to enforce legislation, the emergence of NGOs and community-based organisations that watch over government agencies and industries, and the threat of litigation that could bring a stay-order, closure or project delay; have all made industries vigilant about their environmental performance. NGOs and concerned individuals today can seek information on projects and policies.

Externally, sector and industry-wide demands for cleaner production, international standards (especially those who conform to the parent company standards), certifications, and increasing awareness among consumers world-wide have exerted pressure on industries to opt for cleaner technologies.

While governments may be reluctant to enforce cumbersome and onerous environmental legislations on Trans national corporations (TNCs), NGOs have acted as the watchdogs on TNCs. In a milieu where government efforts are mostly directed at attracting TNCs, public interest litigation and NGOs have directed their efforts at ensuring that TNCs conform to high environmental standards. While it is to be expected that NGOs would be more active in States such as Bihar with weak administrative and governance structures, surprisingly they have surfaced in larger numbers in States such as Maharashtra and Tamil Nadu where governance structures are relatively stronger. This appears to indicate that strong governance structures are more conducive to building higher levels of public awareness on issues such as environment. In addition these States appear to be relatively more wealthy than states which do not have a strong NGO presence. Of course the number of TNCs in these states is also higher.

The attitude towards TNCs in the Indian populace appears to have become more positive in the 1990's, though there is a divide between the views of the rural and Urban Indians. While Urban Indians favour TNCs, rural Indians are still hostile to their presence. This is also reflected in the NGOs attitudes in rural and urban areas.² There is also considerable scepticism of the Indian populace towards NGOs in general. Several feel that they may be susceptible to influences by foreign funding sources and their campaigns may not be based on adequate research. But most of this scepticism is directed towards national issues, whereas their enquiries on TNCs draw a much more broad-based support.

Parallels to this process can also be found in the realm of international trade law. Panel and appellate body rulings at the WTO have also sought to change the approach to rule making particularly in relation to environmental matters. While judicial activism can force the implementation of environmental legislation both internally and externally, it may not always be either an efficient or an equitable mechanism for doing so. It is also a process of atomistic decision making and as

² India Today, September 19, 1999.

such should be viewed with caution. Judicial activism does not require the kind of mass mobilisation which NGO movements in India have generally been associated with.

II. Brief history of NGO movements and judicial activism in India

Many protest and activist NGOs³ largely emerged in response to an imminent threat to local environments that would otherwise have remained unaddressed by policy and regulation. Most were passive and rarely violent. Many of these issue-based protest NGOs were formed with external assistance and external leadership and management inputs were sought. Some protest and activist organisations joined established networks or formed alliances and addressed problems collaboratively (like the National Alliance of People's Movement). Other NGOs were individualistic in addressing issues of their particular interest; some NGOs are small others large; some focus on policy issues only, others target projects; some are region specific, others are cause, issue specific or localised in influence; some address broader interdisciplinary issues like human rights, health, land reforms which may include the environment, while others specifically focus on natural environment; many depend on corporate sponsorship, some on private charity and a rare few on government funding. Several organisations are single person-based institutions with a short life span, which cease after addressing an issue at hand. Many of those that persist broaden their focus beyond the original issue and many establish or join alliances and networks.

In the 1980's two remarkable developments in the Indian legal system provided a strong impetus to judicial activism in India. There was a broadening of existing environmental laws in the country and judicial activity through public interest litigation began in earnest in India. These two developments gave more scope to citizens and public interest groups to prosecute a corporation or a TNC which violates environmental norms.

Until the enactment of Environment Protection Act of 1986, prosecution under Indian environment laws could only be done by the government. Public interest groups or citizens had no statutory remedy against a polluter who discharged an effluent beyond the permissible limit. But under the Environment Protection Act 1986, Section 19, a citizen can prosecute any company provided a 60-day notice is given of her/his intention to prosecute. Other provisions allowing citizens to participate in the enforcement of pollution laws are now found in Section 43 of the

³ According to one rather contentious definition, activism in India is marked by 'that it has no territoriality, no hegemony, no competition for power, no lusting for eminence in the media market, no questing for recognition or rewards'. Baxi U. (1986) Activism at Cross-roads with Signposts, Social Action, Vol.36, October-December.

Air Act, as amended in 1987, and in Section 49 of the Water Act as amended in 1988. Both these Amendments require the Pollution Control Board to disclose internal reports to citizens seeking to prosecute a polluter.

There has also been an expansion of citizens' participatory rights in public interest litigation (PIL). Traditionally only an individual who had her or his rights violated could seek remedy under PIL. This meant that a person wishing to prosecute had to show that he/she had suffered some special injury over and above other members of the public. Thus cases of air or water pollution were difficult to redress. Now, however citizens can challenge environmentally harmful actions even though they may not suffer any greater harm than others. The closure of limestone quarries in the Dehradun district of UP, as well as polluting tanneries along the Ganges is important landmarks in the history of India's public interest litigation.⁴

One main deficiency that persists in the entire environmental movement is the lack of *scientific inquiry*. NGOs lack scientific capacity and technical know-how to understand industrial ecology. Also, industries (and Pollution Control Boards) make little effort to publicise their environmental impact assessments (EIAs), project plans and Environmental Reports, which makes NGOs suspicious. State Pollution Control Boards (SPCB) too lack technical staff and facilities to assess each and every project and industry. This has made people's perception of projects a vital factor in the establishment of an industry. One important issue that remains uncorrected is that public review of EIAs projects is only through their summaries.

III. Experiences with NGO activism and public interest litigation in India

The Bhopal tragedy gave environmental and factory enforcement agencies⁵ a major cause for concern and highlighted the lacunae that existed. This led to a boost in NGO activity. In cases where cities developed primarily around industries (mostly textile and dyeing units, chemical plants, or factories), the question of their safety became critical. Extensive media coverage and people's movements pressurised governments to regularly inspect industries and factories in cities and towns.

a. Protest mechanisms used by NGOs

Effective awareness building tools, which may spawn undesirable second-order effects, are protests. Many NGOs protest through vocal and verbal communication

⁴ For a detailed analysis of PIL and environmental law see, Environmental Law and Policy in India, 1991, Armin Rosencranz, Shyam Divan and Martha Noble, Tripathi publishers.

⁵ Environmental policies are enforced by the Pollution Control Boards, but in addition the Factories Act is enforced by factory enforcement agencies.

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to educate and lobby for people and institutional support. Commonly used protest mechanisms like *dharna* (sit-in demonstrations), *morchas* (processions) and *padyatras* (marches and processions) are effective to increase public awareness and expose agencies and institutions to community interests. The mechanism aims to deter on-going projects by revealing to society the options that would have been lost for otherwise inexplicable reasons—a means to bring their legitimate complaints before a quasi-judicial body (like the Green Bench or SPCBs to settle issues through dialogue)⁶. This has been used as an effective means by many protest NGOs to render the projects ineffective since project cost overruns caused by delays further deter industries to proceed with the project work. Violent forms of protests, like monkey-wrenching used by protest NGOs of the developed countries are largely absent in India.

To make protest more effective, Green groups often form alliance to protest on different aspects of a project, thereby drawing upon each others experience and methods of addressing the same issue. International protest NGOs and radical donors also have been playing an increasingly important role in helping local NGOs with resources and most importantly giving them the publicity at an international level. For example, Greenpeace and Multinational Resource Centre, a Washington based information centre, work in close collaboration with Toxic Links and other NGOs in India to monitor, investigate and protest against industrial activities. NGOs in India are not only getting sensitive to local issues but also sensitising citizens of practices of TNCs abroad. On December 10, 1997, protest NGOs in New Delhi and Mumbai organised the 'Boycott Shell' Day to commemorate the second death anniversary of Ken Saro Wiwa. Similar protests are organised to commemorate the Union Carbide day annually in Bhopal.

Direct action through protests and demonstration possibly has proved to be the most effective way to mobilise people and opinion. However, the recent media attention and politicisation of environmental issue obscures the motive. Direct policy intervention through public participation, aggressive lobbying or media coverage through reports can be instrumental in bringing about change.

b. Public Interest Litigation

The most important feature of the Indian environment law is the role played by public interest litigation (PIL), which has significantly helped redress several social, political and environmental malaise at the grassroots levels. PIL offers litigants with many procedural benefits - it has a wide *locus standii*, it has non-adversarial

⁶ TOI, Green Groups mobilise public opinion, Nov. 24, 1994 pg. 7.

proceedings, the court can sponsor assistance in examinations and investigations, public hearing and reviews educate the people, rulings have wide implications on future judgements and policy, and direct and prompt action is taken on the decision.

Most environmental cases since 1985 have been brought before the courts as writ petitions, normally by individuals acting on a *pro bono publico*. Petitions are generally lodged in the superior court. Here technical expertise for examination and assessment is largely absent. In such a case, the court may decide to appoint an independent committee in consultation with the parties. The court occasionally appoints an *amicus curiae* to assist investigations, gather evidence and assess the impact and damage. In all experiences in the state of Maharashtra, Committees assess the degree of environmental damage involved and recommend remedial measures. However such committees rarely consult local communities regarding the management of resources or ecosystems and are not open to legal scrutiny or expert criticism in the course of the judgement, nor do they have the opportunity to present alternative findings before the courts. Another drawback of the court sponsored committee assessment is their inability to consider new evidence and developments that may have taken place during the course of the investigation. In some cases, the Court can inquire on the inaction, delays or other actions of government departments or reasons for their not divulging important evidence.

Of late, the 'Green Bench' of the Supreme Court has delivered some landmark judgements on issues that concern the public at large. Though the immediate economic impacts are large (as in the Translocation of industries (various orders from 1994-1997), and case on Vehicular Pollution, Ganga Pollution or the Taj trapezium), the wide reaching environmental benefits out-run short term economic gains.

In a landmark decision in West Bengal, the Green Bench ordered the closure of 30 large industries, including 9 TNCs, wherein the court enforced the non-exercised Environmental (Protection) Act, 1986, to impose daily fines upon the defaulting companies till they installed pollution abatement equipment. One distinct advantage of injunctive relief is that it gives Courts the freedom to innovate upon their decision depending upon the gravity and specific nature of the case. This enables courts to order prompt remedial measures and suggest broad guidelines to future policy making.

c. Redressal mechanisms

Compensations from environmental damage and personal injury *per se* has been a mixed bag of results. Historically, compensations have ranged from no compensation or notoriously low compensation to high compensation for limited

damage⁷. There is therefore no thumb rule for deciding the nature of compensation, and expert committees so far are not prudent enough to assess the true value and nature of ecological damage (as in the case of P&O - Vadhavan Port case, 1997). Courts however, in absence of many provisions in the Environmental acts have accommodated these in other acts like Public Liability Insurance Act (1991), Factories Act (1995) and other acts like Town and Country planning acts, Urban development acts and industrial location policies.

Absolute liability is another direction that courts have followed in recent years. The Court may issue a writ of *Mandamus* compelling the State institutions and agencies to take prompt action. The Court may order the concerned Government agency to provide redressal measures, impose fines and deliver closure notices to polluting industries (as in the West Bengal case, Translocation of industries in Delhi, Kanpur tanneries, etc.) and order government agencies to follow-up on compensation to the aggrieved (as in the H-acid case, Rajasthan). In these cases, TNC affiliates (and their suppliers) also had to face closure or fine.

The National Environmental Tribunal Act, 1995, (NETA) introduced the rule of strict liability and addresses (unlike the Public Insurance Liability Act) large scale accidents and damage involving hazardous wastes and chemicals. NETA does not address everyday problems of pollution, natural resource depletion, forest degradation, coastal and river zone area infringements and impact of industrial activities on rural communities.

d. Legal redressal mechanisms

A powerful legal instrument with the community for protecting their environment from projects is the public hearing process. Here the community is empowered to voice their opinion and choose from development options and then reject or accept the proposal. This is an excellent means of educating the public on enviro-legal issues and bring forth the initiative in the people to organise themselves to protect their rights and their environment. Unfortunately, the concept has not taken-off in India, primarily because the public is not sufficiently well informed before hand of such hearings. In January 1994, public hearings were made mandatory under the Environmental Impact Assessment (EIA) Notification (dated 27 January 1994), for the 29 different classes of (hazardous) industries. These industries, according to this notification are required to obtain clearance from the Central government (mainly the Ministry of Environment and Forests) prior to the commencement of work. Environmentalists allege that due to the powerful industry lobby, public hearing on EIAs was made optional in May 1994. Hence there were no public hearings on

⁷ Rosencranz A, Shyam Divan and Martha L. Noble (1991), *Environmental Law and Policy in India - Cases, Materials and Statutes*, Tripathi, Bombay.

EIAs between May 1994 - March 1997⁸. Facing severe criticism, the government in April 1997 amended the EIA notification to make public hearing mandatory on all EIAs of projects⁹. However, only the Executive Summary report of the project is to be made available to the public. Under this SPCBs were made responsible to release a notice for environmental public hearing and entertain all grievances, comments and suggestions related to the project within thirty days of the notification and hearing conducted within 90 days of the notification. Since only Executive Summary is available to the public, this process is more of a formality as the public has nothing concrete and no meaningful suggestions, objections and comments can be filed.

Though the legal system offers citizens many options to judicial redress, it has done less to address the question of how environmental damage and degradation be identified, assessed, and remedied. The courts despite its often ambiguous decisions have supported the development of a strong public interest movement, often depending upon expert committees for assistance. This has received some flak from critics. According to one, 'some judges appear to be assuming the role of the police and administrator.... Judicial activism is not at all a shining virtue. Activism of the judges can result only in judicial excesses'¹⁰. Recently, the Supreme Court ruled that petitioner would be made liable to compensation for public losses due to project delays, if the court perceives unnecessary delays caused the litigant¹¹.

e. Government responses

The Central Government has taken some pro-active steps to pre-empt judicial and community pressures. However these were a direct result of various Supreme Court orders in public interest environmental cases. In December 1991 the CPCB identified 1551 large and medium industries for being highly polluting. Out of these 1551, 111 were closed, 1220 installed the required pollution control equipment while 220 defaulted in terms of compliance and were served further legal action. Of these, only 23 were TNC or associated with TNCs in technical or manufacturing collaboration. None of these defaulted in compliance.

Of the 1551 units, 164 were identified in Maharashtra, which largely comprised Public sector companies dealing in power, sugar and distilleries; among the private companies they were largely chemical and pharmaceutical units, and paper and

⁸ Mohan T. 1998, *Of Participatory democracy, Public hearings and Projects*, CAG Report May -June 1998, Consumer Action Group, Chennai, India.

Since amending the notification involves public participation, the Environment (Protection) Rules, 1986, were amended on 16 March 1994 (for which no public participation is required) so as to do away with the process of public participation in formulating/amending notifications. Using this amendment to the Rules the Notification was amended.

⁹ MOEF 1997, *The Gazette of India, Extraordinary*, 10th. April 1997

¹⁰ Joshi, Sharad 1997, *Activism's Excesses*, Business India, June 2-15, 1997 pg45.

¹¹ Bhatnagar Rakesh (1998) *Supreme Court rules against abuse of PIL*, Times of India, New Delhi, December 12, 1998, pg.1.

pulp companies. Of these seven were TNCs or associated with TNCs in technical or manufacturing collaboration.

Recently, under the auspices of newly constituted National River Conservation Authority (NRCA) industries that were polluting rivers and other water bodies were identified. 2901 public and private industries were identified in eleven states, of which 841 units installed adequate treatment facilities, 34 preferred to close down the units and others deferred action in installing environmental facilities. Of these 42 were TNCs or their affiliates, however their fate is not known¹².

The emerging role of MPCB in the management of industrial environment has been decisive in improving environmental quality. Table 1 describes the policies that led to the formation of MPCB. The case study below examines the role of MPCB and the subsequent section describes the co-evolution of different stakeholders.

Case 1: Thane Belapur Industrial Association (TBIA) – A case of industrial symbiosis

TBIA is a body of industries in the Thane-Belapur industrial belt, the largest industrial belt in Maharashtra. The association has recently set up a CETP for industries in their area. The CETP was designed to overcome techno-economic constraints of SSIs who cannot treat their industrial effluent. 350 small and 50 medium and large industries use these facilities. The State government agencies (MPCB and MIDC), the World Bank and the users have contributed for this development. There is a differential tariff for industries based on their size and hydraulic load. Many industries (especially large and medium) that have their own treatment facilities have voluntarily joined this scheme. TBIA also organises workshops and training sessions on environment, health and safety aspects. Large industries that have the in-house capacity also participate in transferring their skills and knowledge to other industries. A unique joint effort among the leading industries to meet a foreseeable disaster in the area is committed under MARG (Mutual Aid and Response Group). TBIA is also working on a landfill programme. *Despite the fact that some large industries that have their own treatment plants, they have voluntarily participated in the CETP Programme, and also assisted in the overall management and transfer of knowledge and experience to*

¹² Shailendra, *Govt cracks down on 2026 units for effluent discharge*, Economic Times, New Delhi, September 27, 1997, pg 7

IV. Institutional reform and enforcement of environmental laws because of NGO activity

Administrative decentralisation and institutional democratisation were powerful trends that occurred in the early 90s. The liberalisations of the economy and the increasing recognition of the role of NGOs in the society have helped improve the effectiveness of policy implementation and reducing the trend of corruption. Earlier, because of weak investigatory, prosecutory and judicial and technical, organisational and manpower incompetence served as alibis for the non-systems, accusations of corruption would seldom stick. Often economic reasons, political pressure and technical, organisational and manpower incompetence has served as alibis for the non-performance of government agencies¹³.

Corruption has been cited as the major source reason for the non-performance of state institutions equivocally by the NGOs¹⁴ and government¹⁵ (Greenpeace 1997, Planning Commission Report 1995). Often the culture of corruption is more strongly prevalent in Government agencies of more 'developed' states of corrupt countries. The negligence of government agencies in monitoring environmental degradation caused by (industrial) growth has marked the emergence of watchful society and people's institutions. Observably, weak government institutions have given rise to strong people's institutions. People's institutions through proactive participation and lobbying have in turn strengthened state institutions. People's institutions have challenged and have inquired into the state institution's role, powers and authority often through a superior authority (namely through judicial inquiry and policy directives). This in turn reinstated the power of the state institutions that had corroded through a culture of corruption and inertia.

Table 1: The changing role of Stakeholders

¹³ See for example Greenpeace (1996) *The Stranger* op cit. pg. 11, 97; CPCB (1982) Comprehensive Industry Document : Chlor-alkali Industry, CPCB, New Delhi and CPCB (1991) Comprehensive Industry Document : Paper and Pulp Industry, CPCB, New Delhi

¹⁴ Greenpeace (1996) *The Stranger : the Chlorine industry in India*, Greenpeace International, Amsterdam

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<i>Period</i>	<i>MPCBs approach</i>	<i>NGOs role</i>	<i>TNCs approach</i>
1960-1980s	Command or Ignore: low technical inputs, political and economic motives alibis for the lack of enforcement	Passive, unorganised activism -issue based activism	Indifferent to environment
mid 1980s	Command and Control : Increasing pressure from Courts and citizens, increase in enforcement	Watchdog	Observe and learn from problems faced by the domestic industries.
Late 1980	Command, control and partake: new legislation and rules strengthen SPCBs and NGOs	Judicial activism, collaboration & networking with international NGOs	International and domestic pressure mounting – compliance becomes essential.
Early 1990s	Command Control & co-manage, though with limited participation. Organise CETPs and landfill programmes, improved interagency coordination	Demands `Openness and transparency` of all institutions, policy initiatives	TNCs and local industry develop market and economic justifications to environmental actions. Internalise environment as management function. Follow Voluntary self regulation rather than `command and control` of MPCB
mid-1990s	NGOs participate in policy and review, though limited. Special NGO cell created	NGOs collaborate with SPCBs and industries. Few NGOs provide enviro-legal aid and education.	Some TNCs encourage NGO participation. Help transfer of technology and practice. Some TNCs seek excellence in environmental performance.

¹⁵ Planning Commission (1995) Report of High Power Committee - Urban Solid Waste Management in India, Planning Commission, GOI

The efforts of NGOs in soliciting to clarify official discretion, has helped simplify rules and regulations and enhance accountability and transparency. Over the past five years, government agencies in the state have been asked to partake responsibilities with NGOs and the community. This reform of government institutions has helped increase the legitimacy of institutions and democratisation through participation, as well as increase the efficiency and effectiveness of their services and policies. This is leading to one broad objective: that of *strengthening accountability*.

Despite this, state institutions have had a poor experience in drafting legislation and taking policy initiatives. Promulgating policies and rules have themselves proved that they can be a source of (social) costs and corruption. This has been largely because the administrative costs of new rules are high, and efficiency can suffer. The overall experience has been that they stimulate corruption when they grant officials new monopoly powers, with vague discretion and little transparency. Non-implementation of directives like compulsory public hearings on government projects (which is voluntary for industries) and inspection of documents has not been initiated.

The changing trend of corruption in government agencies has been beneficial in restructuring inefficient institutions. According to an official in the Anti-Corruption Bureau (ACB) the change of nature of corruption has been the most significant factor in its decline. He observes that earlier monopolistic and discretionary power prevailed in the enforcement of environmental regulations. The giver (the industry) and taker (corrupt agency official) were in a mutual agreement of a *collusive* form of corruption. With increasing NGO activity and opening of the economy, the agencies were forced to implement rules and regulations - defaulters could persist only on a day to day basis before they could be discovered. Hence, officials could only victimise those who resisted adoption of clean technologies using *extortionate* methods. Extortionate corruption in state agencies is easier to combat through information and education of stakeholders (NGOs, industries, trade bodies, etc.).

Recent developments in Rajasthan and Tamil Nadu on the Right to Information Bill are steps forward into complete democratisation. Prevalence of repressive acts like the Evidence Act and Official Secrets Act prevent concerned institutions from seeking information legitimately. Some recent judgements by the courts on providing information and involving NGOs in development planning has encouraged people to seek information on projects and policies¹⁶.

¹⁶ See Government of India - Ministry of Environment and Forests (1986) *Right to know - the Judgment of Bombay High Court and Supreme Court Order* : in the case of Bombay Environmental Action Group and Others vs. Pune Cantonment Board (vide Writ petition 2733 of 1986, Bombay High Court) and other cases mentioned therein

V. Industries Response to Environmental Pressures

The growing social and regulatory pressures have made industries seek new partners to collaboratively deal with environmental challenges facing them. Industries have responded by three mechanisms; they are: one, through sharing and developing common facilities with other industries; two, by initiating the formation of industrial associations; and three, by fostering relations with NGOs to help improve their environmental performance and image. Industrial areas in Maharashtra have therefore developed mutualistic and symbiotic relationships with agencies and NGOs. Associations in industrial areas began addressing collective action at the behest of industries and became representatives of industries at forums. Thane Belapur Industrial Association is one of the most developed of associations.

Development of relationships between industry and NGOs is commonplace on social issues; this was largely through financial assistance and support. However, industry-NGO partnership on environmental grounds is rare. Recently few NGOs have come forward with strategies on site remediation, waste management and recycling. A good example of this relationship is the PCMC model of waste recycling.

Case 2: Pimpri-Chinchwad Model Community Programme - An example of Industry - NGO Partnership¹

The Pimpri-Chinchwad area in Pune district of Maharashtra, is a heavy industry area, primarily housing automobile giants and several small scale industries around them. The wastes from the industries and the townships around them were beginning to grow rapidly. In the absence of a well defined waste disposal method the Pimpri-Chinchwad Municipal Corporation (PCMC) along with three local NGOs and the community has designed a waste disposal strategy. Under this, three NGOs with expertise in hospital and hotel wastes, organic wastes and solid wastes were treated separately using eco-friendly technologies like incineration, oxygenation of waste water, and vermiculture. This experiment has provided an opportunity for environmental education for PCMC and the NGOs. One academic institution, SNDT University, Pune, had started a programme GRASP (Garbage Recycling and Segregation Programme) in 1991, wherein local rag-pickers were involved to collect garbage from door to door from the township, industrial areas and settlements. They collect on average 200-250 tonnes of wastes that they recycle using vermiculture. The university has provided the rag pickers with a savings co-operative, educational incentives to reduce child labour and health facilities. Industries have also taken a lead in helping this initiative by reducing their waste for recycling and also sponsoring many activities of the PCMC. In August 1998, a division bench of the Supreme Court ordered a solid waste disposal committee to examine the possibility of recycling urban and industrial wastes.

VI. Conclusions

Legal activism has worked towards addressing environmental problems. But apart from a few important exceptions, the Indian legal system has largely acted more effectively on mitigation of pollution damage rather than towards preventing future damage. Unfortunately, Indian courts are yet to recognise the value of intangible services and benefits of ecosystems. They also need to act more on developing practical remedies.

Legislation is by far the most effective instrument in shaping the corporate response to the environmental challenge. The deployment of policy instruments and public pressure has demonstrated that a smart mix of instruments and strategy is effective. Unfortunately a legal instrument that remains unenforced gradually acquires a status of a policy or a statement of good intent. The renewed interest in environmental monitoring of industries has re-enforced the effectiveness and authority of environmental laws.

The outlook of most activist NGOs towards TNCs can be best summed up by this point of view - TNCs are driven by 'the financial bottom-line at home which precedes deliberate ecological destruction in distant lands. Corporate responsibility is weakest when idealist programmes such as industrial ecology are involved. Within the US and Europe, it moves gingerly, prodded by environmentally sensitive legislatures and hyperactive non-governmental organisations. But this is not the case elsewhere. Indeed multinational corporate responsibility differs from country to country¹⁷.

NGOs have emerged to address the issues of environmental management in industrial areas only recently. Most of these are partners in development rather than watchdogs. Industrial symbiosis has emerged in industrial areas like Thane-Belapur, Pimpri-Chinchwad and Patalganga where inter-industry and industry-NGO co-operation has increased. Despite the awareness and effort by government agencies, citizens and NGOs, these several industrial areas languish in abject pollution and depravity. This can largely be attributed to the role of government agency's focus on a few showcase industrial areas while neglecting other industrial areas¹⁸.

Despite this, the role of NGOs is questionable. Often NGOs address environmental and development issues from an emotional rather than an informed view. The weakness in NGOs approaches arises because of lack of scientific and technical perspectives. Lack of co-ordination between NGOs often leads to

¹⁷ Pillai MGG(1996) *Multinationals and the Environment*, Economic and Political Weekly, Vol. XXXI No.6, February 10, 1996 pg. 325.

¹⁸ See for example Bunsha Dionne (1998) Villagers near Tarapur Industrial belt reel under ecological disaster, Times of India Bombay, November 3, 1998 pg. 5.

Implications for transnational corporations

duplication of efforts¹⁹. Questions have also been raised about their accountability? NGOs may be equally predisposed to corruption and connivance and their very diverse nature, approaches and philosophies are debatable. Hence the emergence of NGOs or the rise in judicial activism *per se* is not a sure sign of environmental revival; rather it poses just another challenge on enforcement agencies to monitor the development of a powerful and potential opportunity in the overall development of the state.

Though TNCs on record may not appear to be the real culprits of the major environmental damage in Maharashtra, the nature of their operations, scope (both in adopting and transferring technology) and commitment remains suspect. In Maharashtra, few TNCs have proactively been involved in direct assistance or in maintaining environmental quality by transferring the practice to their vendors and NGOs. Manufacturing processes that are hazardous or highly polluting are often contracted out to escape adding to their own environmental costs²⁰. Most TNCs are passive compliance orientated though internationally they are committed environmental stewards. With constant NGO pressure (especially increasing international NGO pressure both in India and abroad) it will probably be possible to help overcome this inertia in TNCs.

¹⁹ Sahal ,Bittu (1994) *A House Divided* , Sunday Observer, Bombay 13 February 1994, pg.7. Sahgal argues that 'the abysmally lack of unity among Indian NGOs (environmental and human rights)...the five premier NGOs (Bombay Natural History Society, WWF, BEAG, Centre for Science and Environment, New Delhi and the Indian National Trust for Art and Cultural Heritage) have virtually no regular institutional contact with each'. Sahgal further criticises NGOs for 'working at cross purposes' on major issues and for not addressing issues on environmental legislation.

²⁰ See for example, note on PVC in Greenpeace (1996) (op cit.) pg.81 and other examples stated therein.