CHAPTER IV
1(A) Importance of Water to Society:

70% of earth is covered by water. Water plays a very significant role in balancing environment. There are two kinds of water reserves (a) Sweet Water (b) Salty Water. Sweet Water is essential for sustenance of all forms of life in the planet.

The importance of water can be depicted as under -:

FIGURE: 4.1 Importance of Water to Living Organisms:
The world foresaw importance of human environment as sustenance of human beings was at a great risk. Human beings were thinking only about improvement of wealth by way of industrialisation ignoring the very existence of living beings. It is rightly said "Water pollution is also seen as an aspect of irrational allocation of water resources".  

Shastri has stated that in bio-system and ecosystem, water is an essential substance for life. The mobile living and immobile living both cannot live, or exist without water.

1(B) Beginning of Civilisation

Water, first appeared on the globe before living beings. Like air, water is the strength of life for every living organism. Two important ingredients of environment are air and water. Next to sea, rivers, streams and lakes are the containers of water. Apart from this, below the surface, are large deposits of water, among inland water, river has a unique place. In ancient times, cities and civilisation developed on the banks of rivers or in river valleys. It is rightly said: "Water is most important element of nature. River Valleys are cradles of civilization". It is not surprising, therefore, all major civilizations have been cradled on the banks of rivers or in river valleys.

1(C) Water and River sustenance of living beings: - Indian philosophy

According to manusmriti, an ancient Indian scripture, "Water means life, throwing urine, night soil, any dirty substance, blood or poisonous substance in water" is condemned. In a way, it orders maintaining purity of water,
which is life for all forms of life on globe. "In modern times, river is held to be a life-line".4

1(D) Survey of Regulatory Laws

The behaviour of human beings depicts that industrialisation, and power of money became dominant features of modern civilisation in the 19th and the 20th centuries. Laws necessary for controlling and commanding human beings to protect water had to be legislated by various Governments of the world. India in 1962 thought about legislating special enactment for curbing irrational water consumption. Water management and priorities of allocation of water were becoming foremost in the mind of Indian Government. The Water Act was finally legislated in the year 1974.

One additional regulatory legislation Environment (Protection) Act was enacted in the year 1986. These two legislations regulate the activities of persons and industries qua water, through administrative process subjecting industries to certain norms, fixed by Pollution Control Boards. Industries are brought within the frame work of these legislations over and above the criminal sanctions under Section 133 of Criminal Procedure Code, 1973, and the provisions of Indian Penal Code in Chapter X Section 268, based on principle of negligence and nuisance. Another legislation in force as far as the State of Gujarat is concerned is the Gujarat Municipalities Act. This regulates to certain extent water problem of people and the activities of the polluters, industrialists and persons staying within the municipal area.
The title of the Water Act (Water Prevention and Control of Pollution) 1974 is suggestive that it is a regulatory framework. The Act gives power to the authorities to lay down certain standards. It vests power to see that pollution norms are complied with by industries.

2 OLD TEXTS OF INDIAN ORIGIN AND CONCEPT OF PURE WATER; INDIAN PERSPECTIVE

2(A) Vedas

Purity of water has always been emphasized from times immemorial in India. In the Rig-Veda, the Atharva Veda and the Yajur-Veda, many verses in praise of Lord Varun (God of Water) and Lord Indra, are found. In the Yajur-Veda water is regarded as a source of life.

2(B) Upanishads

The Upanishad and Vedas together constitute Smruti, which means heard and passed on from generation to generation verbally. The source of Upanishad is believed to be divine. These classics abound in quite thought provoking references insisting maintaining `purity' of water.

2(C) Bhagvad Gita

Bhagvad Gita also mentions about worshipping of Lord Varuna the Master of all water resources. In Vedic times, water was regarded as a component of life and was regarded sacred.
2(D) Smritis

It has been mentioned in household rules of Manusmriti that Let him not throw urine or faeces into the water, nor saliva, nor clothes defiled by impure substances, nor any other impurity, nor blood, nor poisonous thing.⁶

3 STATUTORY PROVISIONS DURING BRITISH REGIME AND OTHER GENERAL LAWS FOR CURBING POLLUTION OF WATER BEFORE ENACTMENT OF SPECIFIC LEGISLATION IN INDIA

3(A) Beginning of Regulatory Laws

Dr. Paras Divan has opined that India has traditionally been a pollution loving nation, "We pollute our rivers by disposing our dead bodies and all other human and other waste".⁷

Irrational allocation of water resources has given rise to several issues such as conservation management and availability of water for consumption. The British wanted to regulate and control pollution of water, rivers, sea. Gleaning through the early pre-independence British period one finds water related legislations. The Bombay Act, i.e. Shore Nuisance (Bombay and Colaba) Act, 1853 can be regarded as the first legislation aimed at controlling pollution of water. The legislation mainly aimed at controlling water pollution, water pollutant was considered to be causing nuisance. The Collector of Land Revenue was authorised to stop the nuisance anywhere. The person carrying on such activity was made to abate the nuisance. The next legislation dealing with water
pollution was the Oriental Gas Company Act, 1857. This Act prescribed punishment for pollution of water if caused by the company.

3(B) Indian Penal Code 1860 :-

The Indian Penal Code 1860 embodied provisions that dealt with punishment for nuisance. This was based on the doctrines embodied under tortuous liability envisaged by Old British regime under judge made law, based on the principle of tort.

Chapter - 14 of the Indian Penal Code 1860 relates to the offences affecting public health safety, convenience, decency and morals. Provisions enumerated in Sections 268 to 290 are important, in Section 277 of *The Indian Penal Code*, it is legislated that:

> Whoever voluntarily corrupts or fouls (a) the water of any public spring or (b) reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both."

Even mischief is included in the term nuisance, and therefore, the provisions of Section 425 and 426 of the Code can be resorted to for curbing water pollution.

Section 425 provides that `whoever ....... causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility or affects
injuriously commits 'mischief'. Thus, to render water unfit for human consumption or to injure aquatic life amounts to mischief.

**Analytical Study of Judicial Trends :-**

The Judicial attitude under the provision of Section 269 read with Section 277 would make it clear that it applies only to water in a public spring or reservoir but it would not apply to public river or running water. However, Section 268 would take within its sweep pollution of the streams or rivers, as the definition of public nuisance is meant for avoiding nuisance, omission would mean not acting according to the principles which are set for not causing of hindrance to other persons. The framers of Indian Penal Code were alive to the situation so as to punish people who would render water unfit for human consumption. If aquatic life was injured or even if the utility of the water was diminished person would be punished.

**3(C) Criminal Procedure Code, 1898 now Criminal Procedure Code, 1973**

The Criminal Procedure Code (Old) now repealed had also made provisions to curb pollution of water.

Chapter 10 relates to maintenance of public order and tranquility. It would be relevant to consider and analyze provisions of Section 133 of *The Criminal Procedure Code* read with Section 144 are analyzed on the basis of the legislative and judicial trends which shows their importance in curbing pollution of water. It is useful for improving quality of water.
Analysis of decisions of Gujarat High Court and landmark authoritative pronouncement of Supreme Court shows that all cases of annoyance are not considered to be injurious to health. It is held that there must be continuous nuisance as defined in Section 268 of the Indian Penal Code. The recent decision in Surat Municipality vs. Laxmi Silk Mills and Anothers reported in 1997 (1) GLR 455\textsuperscript{10} is of relevance. Hon'ble High Court of Gujarat has held that under Section 133 of the Criminal Procedure Code the company which is discharging polluted water cannot be granted prayer to provide drainage connection. The local authority cannot be directed to take action so as to help wrong doer. The Hon'ble Gujarat High Court in 1990 has held that the conditional order must first be passed before final order is passed. In the Case of Kothari Jayantilal vs. State of Gujarat reported in 1990 (2) GLR 744\textsuperscript{11} the Hon'ble High Court of Gujarat held that the provision enjoins on the Magistrate certain procedures to be followed as per Sections 133 to 138 of the Code. If the Magistrate is not satisfied he may not go further with the proceedings. This Judgment points out that it is for the Sub-Divisional Magistrate to come to definite finding. The Hon'ble High Court of Gujarat in the case of Maneklal K. Dauda vs. State of Gujarat; 1991 (1) GLR 57\textsuperscript{12} has held that Magistrate cannot make local inspection. However, the later Judgment reported in Branch Manager, Vijaya Bank vs. State of Gujarat; 1993 (2) GLR 1004\textsuperscript{13} relying on Supreme Court's decision held that local inspection can be carried out by the Magistrate. The decision reported in 1991 is per incurium the reason being that the Hon'ble High Court did not appreciate nor had considered the decision of Supreme Court rendered in 1979 in Govindsingh vs. Santibhusan nor has the decision taken into consideration the provisions of Section 350 of the Criminal Procedure Code.
which would permit a Judge or Magistrate at any stage of trial to make local inspection where nuisance is caused [Emphasis Supplied].

The Supreme Court as early as in 1980 was faced with challenge by authority who failed to give adequate facilities to people and when ordered to do so, challenged the order in the Supreme Court. The Supreme Court in Municipal Council Ratlam v. Vardichand; AIR 1980 SC 1622\(^{14}\), the above referred Judgment of the Hon'ble Supreme Court though interpreted the provisions of Section 133 has proved to be torch bearer in matters concerning Water Pollution and duties of Municipalities towards its subjects. The decision is well-known as the Ratlam Municipality case (reported in AIR 1980 SC 1622).

**Brief Facts** :- Residents of a locality within limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretion by nearby slum-dwellers moved the Magistrate under Section 133 of Cr.P.C. to require Municipality to do its duty towards the members of the public. The Magistrate gave directions to Municipality to draft a plan within six months for removing nuisance. In appeal, Sessions Court reversed the order of the magistrate. The High Court approved the order of the Magistrate. In further appeal, the Supreme Court affirmed the Magistrate's order. The Municipality was directed to provide proper facilities and was asked to remove nuisance.

3(D) **The Code of Civil Procedure, 1908 :-**

The Code of Civil Procedure, 1908 made specific provision in Section 91 of the Code, in 1976 the scope was widened to take within its sweep wrongful act which affects or is likely to affect the public by nuisance.
91. **Public nuisances and other wrongful acts affecting the public.**

(a) An act is actionable if it is public nuisance or other wrongful act which affects, is likely to affect, considerable people then (b) a suit for declaration and injunction or for such other relief as may be appropriate in the circumstances of the case be instituted in a Court of Competent jurisdiction.

The persons who can institute proceedings are

(a) the Advocate - General, or

(b) with the leave of the Court, by two or more persons, even though no special damage has been caused to such persons by reason of such public nuisance or other wrongful act.

Subsection two is a proviso and it specifically permits a person to carry pursuit under other laws also. It is provided that nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently. It is opined by Justice C.K.Thakkar that:-

"The suit under Section 91 can be instituted for declaration and / or injunction or even for a relief which may be considered to be appropriate to meet with the averments made in the suit".15

Chapter 5 of the Code of Civil Procedure relates to special provisions was amended in 1976. The amendment did away with the filing of the suit
in respect of public nuisance by the Advocate General or two or more persons only, after the written consent of the Advocate General was obtained. However, it is legislated that if the Court grants permission, a suit can be instituted if there is public nuisance, even without permission of Advocate General.

(1) **Nature and scope of the provision:**

Nature and scope of the above provision is wide enough. Injunctions, declarations or any kind of order which would meet the situation so as to curb nuisance can be granted.

(2) **Public nuisance: Meaning**

The expression 'public nuisance' has not been defined in the Code. It can, however, be an act or omission which causes common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity or which must necessarily cause injury, obstruction, danger or annoyance to the persons who may have occasion to use public rights. Thus, obstruction of a public highway, pollution of public waterways, storage of inflammable materials, endangering life, health or property of public, ringing of bell day and night, etc. are instances of public nuisances".16

(3) **Person capable to institute proceeding:**

Prof. Yogesh Mehta in article "Female Foeticide and the P.N.D.T. Act, 1994 : The Family at the site of struggle" published in 2003 (3) GLR
Journal 139; Yogesh Mehta\textsuperscript{17} has emphasised the fact that the family is a natural and a fundamental group unit of the society and is entitled to protection by the state. The provision made under Section 91 would include family, if the family faces any public nuisance it can institute a suit for injunction or declaration in a Civil Court.

The Hon'ble High Court of Gujarat in \textit{Manubhai vs. Umreth Municipality} reported in 1964 \textit{GLR 1027}\textsuperscript{18} held that:

"If any individual and personal rights of the member of the public are violated by an act which constitutes public nuisance, the individual member of the public whose rights are so violated can always maintain an action at law and enforce such rights. For such an action, Section 91 of the Code of Civil Procedure can afford an answer" [Source : - \textit{Civil Procedure Codeby Shri J.M. Thaker}]\textsuperscript{19}

Other provisions under which redressal can be sought:-

Under Order 39 Rule 1 and 2 of Civil Procedure Code prayer can be made as it is meant for restraining a person from committing acts which would be harmful to the public at large.

The Hon'ble High Court of Gujarat in \textit{Kadarbhai Mohadbhai vs. Haribhai; 1973 GLR 245}\textsuperscript{20} held that where removal of public nuisance was one of the relief sought for and if the plaintiff suffered special damages then the consent in writing of the Advocate General was not necessary.
(E) Labour Legislations

With the increase of industries, legislations for welfare of workers working in industries, namely The Factories Act, B.I.R. Act & Industrial Disputes Act were enacted.

The Factories Act, along with other legislations has tried to protect the workers and the persons serving in places where pollution is caused. Section 12 of the Factories Act requires that each factory shall make arrangement so that the effluents and water are properly discharged without causing harm to the surrounding areas or to the people living in the vicinity.

3(F) Municipal Laws Applicable in The State of Gujarat

Bombay Provincial Municipal Corporations Act (BPMC Act) 1949:-

This Act legislated provisions for sanitary regulations. The provision in clause 314 specifically prevents pollution of water by chemicals. Special measures are to be taken by the Commissioner for implementing sanitary conditions. Chapter - 12 deals with drains, drainage and enjoins duty on the authority to construct, keep and repair drains.

The next legislation to follow was the Gujarat Municipalities Act 1963 legislated after the formation of State of Gujarat, wherein provisions have been made in chapter - 11 in sections 192,193,194,195 Powers are conferred for prevention of nuisance like discharge of sewage, removal of filth, removal of night soil and even abatement of nuisance from well.
Chapter - 11 gives powers to the authorities which are concerned with drainage and water supply.

3(G) Easements Act 1882

The riparian rights: The law of nature permits people to have access to a stream near their house. The use of such right is not reasonable and is objectionable, if they obstruct or cause any kind of pollution such action would become actionable. In these circumstances, the act would be considered to be tortuous. It is even recognised that neighbours can not allow each others’ wells to be contaminated by pollutants, as it would cause immediate damage, namely pollution of water. Allowing sewage to escape into other person's property would be injurious to the other person and action can be taken.

4. TORT LAW: NUISANCE, NEGLIGENCE
PER-SE ACTIONABLE UNDER LAW OF TORTS

The pollution of water is tortuous act. It is covered by the tort of nuisance as it causes injury to person and property, comfort of a person or health. In Pakkle vs. P. Aiyasami; AIR 1966 Mad. 359, it was declared by the Madras High Court that altering the natural quality of water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used gives cause of action in nuisance.

The oldest legal remedy prevalent in common wealth countries is the law of torts. Even environmental pollution was abated with its help. The majority of pollution cases under Tort Law can be categorized into those which cause nuisance, ones’ which are committed due to negligence and which arise out
of strict liability of the wrong doer. In India law of tort is the outcome of common law principles adopted by the British based on judicial mandates in contrast to legislative enactments. The law of torts can be brought into action, by claiming damages or seeking an injunction or seeking both, against the wrong doer.

The decision of *J.C. Galstaun vs. Dunia Lal Seal; (1905) 5 CWN 612, 617* is one of the oldest cases reported under tort law in India. The defendant must be punished for the outrageous nature of conduct, as for instance, when he or she persists in causing a nuisance even after convicted and being fined for causing the nuisance.

Combined with damages, injunctions are also sought, may be temporary or perpetual. The classic example is of Oleum Gas leak case wherein the Supreme Court injunctioned Sri Ram Foods and Fertilizer Industry from restarting its factory without following certain norms and propounded the principle of absolute liability deviating from the principle of strict liability. It even propounded the principle of compensation as per the magnitude and the capacity of the company. Refer: *M.C. Mehta vs. Union of India; AIR 1987 SC 1086.*

In a very old decision reported in *Fletcher vs. Bealery; (1885) 28 Ch D 688* the plaintiff was a riparian owner who used water from the river in the paper-manufacturing process. The defendants were alkali manufacturers and were in the habit of depositing heaps of refuse on their land which was close to the river. It was proved that in some years the noxious fluid began to flow from the heap into the river. Thus, it rendered, the water of the river unfit for...
the use of the plaintiff in the paper-manufacturing process. The plaintiff did not suffer any actual injury. Parson, J. stated the law as follows:

"There are at least two necessary ingredients for a *quia timet* action. There must, if no actual damage is proved, be proof that the apprehended danger will, if it comes, be substantial.... I think it must be shown that if the damage does occur at any time, it will come in such a way and under such circumstances that it will be impossible for the plaintiff to protect himself against it if relief is denied to him in a *quia timet* action."

The action failed as the plaintiff could not prove any substantial damage. Action can also be brought against statutory bodies for caused nuisance to private individual for water pollution. refer *Brijbala Prasad vs. Patna Municipal Corporation*, AIR 1939 Pat 273. The decision of the Supreme Court in *Jay Laxmi Salt Works Pvt. Ltd. Vs. State of Gujarat* reported in (1994) 4 SCC 127 wherein meaning and ingredients of Tort and which are the injuries which would be actionable is explained. The Supreme Court has even explained the meaning of negligence. The judgment is important as it enjoins the duties of the state in case of negligence.

The basic definition of tort would be to twist, and therefore, an act to be Tortuous, would be considered a wrong for which unliquidated damages can be claimed. In law of Torts by Ratanlal & Dhirajlal it has been opined that "Truly speaking entire law of Torts is founded and structured on morality. No one has a right to injure or harm other intentionally or even innocently. Therefore, it would be primitive to close strictly or close finally ever-expanding growing horizon of tortuous liability. Even for
social development, orderly growth of the society and cultural refineness: liberal approach to tortuous liability by Courts is more conducive.\textsuperscript{28} The law of torts can be resorted to, for resolving environmental problems. The definition of nuisance as defined in Section 268 of Indian Penal Code can also be taken into consideration. Nuisances are of two kinds: public or private. As early as 1902, the Bombay High Court has held that the injury must be shown to be of a substantial character, and therefore, where the injury of causing nuisance is substantial and causing consequential injury remedy would lie under tort law refer: \textit{Sadu v. Suka}, 1902 (5) BLR 116.\textsuperscript{29}

The Supreme Court and the Hon'ble High Court of Gujarat have under the tort law assessed the damage to the environment under the writ jurisdiction. In the words of Michael R. Anderson "An innovative understanding of damages was articulated in the Oleum Gas Leak Case". (Reported in \textit{M.C. Mehta vs. Union of India}; AIR 1987 SC 965.\textsuperscript{30})

The tortification of Constitutional Law by the Supreme Court and the High Courts are based on damages which can be said to be emanating from the Law of Torts. The Constitutionalisation of Tort Law has sometimes led the courts to consider matters of causation, duty of care, and other aspects of tort law in a constitutional setting. Indeed, in a number of decisions, courts have turned to tort precedents in order to fashion suitable remedies to protect the environmental dimensions of the right life.\textsuperscript{31} The first question for awarding compensation by invoking the writ jurisdiction was first raised before the Supreme Court in \textit{Khatri (ii) vs. State of Bihar}; 1981 (1) SCC 627 wherein the Supreme Court decided to device new remedies for the purpose of vindicating the most precious of the fundamental right to life and personal
liberty. Reference to the following decisions of the Supreme Court and the High Court of Gujarat would go to show that the authorities and industrial houses are held liable under doctrine of absolute liability.\textsuperscript{32} The High Court of Gujarat in \textit{Rajkot Municipal Corporation vs. Majulaben Jayantilal Nakum Wd/O. Decd. Jayantilal Chhaganlal & Ors.}\textsuperscript{33} The High Court while deciding the said matter has relied on various authoritative pronouncements of the Supreme Court and the English Court.\textsuperscript{34} The High Court has interpreted that the word `may' be construed as `must' or `shall' in the facts and circumstances of the case. The Court referred to

The constitutional remedy is available as a part of public law, and asserting the relevance of tortuous liability, the Court held that the respective factories or companies would be bound to compensate the workmen for the health hazards caused by the disease which the workers were suffering from, or had suffered pending the writ petitions: "Therefore, the factory or establishment shall be responsible to pay liquidated damages to the workmen concerned." Where there was a positive finding that any of the workmen was suffering from asbestosis, "each such worker shall be entitled to compensation in a sum of Rs. 1 lac payable by the factory or industry or establishment concerned within a period of three months from the date of certification by the National Institute of Occupational Health."

\textbf{5 \hspace{1em} INDIA GOVERNED BY CONSTITUTIONAL MANDATE}

\textbf{5(A) \hspace{1em} General Aspects Concerning `Water'}

India has a dual polity with union at the centre and the states at the periphery, each endowed with the sovereign power assigned to them.
respectively by the Constitution. It has declared India as a Union of States. Both the Union and the States have been conferred with the power to legislate, by making appropriate distribution of subjects. The subjects enumerated in List I & II empower the Union and the States to legislate. Union and State are concurrently empowered, to legislate on the subjects enumerated in List no. III (concurrent) of Schedule VII, of the Constitution. None of the lists, however, includes environmental protection or pollution of water or air, as a separate subject for legislation.

Entry 17 of List II Seventh Schedule Act, 246 in State List reads as follows:

"Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List I."

The Water (Prevention and Control of Pollution) Act, 1974 could not be brought on legislative sphere as Article 252 of The Indian Constitution permitted States to legislate and prohibited Centre to enact unless 2 or more States passed resolutions for framing of legislation. The central legislature could enact only after receiving assent from the States.

5(B) 'Water' Listed Under State Subject

In 1962 the Ministry of Health had appointed a committee on water pollution. The Committee recommended that the Union as well as the States enact law on the subject. The Parliament had no power to enact laws with respect to such matters, except as provided in Articles 249, 250 and 252 of the Constitution. A draft bill was circulated to all State
Governments in the year 1965, with a request to pass enabling resolutions as required in Article 252 (1) of the Constitution authorising the Parliament to enact law.

The Prevention of Water Pollution Bill, 1969, was introduced in the Rajya Sabha after 6 states had adopted the required enabling resolutions. In August, 1970, Rajya Sabha decided to refer the bill to a Joint Committee, which modified it in many respects and then presented it to the Parliament in 1972.  

The bill was passed by the Parliament in 1974. The Water (Prevention and Control of Pollution) Act, 1974, came into force. "The Water Act is the statute par excellence on water pollution control in India. It seeks to maintain or restore "wholesomeness of water". Though India was alive to the problem of water Pollution, it was only after the Stockholm Declaration in June 1972, India took steps to legislate. The Water (Prevention and Control of Pollution) Act, 1974 (hereinafter referred to as 'Water Act') was enacted by the Parliament, it applied only to such states that had consented and passed resolutions to the said fact.

5(C) Development of Inter-State Rivers under the Constitution

Under The Constitution Inter State River Development is enlisted in Item 56 of List I of Schedule VII the entry reads thus:--

Regulation and Development of Inter-State rivers and river valleys to the extent of which such regulation and development under the control of the
Union is declared by Parliament, by law to be expedient in the public interest.

Union Government can legislate on inter state rivers and river valley.

The following two Acts enumerated in Box 4.1 were enacted under Constitutional mandate:

Box 4.1

The Inter State Water Disputes Act, 1956.
The River Boards Act 1956.

6 WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

6(A) Intendment

The Bill on Water Pollution was introduced in the Parliament in the year 1969 and got accelerated due to Stockholm Declaration of 1972. On March 3, 1974, on receiving the assent from the President of the India, the Water (Prevention and Control of Pollution) Act, 1974 became a statute. As per the Preamble, the Act intends to prevent and control water pollution and restore wholesomeness of water, and to constitute Boards, to implement the scheme.
The ongoing industrial concerns were also required to comply with the terms of permission granted by the Pollution Control Board.\textsuperscript{37}

Despite the law being enacted people of Gujarat drink (still) unpotable water as per the observation of Hon'ble Gujarat High Court in the decision rendered in \textit{P.J. Patel vs. Union of India}.\textsuperscript{38}

\textbf{6(B) Brief Analysis of the impact of the legislation :-}

\textbf{6(B) (1) Prelude}

Under the Act various activities of potential polluters are regulated, by rules, directions, quasi-judicial orders, administrative orders, prior permission/consent, etc. For example, a person who wants to set up a new industry which is likely to discharge effluents or pollute the nearby water course is bound to obtain consent of the Pollution Control Board under the Water Act.

The unit or individual must obtain environmental clearance from the Central government or State government if the industry falls in a specified category. If the industry is such that it is governed by Water Cess Act, it has to confirm to the provisions of latter Act also.

A person or industry violating provisions of law may be directed to a) close down or discontinue the activity; or (b) water, electricity or other essential services may be ordered to be disconnected. Besides regulating the conduct of persons by administrative process, criminal sanctions are
also imposed by the above legislation. "The aim is to prohibit certain conduct of persons harmful to the environment, though breach of environmental legislations is a criminal offence punishable by a competent criminal court exercising territorial jurisdiction over the industry or the place which is being polluted.\textsuperscript{39}

The Preamble of the Water Act and Environment (Protection) Act go to show that the parliament has legislated in pursuance to the aims of the UN Conference on Human Environment\textsuperscript{40} held in the year 1972

\textbf{6(C) Definition Clauses:} Section 2: Important definitions -> Analysis

2(d) "\textit{Occumier}" in relation to any factory or premises means the person who has control over the affairs of the factory or the premises and where the said affairs are entrusted to a managing agent, such agent shall be deemed to be the occupier of the factory or the premises.

Section 2 (d) provides that a person who is or was in occupation or control of the establishment would be deemed to be an occupier. The Directors can also be deemed to be occupier as per the decision of the Hon'ble High Court of Gujarat in \textit{Azim H. Premji vs. State of Gujarat reported in 2000 (3) GLR 2280}.\textsuperscript{41} If day to day affairs are entrusted to managing agent, he is deemed to be occupier.

2(dd) "\textit{Outlet}" includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes or is likely to cause pollution.
The word outlet has been defined by the Amendment Act of 1988. The definition is an inclusive one.

2(e) "Pollution" means such contamination of water or such alteration of the physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any other liquid, gaseous or solid substance into water (whether directly or indirectly) as may, or is likely to, create a nuisance or render such water harmful or injurious to public health or safety or to domestic, commercial, industrial, agriculture or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms.

(i) **Definition analysed** - The definition of pollution can be divided into three parts, the first part relating to (a) water as such, (b) the second part relating to sewage or trade effluent, whereas the third relating to (c) discharge of noxious substances into water.

In relation to water, pollution means –

(i) such contamination of water, or

(ii) such alteration of the physical, chemical or biological properties of water,

as may, or is likely to –

(a) create nuisance, or

(b) render such water harmful or injurious to, -

(1) Public health, or safety, or to domestic, commercial, industrial, agricultural or other legitimate uses, or
(2) the life and health or animals or plants or of aquatic organisms.

In relation to sewage or trade effluent, pollution means such discharge of any-
(a) sewage effluent, as defined in Clause (g) of Section 2, or
(b) trade effluent, as defined in Clause (k) of Section 2, whether directly or indirectly, as may or is likely to,-
(i) create a nuisance, or
(ii) render such water harmful or injurious to-
   (1) public health, or
   (2) safety, or
   (3) domestic, commercial, industrial, agricultural or other legitimate uses of water, or
   (4) the life and health of animals or of plants or of aquatic organisms.

The Hon'ble High Court of Gujarat in Gujarat Pollution Control Board vs. Kohinoor Dyeing & Printing Works, reported in 1993 (2) GLR 1368, has elaborately discussed the meaning of pollution as defined in the Water Act and effect of water pollution has also been explained. The definition is a comprehensive one. The definition covers rise in temperature of water. All changes which change the property of water would be covered in the definition of pollution. The definition will also include radioactive substances which may damage the water of well or stream.

The Halsbury's Laws of England, 4th Edition defines pollution in relation to Water to mean "doing of something which changes the natural
qualities of water, including its temperature." The definition under Water Act does not define change in temperature of the water. However, according to Chaturvedi, the definition would by necessary implication include the change in temperature of water if there is physical, chemical or biological change in the properties of water.45

The definition when read with the definition given by Halsbury, would take within it ambit all kinds of hazardous substances which may damage water.

2(g) "Sewage Effluent" means effluent from any sewerage system or sewage disposal works and includes sullage from open drains.

The term Sullage from open drains would be included. The Sewage Effluent may be from any sewerage system or any sewage disposal works and would include sullage from open drain. Therefore, all kinds of sewage or sullage would be included in the term sewage effluent.

2(gg) "Sewer":- The words `Sewer' and `Drains' would mean the same. The dictionary meaning is normally the under ground passage for passing of any liquid. The definition of sewer in 2 (gg) takes within its sweep, all conduit pipes or channels containing trade effluent.

2(k) “Trade Effluent” :- The terms trade effluent and domestic sewage are bifurcated in this clause. It can be said that trade effluent may not include domestic Sewage. The term sewage is defined in clause (g). Trade Effluent includes liquids, gases, solid substances or any solid substance which are discharged from any outlet by industry or a process house other
than any domestic sewage. The definition given in Section 2(k) of trade effluent after 1988 amendment is an exhaustive one.

2(1) The term `stream' carries significantly a very wide connotation under Sec 2(j) so as to include;

(i) river;
(ii) water course (whether flowing or for the time being dry);
(iii) inland water (whether natural or artificial);
(iv) sub-tellanean waters;
(v) sea or tidal waters to such extent or, as the case may be, to such point as the State Government may, by notification in the Official Gazette, specify in this behalf.

6(D) Constitution and Functions of Central & State Boards

The Act constitutes Boards at Central and State level. The provisions are (a) to advise the appropriate Government, (b) to provide technical assistance, plan and organise training, (c) the Central Board has the further obligation of co-coordinating the activities of the State Boards. (d) initiating criminal proceedings and (e) making public the reports of the Board.

Analysis of Section

Boards have no power to override directions issued by the Government. The analysis of section 3 shows that the boards have more subordination than authority. State Government has been conferred with overriding
powers to exempt certain industries from the operation of the Act. The grant of exemption has to be based on sound reasons and after consultation and on recommendation of the Board. The Act does not give any guidance, for the area to which exemption could be extended.

6 (E) Analysis of Important Provisions

The most important provisions are the powers vested in the boards under Section 24, 25, 26 and 27. To certain extent these provisions are the backbone of the legislation. These provisions restrict starting of new industries, new outlets without obtaining previous sanction of the concerned boards. The person discharging or running any industry will have to be subject to norms. This relates to even criminal sanction under the sections. Section 32 is important as it relates to the emergency measures in case of pollution of stream or well. Apprehended pollution can be stopped by seeking mandatory injunction.

Provisions of chapter - 7 are amended by 1988 Act. The amendments were adopted by Government of Gujarat only in 1999. These provisions are important as Section 41 relates to conviction and punishment under provisions of Sections 22, 32 or 32 (a) read with Section 42 which relates to penalty for certain actions being taken.

Certain provisions of Chapter V A of the Water Act are considered as they are important for prevention and control of pollution.

The Act, introduced a scheme to prevent and control water pollution. Under the scheme, for performing the function, the Board or its authorised
officers are empowered (a) to survey; (b) maintain record and obtain information; (c) to take sample of sewerage or trade effluent passing in stream or well; (d) to analyse samples taken and (e) prepare reports; (f) and to enter any place which they deem fit. These are enabling provisions.

However, study reveals that not a single unit was (a) prevented (b) was ordered closure (c) no conviction was recorded till 1995 Misinterpretation of ameliorative provisions and total inaction of the Board, State Government lead to the High Court issuing mandamus under 226 of Constitution of India. Refer to P.J. Patel’s case and observation.

**Prohibitory Provisions of the Act**

The Act, has prohibitory provisions and prohibits every person who knowingly causes or permits to enter:

(a) any poisonous, noxious or polluting matter of prescribed standard into any stream or well or sewer or land;

(b) any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water, of the stream. This may lead or is likely to lead to a substantial aggravation of pollution due to other causes or its consequences.

Emphasis on *knowingly cause* refers to mens-rea. It would be in conformity with criminal jurisprudence. To hold any offender guilty, the tests laid are very stringent. As such a reckless act of serious consequence, done even innocently becomes punishable under this Act.
Provisos

The prohibition as introduced under the scheme is not absolute. The Act empowers board to grant exemptions under various contingencies, i.e. to easementary, customary and other rights of the industry. This legislative approach apparently has been due to socio-economic conditions and prevalent practices. The exemptions dilute the vigour of the preventive purpose of the legislation. The decision in *P.J. Patel vs. State of Gujarat i.e. SCA 770 of 1995* reflects this situation. The Hon'ble High Court of Gujarat in *Suo Motu vs. Municipal Commissioner, Ahmedabad Municipal Corporation; 2000 (1) GLR 525* held that no permission of Court is necessary to initiate proceedings. The authorities can initiate proceedings against defaulters without prior permission of the Court.

6 (F) Rules framed Under the Act


Amendments

The first amendment was brought about within 4 years of the enactment. The definition of outlet and sewage had to be enacted. Amendments in Sections 3 and 5 were required to be carried out. The most important amendment was of Section 11 A which empowered the board to delegate powers to the Chairman.

In the year 2003 the President of India granted assent to the Amendment Act, 2003 of the Water (Prevention and Control of Pollution) Cess (Amendment) Act, 2003. The amended provisions of Section 2 and industry, now reads as follows:

"Industry includes any operation or process, or treatment and disposal system which consumes water or gives rise to sewage effluent or trade effluent, but does not include any hydel power unit"

Section 16 granted power to the Central Government to exempt an industry by way of notification which consumed water below the quantity specified in the notification. The decision rendered by the Hon'ble High Court of Gujarat under the Water Cess Act in the case of Municipal Corporations of City of Ahmedabad vs. Union of India; 2000 (2) GLR 1221 where after 14 years the Special Civil Application came to be decided. It is held that cess is not tax and no quid pro quo was necessary. On analysis it can be
observed that the decision is for betterment of environment. The Hon'ble High Court of Gujarat after referring to about 16 decisions held that:

To earn rebate a plant must be designed and capable of achieving the purpose of treatment of sewage or trade effluent. A plant which does not achieve such purpose can't claim rebate.

A plant though successful in beginning to meet the standards if later ceased to be a plant for treatment for sewage would not be entitled to rebate as treatment of effluents has to go on continuously. Thus Section 7 entitles a treatment plant to a rebate if it is treating the trade effluents by reaching the standards laid down by the concerned authority.

The High Court of Gujarat after referring to several decisions rejected the petition challenging the validity of Rule 6 of the Water Cess Rule on the ground that the consumer were entitled to rebate from the date when the plant starts successfully working and not from the date when it was put up. It relied on the 16 decisions of the Supreme Court to reject the petition of Municipal Corporation. A company which is manufacturing Rayon Grade Pulp, a base material for manufacturing of synthetics or man-made fabrics is not an "Industry" as mentioned in Sch. 1 of the Act for the purposes of levy of water cess. Rayon Grade Pulp could not be considered even remotely connected as such with chemical industry or textile industry or paper industry. In all preparations, there is certain chemical process but that does not make all industries chemical industries. Whether a particular industry falls within the realm of
taxation, must be judged by the predominant purpose and process and not by any ancillary or incidental process carried on by a particular industry in running its business. Chemical process would be involved to a certain extent, more or less in all industries, but an industry would be known as a chemical industry if it carries out predominantly chemical activities and is involved in chemical endeavours.

To find out the intention of the legislation, if possible it should be found out from the language used in case of doubt. The purpose of legislation should be sought for to clarify the ambiguity only. If any. There is no absurdity in the literal meaning. The purpose of the Act is to realize money from those whose activities lead to pollution and who must bear the expenses of the maintenance and running of the State Board. It is a fiscal provision and must, therefore, not only be literally construed but also be strictly construed. *The Member Secretary, A.P. State Board for Prevention and Control or Water Pollution vs. Andhra Pradesh Rayons Ltd.; AIR 1989 SC 611.*

Water (prevention and Control of Pollution) Cess Rules (1978) R.6- Rebate in cess. Water from river consumed by Electricity Board for Condensor Cooling Plant. Discharged in river after it is cooled down to below 40°C. Factors to be considered for deciding whether rebate can be granted, stated. The Court held that on plain reading of S.7 and R.6 it would be necessary to decide (i) whether water discharged from the condenser cooling plant can be said to be a `trade effluent' by reason only of the fact of its temperature being above the prescribed standard, (ii) whether but for the treatment given to it as described by the appellant and set out above such water would have been discharged in the stream or river at a temperature above 40°C., and (iii) whether the arrangement made by the Board, therefore, be described as a
plant for the treatment of a trade effluent. These and the related questions must be answered to effectively deal with the Board’s claim for rebate. The matter remitted to Assessing Authority for deciding the question whether rebate be granted. *Rajasthan State Electricity board vs. Cess Appellat Committee; AIR 1991 SC 597.*

7. **WATER POLLUTION: GUJARAT SCENARIO**

Water pollution in Gujarat poses a grim picture of environmental degradation. The major rivers in the state together with medium rivers, lakes, ponds and dams provide fresh water for domestic needs along with agriculture, industry and fisheries. It is learnt from *Gujarat Pollution Control Board’s Annual Report, 2002-2003* and the cases which have been decided by the Hon’ble Gujarat High Court viz. *P.J. Patel’s case; Suo motu vs. Municipal Commissioner and S.R. Shah vs. State Bodies* that these water bodies are highly polluted. The judgment of the Hon’ble High Court in *S.R. Shah vs. State* directed the state to locate water bodies and to improve them. A newspaper item published on 3rd of December, 2003 reported that after the check dams were built, the underground water level was recharged, the water contents showed that when tested the chemical contents were reduced.

It is reported in *‘Paryavaran Mitra’ June, 2003* that within coming five years Saurashtra, Kutch and North Gujarat would face severe water problem. Even Charotar which had no water problem has started having water problem.
The cases which are now analysed indicate that the Supreme Court and the High Court of Gujarat have addressed the issues of environmental degradation especially for checking water pollution by invoking even criminal sanctions. The hypothesis in chapter I is partially answered in the positive. What is being emphasized is that the High Court of Gujarat and the Supreme Court have exercised their powers under the Criminal Sanctions as embodied in the Water Act and the Common Law to halt degradation of water. The courts have taken pragmatic approach to see that the legislative intent is not frustrated while dealing with criminal matters. The analysis of the judgments of Nico Sulf and Divine Chemicals is, of course, an exception to the aforesaid approach.

The Supreme Court and the High Courts have also played a supervisory role while exercising their powers under Articles 32 and 226 of the Constitution. The Courts have directed the Pollution Control Boards and the industries who are noticed violating the Water Act to perform their duties. The Ganga Pollution case is an illustration to the point where the Supreme Court noticed the indifference of the industries and directed the industries to stop the discharge of trade effluents. The High Court of Gujarat under Article 226 of the Constitution has played a very positive and constructive role in improving the water quality and curbing pollution.
8(A) Decisions of Hon'ble High Court of Gujarat: -

(1) Criminal Sanctions

8(A)(a) Trying to Dynamite proceedings at its initiation by invoking Section 397 or 482 of Criminal Procedure Code, 1973 discouraged:

The first decision to be analysed relates to the provisions whereby criminal sanctions have been made. The Pollution Control Board had its first problem where provisions of Section 11 (a) and 49 of the Act and the power of delegation by the Board to the Chairman for filing complaint came to the rescue of the polluter. The order of J.M.F.C., Baroda in Criminal Case No. 686 of 1986, was impugned in *Gujarat Pollution Control Board vs. Indian Chemicals Manufacturer, Vadodara, reported in 1990 (2) GLR 1306* where discharge of the accused by the Judicial Magistrate was challenged. This decision depicts, how the trial Court acted mechanically in discharging the industrial concern. The study of the decision goes a long way to help the trial Courts as it holds that the Chairman of the board will be in a position to exercise power and perform the duties prescribed under the Act. The resolution is to be passed by the Board under Section 11 (a). The analysis of the decision reveals that the decision is passed on the sound principles of effective implementation of the provisions for controlling the menace of pollution. The Court held that the trial judge should not refuse to take cognizance of complaint. The Court categorically ruled that the Magistrate has no power or jurisdiction to declare the resolution of Pollution Control Board as illegal. [Emphasis Supplied] The Pollution Control Board has all powers to delegate and the delegation of the powers for sanctioning prosecution was legal. The Hon'ble High Court of Gujarat while dealing with the
provisions of Sections 8, 49 and 11 (a) has come to the conclusion that the Chairman can be invested with powers by the board.

8(A)(b) **Unjust orders of Trial Court under Plea Bargaining deprecated**

The decision of Hon'ble High Court of Gujarat reported in *Gujarat Pollution Control Board vs. M/s. Yogiraj Pulp & Paper Industries;* 1993 (1) GLR 484 deprecates awarding of punishment of less than 6 months (minimum sentence) under Section 44 of the Act. The Hon'ble High Court disapproved the order of Magistrate awarding punishment till the rising of the Court.

**Per A.N. Divecha J.**

"The facts giving rise to this revisional application are not many and not much in dispute. The complainant appears to have filed the complaint charging respondents Nos. 1 to 5 herein with the offence punishable under Section 44 of the Act read with Sections 25 and 26 thereof. That complaint was filed in the Court of the 3rd Judicial Magistrate (First Class) at Amreli. It appears to have been registered as Criminal Case No. 686 of 1986. Respondents Nos. 1 to 5 herein appear to have given one pursis on 29th June, 1987 admitting their guilt. That pursis appears to have been taken on record at Exh. 20. They also prayed for mercy. Thereupon, by Judgment and order passed on 29th June, 1987 in Criminal Case No. 686 of 1986, the learned 3rd Judicial Magistrate (First Class) at Amreli convicted respondents Nos. 1 to 5 herein as the accused of the offence punishable under Sec. 44 of the Act and sentenced each of them to fine of Rs. 150 and also sentenced respondents Nos. 2 to 5 herein to imprisonment..."
till the rising of the Court. Aggrieved thereby, the original complainant has invoked the revisional jurisdiction of this Court under Section 397 read with Section 401 of the Criminal Procedure Code, 1973."

**Analysis :-**

On admitting guilt, the polluters were convicted and awarded punishment which was disproportionate to the offence committed. The Learned Judge did not follow the procedure for accepting plea bargaining. Indication should have been given to the accused that the accused on pleading guilty would be inflicted with at least minimum sentence required by law. The reason for legislating that accused should be inflicted with minimum sentence is deterrence. This decision of setting aside the punishment goes to show that plea bargaining in such matters should not be easily resorted by the Trial Courts in environmental cases.

**8(A)(c) Case of production of written sanction at the time of lodging of complaint :-**

The High Court was considering production of order of written sanction along with lodging of complaint. A petition came to be filed for quashing the order of the Chief Judicial Magistrate who refused to discharge the accused. In the case of *Industrial Chemical Works vs. D.K. Solanki*. 1993 (1) GCD 44 ~ 1993 (2) GLR 1318.58

The decision assumes importance, as it is under Section 397 of Criminal Procedure Code that the petitioner came for dynamiting the prosecution at its inception. The Hon'ble High Court in a well reasoned judgement held that non production of written sanction along with the complaint at the
time of taking cognizance `ipso facto' would not constitute any fetter in the maintainability of the prosecution under the Act. Prosecution under social legislations like pollution laws should not be lightly and leniently dealt with. It is observed that technical infirmity can be removed at a later stage. Such infirmity should not be allowed to be used by an industrialist as a weapon to shatter the prosecution at the inception. It was not the case where sanction was not granted. Where there are serious allegations of environmental offence, the Court should not stay the proceeding or discharge the accused as the technical defects can be corrected at a later stage. The High Court of Gujarat has referred to authoritative pronouncements of the Supreme Court in Nagraj vs. State of Mysore,\textsuperscript{55} R.S. Nayak vs. A.R. Antulay,\textsuperscript{60} C.R. Bansi vs. State of Maharashtra,\textsuperscript{61} U.P. Pollution Control Board vs. Modi Distillery.\textsuperscript{62}

The Judgment under analysis shows that the complaint mentioned that the sanction to prosecute was given by the Chairman. The quashing proceedings were filed after two and half years of filing of the complaint. The written sanction was already there on record, a prima facie case was already made out. The decision of the Supreme Court in Nagraj has been distinguished, in this case sanction was already there, whereas the decision before the Supreme Court, the Government had not granted any sanction. The ratio laid in the Supreme Court's decision was not applicable in this case as sanction was given. The decisions in A.R. Antuley's case was also held not applicable in this case. The decisions of the Supreme Court were based on non-availability of valid sanction whereas in this case, a sanction was accorded by the Chairman but the copy was not filed along with the complaint.
Hon'ble High Court has cautioned the Trial Court from quashing the process issued. The power to discharge is required to be exercised sparingly. The pre-requisite for taking cognizance of the offences under the Act is a valid sanction. If the written sanction is already obtained and the fact is stated in the complaint then, in those circumstances, the proceedings would not be void. The Court would be competent to take cognizance without dropping the proceeding. On the date of taking cognizance, there must be a valid written sanction.

The Court has also observed though obiter that a complaint with a valid sanction by any Officer of the Board is also a valid complaint. The Court has further observed that it is a *sine qua non* without which the proceeding can't go ahead. The technical flaw can always be permitted to be cured. Refer to the decision of the Supreme Court reported in *M.C. Mehta vs. Union of India; AIR 1988 SC 1115*.

8(A)(d) *Desist* does not mean closure - powers of Magistrate defined in Criminal Revision Application 272, 273, 274 etc.

The next decision for analysis is delivered by Justice K.J. Vaidya a judge much concerned with seeing that polluters do not go unpunished. His Lordship had decided the matter of Dwarka Cement Works as early as in the year 1992 upholding prosecution under Air Act. The Additional Sessions Judge, Surat had discharged the polluters. The Pollution board had to approach the High Court. In the case of *Gujarat Pollution Control Board vs. Kohinoor Dyeing and Printing Works 1993 (2) GLR 1368*.

The facts: The Petitioner-Gujarat Water Pollution Control Board, Surat is a statutory body established under the provisions of Sec. 4
of the Water (Prevention & Control of Pollution) Act, 1974. The purpose of prevention and control of water pollution, maintaining and restoring the wholesomeness of water is conferred on the board. The Board is conferred with various statutory powers and functions as prescribed in the Act. The respondents were the owners and/or manager of the respective units carrying on various industrial activities of manufacturing cotton textile, textile printing and dyeing. The Board accordingly in discharge of its duties, on finding the respondent-Units contravened provisions of Secs. 25 and 26 of the Act, had earlier launched several prosecutions by filing criminal cases before the concerned learned Magistrate. In all these complaints, it is commonly alleged that the management of the defaulting units ran by the respondents, discharged large quantities of effluent water, polluting the river "Modhiba" without being treated through the drains of the Corporation, inter alia praying for conviction of the respondents. It further appears that several applications under Sec. 33 were filed before the learned Magistrate inter alia praying for restraining the respondents from polluting the river "Modhiba". On 15-7-1986, the learned Magistrate passed an ad-interim order restraining the respondents from discharging the alleged effluent water outside their factory compound until further orders, making the notice returnable on 22-7-1986. Thereafter, after hearing the respective parties, the learned Magistrate by order dated 12-8-1987 confirmed the ad-interim relief granted earlier and ordered to continue the same till final disposal of the criminal cases. Feeling aggrieved and dissatisfied with the impugned order passed by the learned Magistrate, the respondents preferred Criminal Revision Applications before the
Court of learned Sessions Judge, Surat which came to be partly allowed by the impugned Judgment and order dated 22-12-1989.

The matter was carried before the Hon'ble High Court and the Court held:

The statement of object and reasons of the Act, the definition meaning given to the word "pollution" in Section 2(e) of the Act and the object underlined in Section 33 clearly stand out as the light-house to guide the law enforcing agency and the Courts of law while dealing with the cases under the Pollution Act.

Section 33 of the Act is a special section which gives special right, special remedy and special powers to the Court, and therefore, it is a self-contained section in itself, independent of other provisions of the Act. Thus, Section 33 comes into operation only on the basis of the ingredients provided therein namely the apprehension of the Pollution Control Board about the likely pollution by any person.

On overall analysis of the decision His Lordship has ascribed the purpose of legislation and upheld the Magistrate's order whereby respondents were directed to desist from discharging effluent water holding that such order can't be said to be order of closure. The industry could run units uninterrupted and at the same time comply with the order of the Court. The same could be followed by establishing water treatment plant.

Thus, the word 'desist' cannot be termed to be closure otherwise it would amount to rewriting clause -1 of sub-Section 3 of Section 33 of the Water Act. The view of the Hon'ble High Court is based on the
principles enunciated under interpretation of statutes. The aim of the legislation is fulfilled, and no such meaning be ascribed, whereby the industry can take a stand of closure under Industrial Dispute Act on the ground that some order desisting, it to run the industry is passed.

8(A)(e) **Sample Taking Case**: If substantial compliance with mandatory provision charge to be framed:


Criminal case lodged in Metropolitan Magistrates Court in the year 1990 was asked to proceed in the year 1994. Kashiram Textile Mills and its Directors were successful in getting discharged without framing of the charges. The Learned Magistrate discharged the company and its directors on the ground that samples of the trade effluents were not taken in the manner in which they were supposed to be taken. This kind of discharge of offenders of environmental crimes came to be deprecated by the Hon’ble High Court of Gujarat in case of *D.K. Solanki vs. Kashiram Textile Mills Pvt. Ltd. & Ors.* The Court held that the trial Court lost sight of provision of Section 21 and sub-sections and only sub-section (2) of 21 was interpreted. The Hon’ble High Court held that if prima-facie case was made out, the trial Court should conduct the trial.

8(A)(f) **GPCB vs. AEGIES Chemicals; 1995 (2) GLR 1691**

No discharge of polluters without trial.

The High Court of Gujarat has held that defaulters cannot be discharged at the very outset unless a proper case is made out. The Trial Court cannot
discharge a person or company under the provisions of the Water Pollution Act by interpreting the enactment.

The facts as mentioned in the body of the decision are that the Magistrate discharged the accused on two grounds (a) the report of the board analyst in respect of the trade effluents taken by the board is not admissible in evidence as it is in breach of provision of Section 21 (3) & (5) of the Act and (b) that the seal applied is not spoken of in any inspection report. The evidence has been misread by the Trial Judge. Hon'ble High Court held that the misreading of the evidence on technical ground was unwarranted and shocking. The Hon’ble High Court set aside the discharge order and directed the trial to proceed. The facts go to show the Trial Judge misread the evidence, and thereafter, discharged the accused by the help of wrong interpretation of the statute. The High Court has held that if a prima facie case is made out against the accused, the accused cannot be discharged before framing of charge.

8(A)(g) *Gujarat Ambuja Proteins Ltd. vs. D.K. Solanki; 1997 (2) GLR 1516.*

Directions for Top Priority for Environmental Matters:-

The case of *Gujarat Ambuja Proteins Ltd. vs. D.K. Solanki, 1997 (2) GLR 1516,* is a welcome decision. The data available today goes to show that even as on today the tendency is such that no priority is given to environmental matters by the Trial Courts. The directions are just paper direction. Neither advocates of G.P.C.B. nor the Trial Court Judges are sensitive towards these litigations. The Judgment is a good one on paper and if followed in true spirit can be very useful to justice delivery system. The system is not responding positively and the criminal sanctions have
miserably failed to bring about deterrence to defaulters. The magistrate
should not issue non-bailable warrants after granting conditional exemption.
This direction / finding can be said to be counter productive as under
Section 205, it is the duty of the advocate to remain present if the accused is
not present. This is diametrically opposite to the directions given by the
Court.

8(A)(h) *Azim Premji vs. State of Gujarat; 2000 (3) GLH 788.*

Directors though may not be staying where the industry is located can’t be
discharged without framing charge.

The Trial Court did not find material defect or lack of material to show that
the accused were not in day to day charge of the affairs of the company.
The Hon’ble High Court held that the prosecution cannot be thwarted and
process should be issued. The Hon’ble High Court of Gujarat
considered about 11 Judgments and that of the Supreme Court in the Case
of Modi Distillery. This judgment reiterates the view taken earlier holding
that powers under Section 482 of the Criminal Procedure Code should be
sparingly exercised. The *non obstante* clause has been rightly construed to
take within its sweep every person who is in charge and responsible to the
company for the conduct of the business of the company. (However, this
view is not accepted in Nicosulfl Judgment and also the decision of the
Supreme Court in the case of *Nalin Thakor and others vs. State of Gujarat*).
The core question was whether all the directors even if not in day to day
affairs of the industry could be sued. (The Supreme Court has answered the
question in the negative in the peculiar facts of the said case i.e Criminal
Appeal No. 163 of 2001). The decision of Azim Premji cannot be said to
be watered down by Nalin Thakor’s decision (unreported decision) which would not apply in its entirety because the provisions of Section 47 implicates each and every person who is in charge of and responsible to the company. Sub-section 2 implicates only the directors and other officers if proved that act of polluting was with their consent or connivance. The directives were not discharged by quashing the proceedings under extraordinary powers of the High Court.

The Hon’ble High Court of Gujarat after considering the arguments on behalf of the petitioner and the State and after referring and relying on the several judgments held that it was not a fit case for quashing the process as the complaint prima facie made out the case to set Criminal Law in motion. The judgments relied by the High Court were of the Supreme Court and High Court of Gujarat as well as the Patna High Court.69

8(A)(i) **H.R. Joshi vs. Chandubhai Bosamiya & Others; 2002 (1) GLR 231.***

Powers of Magistrate to restrain pollution highlighted.

The High Court has held that Water (Prevention and Control of Pollution) Act, 1974 (VI of 1974) –under Secs. 24, 25 & 33 – vests Power in Magistrate to restrain a person from causing pollution. In the course of prosecution under the Act an application under Section 33 was submitted on behalf of the Pollution Control Board for an order restraining the accused from discharging pollutants. Despite ample material on record, including Laboratory Report indicating that sample collected from factory of the accused showed polluted water, Magistrate declined to pass interim order. This approach of the Magistrate was found perverse. The
The High Court deprecated the action of the Magistrate for not passing order so as to restrain polluters from committing pollution and causing health hazards.

As per complaint Exh. 1 lodged in the Court of learned Magistrate on 4-4-1989, the complainant was Assistant Law Officer in the Regional Office of Gujarat Pollution Control Board (for short `Board'). As per Section 15 of the Act read with Section 21 of Indian Penal Code, the complainant was a public servant within the meaning of Section 21 of the Indian Penal Code. The aforesaid complaint came to be filed for and on behalf of the Board by the Complainant. The Chairman of the Board accorded sanction on 8-1-1989, authorising the complainant to lodge the complaint against accused. The sample of the trade effluents containing polluted water was sent for testing. The polluter had contravened the provision of Section 24 of Water Act. The complaint was lodged in the year 1989 against the factory in Jetpur known for printing of sarees with silicate and other chemicals. The High Court has been alive to the problem of curbing the menace of water pollution whether it be under writ jurisdiction or exercising jurisdiction under Section 482 of the Criminal Procedure Code.

8(A)(j) Analysis of Non-Affirmative Judgments Under Criminal Sanction: (a) Nicosulf Industries (b) Divine Chemicals


The decision rendered by the Hon'ble High Court is a binding decision on the Trial Courts in Gujarat. [It has been conveyed by the Law Officer of
Gujarat Pollution Control Board that the said decision has been challenged before the Supreme Court and is pending decision by Supreme Court. The decision rendered in the year 2002 has negative impact on Criminal Sanctions and has watered down the earlier decisions rendered by the Hon'ble High Court of Gujarat discussed and analysed hereinabove. The accused were acquitted on four grounds, (a) Resolution of the Board delegating the "power of sanctioning prosecution" to the Chairman and, complaint filed by the officer of the Board under authority of Chairman was unauthorized. (b) Under Section 47(1), the Directors were held not responsible for the affairs of the company as they were residing in Bombay. (c) On facts holding that Section 24 and 25 were not flouted and (d) interpreting Section 21(5) holding that delay in sending sample to laboratory vitiated the prosecution. The above four aspects were decided without taking into consideration the scheme of the Act and the Supreme Court verdicts in Modi Distillery and Mohan Meakings.

The Magistrate after full-fledged trial, convicted the company and the Directors as 10,800 liters of polluted water were discharged by the factory which was producing Nicotine Sulphate, discharging Tobacco Stuff, Lime, Kerosene and Sulphuric Acid. The company had taken approval of the Board for discharging polluted water. However, the Board had imposed certain conditions. It is an admitted position that if breach of conditions is committed complaint be lodged. Breach of conditions was found (and therefore, automatically the consent can be said to have lapsed.) [Emphasis Supplied] On 22-6-1989 sample of polluted water was collected and was analysed. The report was furnished within period of 16 days. The first Appellate Court set aside the conviction of accused nos. 2 and 4 conviction and sentence against the company and one Director was
confirmed. The Company and the Director i.e. Mihirbhai Virji preferred appeal and were successful in (a) getting acquittal for the company as well as himself (b) continued to run the industry despite sanction having lapsed.

Reasons for acquittal given by the High Court are (a) Section 49 read with Section 11(A) does not permit the Chairman to delegate the powers even to lodge complaint. The complaint was filed by person without authority and prosecution could not be commenced. The complaint was not filed by the board but by assistant environmental engineer. The next ground of acquittal was based on fact that the prosecution had failed to prove that accused no. 3 was responsible for the conduct of the business of the company. The Court held that the onus to prove this fact was on the prosecution. The third ground given by Hon'ble High Court was that at the time of inspection, the water was overflowing and solar evaporation pans or that sample of polluted water was drawn from the place where water was overflowing. The Court held that overflow of industrial effluent and collection of effluent from that portion of the factory was not in accordance with Law. The Hon'ble High Court held that sample was not sent forthwith for analysis. There was a delay of 5 to 6 days, which was considered to be fatal for the prosecution by the Hon'ble High Court.

Analysis and Comment

The Hon'ble High Court has dealt with the question of such a grave magnitude of pollution as if it was dealing with a criminal trial under IPC. The Hon'ble High Court has acquitted the accused on technical interpretation of the enactment. The industrial concern had no regard for public life or
environment. The decisions which have been held to be not applicable were not appreciated on the facts of the case. Hon'ble High Court did not appreciate the amendment of 1978 read with purpose of the enactment. The very idea of Pollution Control Board is to strike a balance between industrial development and pollution control.

The observations of the Supreme Court in *U.P. Pollution Control Board vs. Modi Distillery and others reported in 1987 (3) SCC 684* would vindicate the analysis that the Judgment in Nico Sulf requires to be reversed. Section 11 A and 49 have to be read together empowering the Chairman to delegate the powers. Had that not been the intention, Section 11 A would not have been incorporated. The Hon'ble High Court has tried to distinguish between powers to sanction and power to lodge complaint. Had that been the intention, Hon'ble Supreme Court would have quashed the complaint against Modi Distillery. In Modi Distillery complaint was lodged by the Legal Assistant of the Board. The intention of the legislation was that not the Board alone can file complaint. Section 11A would not have been so worded, therefore, reason given by the Hon'ble High Court is diametrically opposite to the intention of the legislation and the Court has tried to legislate. It has interpreted the statute whereby a situation is created that no prosecution can succeed. The observations made by Hon'ble High Court in the Case of Ambuja Protein Ltd. discussed (supra) are relevant where the complaint filed by the Law Officer has been considered to be legal and proper as the Chairman has been invested with powers by the Board for sanctioning prosecution. The Court could have referred to the recent Judgment of the Supreme Court in *U.P. Pollution Control Board vs. Mohan Meakins Ltd. and others reported in 2000 (3) SCC 745*. The Court should not have granted acquittal on such
interpretation of the Water Act. Proviso to Section 47 (1) of the Act which is
discussed in Azim Premji's decision could have been resorted. The proviso to
Section 47(1) shifts the burden on the delinquent from the officer or servant
of the company. It is for delinquent to prove that he did not know committal
of the offence nor connived in it and that he had exercised all due diligence
to prevent the commission of such offence. The finding of defect in the
complaint or arguments that the board has no power to delegate is
erroneous. The case of Indian Chemicals Manufacturers could have been
resorted to where it is held that the section is very clear and vests the power
in the Chairman to delegate. An application of principle enunciated by the
Court that in M/s. Jalan Trading Company AIR 1967 SC 691 where the
doctrine of removal of defects was employed. This can at the most be said
to be a conditional legislation as the statute itself has provided the power
being conferred on the Chairman to carry out the purpose of enactment
Thus implied power is conferred and His Lordship Justice C.K. Thakker ir.
"Administrative Law" has defined the stages of delegation of power
and necessity of such delegation. At times to be supported on the basis
of power of further delegation and sub-delegation is ancillary to such
degregation. Any objection to the process is likely to subvert authority which
the Legislature would delegate to the Executive.

"The maxim 'delegatus non potest delegare' does not embody a
rule of law. It merely lays down a rule of construction of a statute.
However, looking to the facts and circumstances of each case, the
construction that would best achieve the purpose and object of the
statute should be adopted. Sub-delegation of legislative power,
though generally impermissible, can be permitted either when such
power is expressly conferred by the statute or can be inferred by necessary implication". 75

Barium Chemicals Ltd. vs. Company Law Board, reported in AIR 1967 SC 295 76 has permitted delegation on inference. Thus acquittal on the ground that Chairman has no power to lodge complaint and no power to authorise the Law Officer to file complaint is against the settled law of interpretation of statutes.

The 3rd ground on which the Hon'ble High Court has acquitted the accused is such that acquittal could not have been granted in such serious matter. The Hon'ble High Court has held that only effluent is found over flowing from solar evaporation system then it is not a breach of condition. The Hon'ble High Court could have pursued the Judgment of M.C. Mehta vs. Union of India reported in AIR 1987 SC 982 77 where the Supreme Court has shown much concern for environment. The Hon'ble High Court could not have conducted itself as a fact finding Court. There was unexplained delay as mentioned by the Hon'ble High Court, The facts go to show that on 22-6-1989 sample was collected, the sample was sent to the laboratory on 28-6-1989. The sample was received in sealed condition. The Hon'ble High Court could not have acquitted on this ground because the report shows that the effluent did not confirm to the pollution norms fixed. It would be much better if the decision is reviewed in light of plethora of Judgments, which have shown concern for environmental degradation. A similar Judgment of High Court of Gujarat in case of Divine Chemicals also acquitted the accused on misinterpretation of provisions of the Water Act. The decision also has tried to distinguish all the other Judgments and has gone on the aspect of strict compliance of technicalities where the
Hon'ble High Court first upheld that provision of sub-Section 4 and 5 have been followed but there is breach of rule - 27. It appears that the High Court has not appreciated the scheme of the Gujarat Water Prevention and Control Rules 1976 enacted under Section 76 and has not appreciated the provision of Section 114 of Evidence Act.

Analysis shows that the two decisions are diametrically opposite to the scheme of Act and settled legal principles enunciated by the Supreme Court.

**Line of Reasoning:-**

Recently, the views of the Supreme Court and the Gujarat High Court are that if the averments are not clear and specific against all the directors of the company, that they were looking after the day to day conduct of the business on the date the complaint was lodged, no complaint under the provisions of section 41 of the Act would be maintainable. This view is taken by the Hon’ble High Court of Gujarat in Criminal Miscellaneous Application 912 of 2000 decided on 17/02/2002 in the case of **H.M. Talati vs. Gujarat Pollution Control Board** and by the Hon’ble Supreme Court in Nalin Thakor vs. State (Supra).

8(B) **Writs under Article 226 of Constitution:**

**Prelude Brief Background.**

In the case of **M/s. Abhilash Textiles vs. Rajkot Municipal Corporation reported in 1987 (2) GLR 1325,** the High Court took a strict view against those who tried to play with the lives of fellow humans. **Narula Dyeing and Printing Works vs. Union of India; AIR 1995 Guj 195** also
recognized right to good environment as part of Article 21 of Constitution. In both these decisions Article 19 is interpreted so as to sub-serve Article 21 by the Hon’ble High Court. The High Court has considered Article 19 vis-à-vis Article 21 to hold that reasonable restrictions can be imposed by the State for the welfare of general public.

The later Judgment in *P.J. Patel vs. State of Gujarat reported in 1995 (2) GLR 1210* Hon’ble High Court of Gujarat has in SCA No. 770 of 1995, and the later Judgment in SCA 4473 of 1997 has enunciated and applied various principles enunciated at the Stockholm Declaration. These two decisions are very important for this study. Hon’ble High Court took a very pragmatic view. It tried to see that the persons living near industrial area enjoy pollution free environment. His Lordship Chief Justice B.N. Kirpal gave several directions which are analysed in Chapter VII.

The review petition filed by *Gujarat Chamber of Commerce vs. P.J. Patel; 1997 (1) GLH 136* was also dismissed. Their Lordships Justices B.C. Patel and M.S. Shah in *SCA 2922 of 1995 in the case of Deepak Nitrite vs. Ajit D. Padival* directed compensation of 1% of annual income. The Supreme Court has remanded the matter to the Hon’ble High Court for deciding on facts whether the order of 1% is just and proper.

The High Court interpreted the provisions of Water Act by invoking article 226 of the Constitution in *Suo Motu vs. Municipal Commissioner of Ahmedabad; 2000 (1) GLR 525.*

Hon’ble High Court of Gujarat in *Shailesh R. Shah vs. State of Gujarat SCA 10621 of 2000; 2002 (3) GLR 2295* and the allied matters decided
question of protecting, preserving and improving the Water Bodies in the State and safeguarding them against encroachment.

The approach of the Hon'ble High Court of Gujarat under article 226 of the Constitution has been very dynamic and pragmatic. The decisions show the concern of the court for the life and personal liberty of human beings; at the same time maintaining the interests of (a) industrial concerns (b) economy of the state (c) interest of workers and (d) international standards (e) the precedents laid and enunciated by the Hon'ble Supreme Court.

8(B) (a) **No Fundamental Right to Carry Business in a Way by Causing Nuisance:**

The Hon'ble High Court of Gujarat was alive to the problem of water pollution. The decision in *Abhilash Textile vs. Rajkot Municipal Corporation* reported in 1987 (2) GLR 1325 assumes lot of importance under the constitutional mandate. This decision delivered by Justice A.P. Ravani was relied upon by Justice R.K. Abichandani in Narula Dyeing, and thereafter, and by Justice B.N. Kirpal in 1995 took up the work ahead in SCA No. 770 of 1995.

This was a case where Article 19, 51 (A) of the Constitution read with Sections 631, 376 and 376(a) of Bombay Municipal Corporation Act, 1949 came to be interpreted by the High Court. The High Court of Gujarat held that the Constitution of India confers right upon a citizen to practice any profession or to carry any occupation, trade or business. There are certain restrictions in sub-clause 6 of Article 19. The restrictions are that a person cannot carry on business in a manner or an activity which would cause
health hazards to the society. It was held that a business house cannot be allowed to reap, rich dividends at the cost of public health. A business house cannot discharge trade effluents without treating them.

**Brief Facts of the case:**

The petitioners were carrying on business of Dyeing and Printing works in the district of Rajkot. They were discharging dirty water from the factory on public road and in public drains without purifying the same. They were causing damage to public health. The claim of the petitioners was that the business was carried on for more than 25 years. The business was popular throughout Gujarat, if they were compelled to close down, more than 30,000 families would starve. It was prayed that closure would be against the mandate of Article 19(a). The analysis reveals that while giving certain directions, the Hon'ble High Court of Gujarat held, that the petitioners could not carry on business by flouting the Municipal Laws, and other environmental statutes, more particularly the Water (Prevention and Control of Pollution Act), 1974. This decision though not directly under the Water Act is a decision which has paved way for the Courts to deal with environmental matters in a positive way.

The analysis of this Judgment shows that the High court held that powers are with the Municipal Commissioner to issue notice for stopping the health hazard as provided under Article 51 (A). The obligatory duty of the Municipal Commissioner has been accepted by the Hon'ble High Court. The issuance of notice has been considered to be a notice of convenience to desist from causing nuisance. It is a sort of caveat. If a person is asked to abate causing health hazards, he cannot complain that he would like to
pollute and earn, because the industry is carrying business for more than twenty to twenty five years. It was, on the contrary, held that the case of reasonable opportunity is given to stop the nuisance and continue their business without causing health hazards. The High Court felt that the water reserves cannot be contaminated for benefit or for personal gain. It has held that reasonable restriction under Article 19 (g) can be imposed by authorities.

8(B) (b) Environment can't be put to peril by a few industrial houses

P.J. Patel’s case:– 1995 (2) GLR 1210 and subsequent decisions:

The researcher during the research found that Abhilash Textile’s decision was followed by the landmark decision which had impact on the environment of entire State of Gujarat which was facing lot of pollution problems. In the year 1995, the petitioners (1) P.J. Patel & other through public spirited advocate (Late Shri Ajit Padival) moved Hon'ble High Court by filing Writ under Article 226 of the Constitution of India.

Brief Facts of P.J. Patel’s case: -

The petitioner had agricultural lands in Kheda District. It was alleged by the petitioner that the industries set-up in and around Ahmedabad were discharging their polluted effluent in the Kharikat Canal which in turn led to Khari river. District of Kheda comprised of about 11 villages. The potable water was available from Khari river but due to the pollution caused by these industries the water had become unpotable. The water in the Khari river was no longer suitable for agriculture.
During the period when this petition was heard by the Hon'ble Chief Justice and Justice H.L. Gokhale, petitioner's advocate Shri Ajit Padival came with bottles full of contaminated water from the River. The colour of water was blackish and resembled that of Pepsi Cola.

The petitioner further alleged that in the 11 villages, commonly known as "Kalambandi Villages" there are about 8000 acres of agricultural land where the agricultural operations are adversely affected by reason of the pollution of the Khari river. Cattle, sheep etc. are adversely affected due to consumption of the polluted water. The specific allegation which was levelled that before the industrial units were set up in the said three industrial estates, the agriculturists were able to get yield of about two tons of agricultural produce per acre but after the pollution of the Khari river the present agricultural yield had come down to about 0.50 ton per acre. Drinking water is also not readily available. Water coming from bore well is full of toxicants. Such polluted water is common in villages like Bherai, Pinglaj, Navagam, Lali etc.

It is an admitted fact that after the Water Pollution Act came into force and the Pollution Control Board was established in the State of Gujarat, the petitioners, and other like minded people approached the authorities since 1978 without any avail. A prayer was made seeking mandate against all the erring authorities who had done nothing to take steps for controlling or curbing the water pollution of Khari river. This resulted into breach of fundamental right guaranteed under article 21 of the Constitution. The petitioners claimed compensation for loss suffered due to the air and water pollution. A prayer was also made for issuance of direction for
providing proper facilities for treating the effluents and waste water so as to arrest pollution of water.

The first aspect which the High Court had to face was that the Act of 1974 was made applicable to the State of Gujarat, however, no further resolutions were passed by the State of Gujarat under Article 252 (1) for making the Amendment Act of 1988 applicable to the State of Gujarat. The section 33 (a) and important amendments were, therefore, excluded from the purview of the application to the State of Gujarat. The Court took recourse to the Environment Protection Act, which included the words 'Water' and 'Stream' in the definition of environment. The next aspect which was considered was whether the problem can be tackled, settled and solved and some solution could be found. The Hon'ble High Court directed the industries to have primary and secondary treatment plants where the effluents should be treated before they mixed with the municipal sewage, and thereafter, only they should be discharged in the river or nalla.

The analysis go to show that the Court had feeling that the Industrial Units had seen that laws are breached, criminal sanctions were scuttled. It became a habit to reap profit at the cost of life of people, crops and animals.

The Central Government and the State Government did not enforce various pollution laws and have failed to undertake their legal obligations except wasting money after GPCB and GIDC as there was total inaction in the law enforcing bodies. The GPCB did not even issue directions to these industries to stop pollution as done by Rajkot Municipality. The industries could have been asked to close down. Powers could have been
exercised and orders could have been passed by the authorities in the facts of the case.

The analysis goes to show that the High Court was alive to the question of effluents being released in the Kharikat Canal. The decision in Narula Dyeing's case was upheld. It was rightly held in Narula Dyeing's case that in such cases, no opportunity to file objections required to be given. There may be temporary closure and the industry can achieve the parameters so that pollutants did not enter the water lagoon. The concept of co-existence has also been evolved. If the GPCB norms cannot be achieved, industries had to close down. It was held that industrialisation and ecology have to co-exist.

The analysis shows that the Hon'ble High Court has held that:

"What is required is Industrialisation and ecology and not industrialisation at the expense of ecology or ecology at the expense of industrialisation. The power granted under Section 5 has to be exercised in order to see that pollution is controlled and the balance between industrialisation and ecology is maintained. Whether the directions which are issued should be that of closure or in the nature of prohibition or be regulatory in character, must depend on the facts of each case. With the object to be achieved being known, viz., preventing pollution and requiring the adherence to the G.P.C.B. parameters, it would be for the Government or the G.P.C.B. to decide what type of action to be taken against an erring unit. It would stand to reason that if, by a regulatory order, pollution can be controlled, then that is the first option to be exercised. If a
prohibitory order is required for the purpose of controlling pollution, then that has to be issued. Possibly as a last resort, if the pollution norms are not met or there is a persistent default or the norms cannot be met, then there may be no option but to order closure."

Thus the analysis goes to show that regulatory order against erring units can be passed. The second option would be a prohibitory order which would mean not closure but stoppage of production as was done by the Hon'ble High Court. The analysis goes to show that Hon'ble High Court has held that closure should be the last option. The Hon'ble High Court also constituted certain committees like Pandya Committee, Nima Committee and Bhanujan Committee. Hon'ble High Court has lamented on action and discharge of effluents by certain companies and industries. The Court held that the norms regarding TDS could be met. The industrial companies came to the conclusion to have Primary Effluent Treatment Plant. The Court had even stopped expansion of industries which were polluting, till they met the GPCB standards. The state was asked to consider transferring of and shifting of water intensive units to suitable alternative sight may be nearer to the sea. Lastly 1% of yearly turnover of the industry for the year 1993-94 or 1995-96 was to be deposited. The amount was to be used for the work of socio economic upliftment of the villages which had suffered due to pollution. This decision was sought to be reviewed and was even challenged before the Supreme Court by the Gujarat Textile Processor Association; 1996 (3) GLR(SC) 521. However, the Supreme Court has held that even if the industries are running in loss, the industries are required to pay the amount as directed by the High Court. The Supreme Court directed the Hon'ble High Court to once again
look into the matter and (a) permitting industry to start work, (b) review 1% payment orders. The industries through the Gujarat Chamber of Commerce and others sought review of the decision in *P.J. Patel vs. State of Gujarat* reported in 1995 (2) GLR 1210.87

The 1995 Judgment has given rise to several litigations. The polluters pays principle has been enunciated. There is no decision giving proper reasons why 1% is granted and why not 2% and why not 2% or 1.5%. The order as far as deposit of 1% is concerned is directed to be reconsidered by the High Court in the decision in *Deepak Nitrate vs. State of Gujarat*88.

8(B) (c) Cases of Surat Dyeing Industry:-

The decision of the Hon'ble High Court in *Dyeing, Bleaching and Finishing Workers Union vs. State of Gujarat; 2000 (1) GCD 503* 89 the High Court of Gujarat was concerned with a writ petition which is sequel to the 1995 Judgment. Petition was preferred by the workers working in dyeing and bleaching industries, in a highly sensitive industrial zone of Surat. The Court directed GPCB to submit its report on the prevailing position in the industries. All the concerned authorities as well as industrial units were directed to stop pollution. Certain reliefs under labour legislations were also granted. The theory propounded in the said Judgment by go to show that the Court appointed Shri Haroobhai Mehta's committee to look into question of pollution. Court has given directions but there was no consensus between the industrial concerns for laying C.E.T.P. It was a welcome Judgment where disconnection was ordered where there was illegal drainage connection. All effluents which were going to river Tapi through stream pipes were also to be disconnected. It was decided that there
should be continuous monitoring. The said Judgment directed that interim arrangement be made. The Court also took help from the coordinate bench's Judgment in P.J. Patel's case and observations made in Paragraph 135-A of the Judgment. The analysis goes to show that the Court did not decide certain questions which it could have decided. The Court while granting relief, could have taken care of labour legislations as was done by the High Court in the Judgment of P.J. Patel's case. The labourers' woes could have been considered by the Hon'ble High Court.

8(B) (d) Suo Motu Petition :-

Closure of units running without proper consent under Section 25 of Water Act.
Suo motu vs. Municipal Commissioner, Ahmedabad Municipal Corporation 2000 (1) GLR 525:—

The petition was pending in the Hon'ble High Court since 1997 till the year 1999. This suo motu petition was initiated on the basis of the report filed by Committee of Mr. M.D. Pandya, made on the basis of visits to the industrial units situated at Saijpur-Gopalpur area, Dani Limda and Shah-Alam. From the order dated 24-11-1997, by which these proceedings were commenced, it transpires that considering the Mr. Pandya committee's report, an interim order was passed on 15-7-1997 of closure. The officers of the Gujarat Pollution Control Board and a representative of the Municipal Commissioner, collected certain information and visited the Units. The Committee submitted a unit-wise report in detail. It was pointed out by the Advisor (Pollution Control), Ahmedabad Municipal Corporation that in all there were 69 units in Behrampura area, which did not have drainage connection, nor had they obtained any consent under the Water (Prevention and Control of
Pollution) Act, as on 30th September, 1997. It was also pointed out that 181 units situated in Dani Limda area were operating without legal drainage connection or a valid consent as on that date. In Saijpur-Gopalpur area, which was outside Municipal limits, there were 39 units operating without the requisite consent of the Board. In all 289 units out of 387 units surveyed by the team were found to be operating without any authorised drainage and/or outlet or without trade license. The units were named in the order. A direction was issued by the Court that all 289 units should be closed forthwith. A direction was also issued to the Member Secretary, Gujarat Pollution Control Board and the Municipal Commissioner to ensure that these units were closed down. The Commissioner was directed to disconnect the drainage connections and seal the outlets. On 2-12-1997, some more units were engaged in carbonisation without any Effluent Treatment Plant, they were also directed to be closed down. The G.P.C.B. was directed to see that they did not operate without permission of Court. On 17-1-1998, the Court made a detailed order and observed that upon a conjoint reading of the affidavits of Member Secretary of the G.P.C.B. and the Deputy Municipal Commissioner of the A.M.C., along with the affidavit of Advisor (Pollution Control) to A.M.C., the Court was able to gather an impression that there were suggestions under which the units could be permitted to recommence their activity. In the affidavit of the Member Secretary of G.P.C.B., it was stated that majority of the units were Small Scale units operating on hand process and in many of the cases, the waste water discharge was of a small quantity, ranging from 500 to 2000 liters per day. It was stated that most of the units were discharging their effluent in the Municipal drains, since about last two decades. Taking into consideration the relevant aspects of the matter, the Court expressed the opinion in the order that only those units which had
filed Civil Applications and were shown at Annexure-A to the order should be permitted to commence their usual commercial activity, either manufacturing or processing, on a trial basis for a period of three months, during which none of the units would indulge in carbonising or silicating process. It was also directed that the units would discharge the effluent only after treating them so as to meet the norms prescribed by the G.P.C.B. within a reasonable time. An undertaking was required to be filed by those units on these aspects. On 17-1-1998, the Association of Industries, the G.P.C.B. and the A.M.C. were directed to undertake a joint endeavour and try to evolve a formula, so that the effluent discharge problem could be solved and the units can also go ahead with their activities. On 30-3-1999, Court gave a further opportunity which was to be the last opportunity for submitting applications to the G.P.C.B. and the A.M.C. The matter was adjourned to 16th April, 1999. On 10-5-1999, it was again noted that certain member units of the Association had not yet filed necessary consent applications and they were given time to file time by 20-5-1999. On 21-6-1999, it was noted that in all 54 units had not complied with the directions contained in the order dated 10-5-1999 and were liable to be closed down. On 12-7-1999, the Court noted the fact that 30 members of Dani Limda-Behrampur Industrial Associations had still not applied under the Water Act and nine members of the Ahmedabad South Zone Small Scale and Cottage Industries Association had not all applied for consent. These 39 units, had rendered themselves liable to closure. They were directed to be closed down. The Board was required to take necessary steps in that direction. In order to have a clear picture, a direction was given by the Bench to the respective parties to furnish segregated information about the units. The two grounds were that no proper drainage connection was obtained and these units were discharging objectionable
effluents without obtaining the consent of the Board or without having appropriate licenses under the relevant laws. The units by their persuasion were able to turn the tables and started their functioning under the Court's interim orders. The fact that the industry had not obtained Board's Consent though most of them had not obtained any trade license. Many units have been functioning in contravention of the provisions of law as alleged by the A.M.C. and the G.P.C.B. It became clear to the Court that further pendency of the petition would be counter-productive. It would afford protection to those who were continuing under the shelter of Court orders without obtaining necessary consent from the Board or the trade incenses required under the law. (Emphasis supplied). Later on the industries which started refunctioning were mostly screen printing and textile units carrying on trade operations. The grievance of the Municipal Corporation was that if the untreated effluents were released by the industries in the municipal drainage system that would destroy the drainage lines. The further grievance was that these units are operating without any health permit. When running of any trade or business requires obtaining a trade license under Sec. 376 of the B.P.M.C. Act or the consent under Sec. 25 of the Water Act or any permission, sanction, approval or license by any authority under any other law, such statutory requirement cannot be waived even by the Court. The Court orders cannot operate as exceptions to statutory provisions, which lay down mandatory requirements of running the trade or business only after following such regulatory measures. The final order of the Hon'ble Court was such which struck the balance between precaution, polluter pays and development.

The analysis of the said decision reveals that the Hon'ble High Court has deprecated the action of the authorities who are supposed to monitor in flow
of the effluents to the river. The analysis go to show that the Hon'ble High Court did not make it mandatory for the industries to become member of the association to get benefit and thereby held that the enforcing agencies could not withhold passing no pass on the benefit to the said units. The doctrine of waiver was sought to be applied where the trade license or consensus are must and they are considered to be mandatory provisions as they are statutorily required for running business even plenary powers under article 226 cannot be applied for scuttling the procedure. The analysis go to show that the authorities and the industries even after all these directions were successful in evading duties (a) enshrined under the Water Act (2) enshrined under the Constitution of India. The Hon'ble High Court refused to exercise managerial function.

8(B) (e)  

Writs Directing Closure and Prohibition:- SCA 4473 of 1997

Jayesh N. Patel vs. State of Gujarat

The units who complied with the norms were made to suffer under the guise of the order of the Hon'ble High Court. This has given rise to series of orders passed in group of matters where the initial order in Jayesh N. Patel vs. State of Gujarat SCA 4473 of 1997 passed by Their Lordships on 21-10-1999. Their Lordships R.K. Abichandani and D.H. Vaghela, heading division bench of the Hon'ble High Court of Gujarat directed that industries shall not discharge the effluents without specified norms in the river Narmada. Parameters would apply to discharge made in the inland surface of the water. After effect of the said order in Special Civil Application (Writ) No. 4473/97 was that the board misread these directions and did not grant consent for production to many of the industries. A situation arose whereby several industries had to approach the Hon'ble High
Court of Gujarat seeking mandamus to the Board consider their grievances. The Board granted consent. There are various orders passed from time to time whereby the Board was directed to consider the application for granting consent. While reading and analysing the Judgment of the Hon'ble High Court, where certain statutory duties come to be cast upon the authorities. The industries have been rightly ordered to be closed. The order of not permitting new industries is based on factual scenario prevailing on a particular day for a particular area.

8(B) (f) Protection of Water Bodies by State

*Shailesh R. Shah vs. State of Gujarat reported in 2002 (3) GLR 2295* in SCA/10621/2000 and other writs are decided so as to ameliorate water quality. The High Court has also recognized the duty of State authorities to protect and improve water-bodies such as lakes and ponds. Wide-ranging directions are given to various authorities in this regard. The Hon'ble High Court was alive to the problem of depletion of lakes and ponds in the State. The Hon'ble High Court gave certain directions to the Municipalities to notify certain lakes in the State. The Municipalities were to maintain and preserve all the water bodies. The analysis of the judgment reveals that water pollution, originating mostly from human activities, occurs frequently, making the quality of water unsuitable for any purpose. The management of water quantity cannot be efficiently done without considering the water quality of reservoirs. Water resources should be managed in conjunction with land resources, and water supply schemes which generate large amount of waste water in consumer areas should be designed and built with the required matching drainage networks and wastewater treatment facilities. The authorities were directed to take steps to get
the standards of quality of water of the lakes and ponds prescribed by the concerned authority under the law, and devise mechanism for periodic monitoring of the quality of water in these lakes and ponds was to be adopted. The work of rejuvenating water bases was undertaken by authorities.

9 (A) Supreme Court decisions which are considered significant both under Criminal sanctions and writ jurisdiction:

Environmental Degradation concerns and the approach of the Supreme Court.

The Landmark decisions concerning Water Pollution by the Supreme Court are dealt in brief without narrating facts as decisions of the Supreme Court are interwoven. The decisions and analysis of the Cases is undertaken in brief,

2) Rural Litigation vs. State of U.P; 1985 (2) SCC 431.
3) M.C. Mehta vs. Union of India; AIR 1987 SC 1037.
4) U.P. P. Control Board vs. Modi Distillery; 1987 (3) SCC 684.
5) M.C. Mehta vs. Union of India, 1988 (1) SCC 471.
6) Indian Council for Enviro Legal Action vs. Union of India; AIR 1996 SC 1069.
8) M.C. Mehta vs. Union of India; 1997 (2) SCC 411.
9) State of Manipur vs. Chandam Maniyar Singh; 1997 (7) SCC 503.


11) Sakthi Sugar Ltd. vs. Union of India, 1998 (2) SCC 601

12) M.C. Mehta vs. Union of India; 1998 (9) SCC 448.

13) Bhavani River vs. Sakthi Sugar Ltd.; AIR 98 SC 2059.

14) A.P.P. Control Board vs. Prof. A.P. Nayuda; 1999 (2) SCC 718.

15) U.P.P. Control Board vs. Mohan Meakins Ltd.; 2000 (3) SCC 745.


17) A.P.P. Control Board vs. Prof. M.V. Nayuda; 2001 (2) SCC 62.

18) Vinet Kumar Mathur vs. Union of India; 1996 (1) SCC 119.

19) Jagannathan vs. Union of India; 1997 (2) SCC 87.

20) M.C. Mehta vs. Union of India; 1997 (11) SCC 312.

21) Narmada Bacho Andolan vs. Union of India; AIR 1999 SC 3345.

The Supreme Court through Justice V. Krishna Iyer in Ratlam Municipality case deprecated the action of Corporation for not providing adequate facilities to the people of the township. This Judgment paved way for the yeoman work of the Supreme Court for upholding the sanctity of environment.

The analysis of the Judgments of the Supreme Court go to show that the year 1987 was a year where the Supreme Court was flooded with matters to be
dealt under the Water Pollution Act. A number of rivers of India were facing grave problem of pollution. The Supreme Court tried to cure this a great extent with the help of yeoman service of M.C. Mehta. In recent Judgment of 2000 the principle of polluter pays was negative where criminal liability is enforced. The Principal that Not fine but punishment being deterrent was propounded in the case of M.C. Mehta vs. Kamalnath reported in AIR 2000 SC 1997. This is a welcome in Kamalnath's case the principle of criminal liability has been propounded by the Supreme Court to serve the purpose of the legislation.

The decisions which throw light and which laid foundation not only for the present generation but for the generations to come are to be appreciated. The Indian judiciary has showed that they have lot of concern for the environment, ecology and good being of Indians. As written by Haresh Salve in article Justice Between Generations (in Supreme but not Infallible) that "the 1980s saw a sea-change in perception of the law of the environment. However, in discussion of this one must notice the paradigm changes in the concept of the standing (locus standi) as also the role of the Court" The decision in Ratlam Municipality vs. Virdhichand; AIR1980 SC 1622 throws great light on the environmental concern of the Supreme Court. The decision goes to show that a much better option is given in Section 133 whereby a complaint can be lodged. A conditional order for removal of public nuisance within a fixed period of time can be issued. The analysis of the Judgment shows that when the Magistrate has a complaint showing that nuisance which can be termed to be public nuisance, is committed the Court must exercise power of removal of nuisance. The Supreme Court lamented on the municipal counsel coming before it with strange plea of lack of funds, which contention was negative.
The sanitation facilities in villages are lacking and time and again polluters go unpunished. The Judgment should be extensively applied by the Executive Magistrates. The public at large should be made aware of their rights. The analysis further shows that the Supreme Court relied on the decision rendered in the case of Govindshinh vs. Shantswaroop; reported in AIR 1979 SC 143. People's right to environment and the concept of Locus Standi of the community and orientation of the public interest was adopted. No evidence came to be produced by municipal corporation or Town Development Trust for not acting for betterment of people. Should financial inability, exclude the Municipal Council from its obligation. The answer was absolutely 'No'.

The Supreme Court in Shriram Food and Fertilizer's case was concerned with provisions of Section 2(e) and Section 24 of the Act. The said decision is analysed qua Water Act in brief. The manufacturers of hazardous products were asked to take measures for reducing hazards to workmen and avoid accidents which may be caused by leakage of liquor. The genesis of principle of absolute liability has been propounded in this decision by His Lordship Justice P.N.Bhagwati. The question agitated in writ petition by Shri M.C. Mehta seeking closure of and to relocate Shriram's caustic chlorine and sulphuric acid plants which were causing widespread panic in the surrounding community. The Court lament on the unsatisfactory situation prevailing in Delhi Municipal Corporation. No steps for the last 5 years were issued to clean up the sewer which can carry the domestic effluents. Certain guidelines were issued so that in future, the industry would stop the hazardous waste or oleum gas from passing in the sewer untreated.
M.C. Mehta vs. Union of India (Ganga Cleaning); 1988 (1) SCC 471.

The next significant Judgment of the Supreme Court shows that once again it was Shri M.C. Mehta who saw that the Ganga Cleaning Action Plan was implemented. In 1985, the Government of India announced an ambitious plan called the action plan for prevention from causing pollution to Ganga, known as the Ganga Action Plan. It is observed that the authorities which were found to be wanting to take action were the authorities who were in-charge of implementing the Ganga Action Plan. "These authorities have drawn heavy criticism from commentators and the Courts for proceeding at a snail's pace to implement environmental legislation". The Ganga Action Plan which took off had ultimately to be monitored by the Supreme Court in the year 1988. Shri M.C. Mehta again came up before. The Supreme Court complaining about discharge of effluents in Ganga by tanneries. Provisions of Section 17 and 18 of the Water Act and umbrella provisions of Environment Act Section 3 and 5 were invoked. The petition was, filed in the year 1985 regarding Kanpur Tanneries. The Judgment shows that the Supreme Court did not decide the aspect of maintainability of petition under article 32 or invocation of its jurisdiction against private industries. The concept of life under article 21 was considered in the said judgment by the Supreme Court. Though it did not expressly opinion about invocation of article 32 by public spirited citizen, the analysis goes to show that the directions were issued to Kanpur Tanneries and Government Authorities. It was a welcome change by the Supreme Court in invoking its jurisdiction under Article 32 in environmental matters qua the public spirited persons directing the tanneries to stop polluting river Ganga.
The water of Ganges has been considered to be pious. The Ganges and its water has been considered to be Amrut. This decision assumes lot of importance as it was the first of its kind for cleaning the Ganges. The next matter before the Supreme Court was again brought before the Supreme Court by M.C. Mehta who prayed that the Court direct the Municipalities which were under a statutory duty to perform certain acts but had failed to carry out their functions, Kanpur Nagar Palica was directed to place the Progress report of Ganga Action Plan before the Supreme Court. The Supreme Court observed that:

"The Ganga is grossly polluted at Kanpur. All nullahs are discharging the polluted waste water into river Ganga. But Jajmau by-pass channel, Sismau, Muir Mill, Golf Club and Gupta Ghar nullahs are discharging the huge quantities of polluted waste water. To improve the quality of the Ganga all major nullahs should be diverted and treated. Combined treatment should be provided for Jajmau tanneries. Effluent treatment plants should be installed by all polluting industries."

The Nagar Palicas where Ganges was polluted were reprimanded, The Responsibilities were saddled on Kanpur Mahanagar Palica which had failed to take steps to prevent Ganges from being polluted. Statutory duties were asked to be fulfilled by the Nagar Palika. The Supreme Court reiterated the decision rendered in of Ratlam Municipality. This petition was filed in the year 1985 and after several interim orders, the Supreme Court issued several directions. Directions were issued that the Kanpur Nagar Palika the other Mahanagar Palikas, the Municipalities were subjected to the decision of the Supreme Court, though they may not
parties before the Supreme Court. The High Courts were directed not to grant stay on criminal proceedings under Section 482 of the Criminal Procedure Code. The Central Government was asked to undertake steps in educational institutions. The Central Government was asked to introduce a subject of environment in the school curriculum. Once again after a decade, the Supreme Court was facing the question of tanneries in Calcutta and the tanneries were discharging effluents into Ganga river. This was also a petition filed in the year 1985 which was decided after 11 years and after lot of monitoring and after taking into consideration the observations by the NEERITEAM. The aspects to be noted that the Supreme Court was monitoring the pollution was unabated matter for a period of 11 years. The Kanpur tanneries and Municipalities were under a mandate to stop pollution of river Ganga. This speaks volumes about the Pollution Control Boards, the tanneries and the Government functionaries. It was a person staying in Delhi and the Supreme Court which had to take care of the Ganga and stop its pollution as noted by `Armin Rosencranz':

"In many ways the acute and complicated problems of Calcutta are typical of the minieu in other cities. Environmental pollution continues unchecked because of negligent officials, a weak city administration, the absence of budgetary support and political will at the state level and persistent refusal on the part of polluters to clean up their act. Once the problem attains huge proportions, there is no single agency capable of tackling all the aspects: land acquisition, translocation, displacement, workers' compensation and the financial outlay. Does this mean that the Supreme Court and the High Courts must continue playing the role of a super-agency to tackle urban India's environmental woes? Is there an alternative?".100
On overall analysis a picture would emerge that despite monitoring by the Supreme Court the tanneries were polluting river Ganga. Tanneries did not show willingness to leave the place nor wanted to set up CETP. *It is not understood why the matter after 11 years was left to be decided by the green bench of the Calcutta High Court.* In this case no warning to the concerned board was given though the Court directed the authorities to take precautionary measures initiated by the Supreme Court in Vellore Citizen's case.

The lakes in India are polluted which can be seen from the 1997 Judgment in Badalkhund and Surajkhund lakes. Should India not have a national fresh water regulation? The recent decision discussed above has brought about the new tactic that the State authorities are granting exemption to industry. The reference is made to *2001(2) SCC 62 the case known as M.V. Naidu's case.* The precautionary principle was not taken care of by the authorities, and therefore, the Supreme Court has reprimanded the State Authority for granting permission where the Pollution Control Board had refused permission to set up a plant.

Even Yamuna River is polluted. The Supreme Court inquired of the Solicitor General as to it was not known why Yamuna continued to be polluted. Why the State could not improve the quality of water of river of Yamuna? In the case of *Com. Suresh D. Sinha vs. Union of India, Central Pollution Control Board; 2000 (8) SCC 368.* No appropriate measures were taken though there were orders passed in the year 1995 till 1999, fine had to be levied as no significant measures were taken. The ecology was being disturbed due to the non-effective measures by concerned authorities. The
industries were going on discharging effluents into drain or directly in Yamuna river.

Thus from the decisions hereinabove quoted and analysed, the analysis is that the Supreme Court in pollution matters has played an active role as far as water pollution is concerned.

(B) Decision of Supreme Court Non Application of Doctrine of Eclipse To Old Cr.P.C. Section 133: -

The question which arose was whether the doctrine of Eclipse would apply after legislating of the Water Act. Whether the provisions of Section 133 of the Criminal Procedure Code would stand obliterated or deleted as far as it concerned nuisance of pollution. The provisions of Section 133 of the Criminal Procedure Code renders summary remedy so that specific nuisance or obstructions may be removed. The provisions of Section 133 can be invoked even by a private individual. The provisions of specific Act no doubt can be invoked by the private person but with the permission of the board. Section 133 can be invoked to stop potential, private nuisance turning into public nuisance, if not curbed in the beginning. Normally as per interpretation of the statutes the subsequent provision on the same subject matter dealing more minutely would be legislated with a view to repeal the general provision. The repeal has to be of those legislations which reasonably cannot co-exist and cannot be allowed to operate and are repugnant to each other. If it is a special enactment which covers a particular area it would have a clause overriding the general enactment. The provisions of Section 133 of the Cr.P.C., when examined on
aforesaid touch stone would show that (a) that it is not repugnant (b) there is no apparent conflict causing inconvenience or confusing consequence. Section 33 of the Water Act serves similar purpose as is in Section 133 of Criminal Procedure Code but it is the board who has the power and function to initiate proceedings under Section 33 of Water Act. The Supreme Court would have struck down the order of the District Magistrate under Section 133 (1) of the Code issuing certain directions. The Water Act serves the purpose of permitting board to come to the Court, seeking prosecution, seeking closure. It was only after the Amendment Act of 1988 that the powers where vested for directing closure, till then Sub-Divisional Magistrate could exercise the powers under Section 133 of Criminal Procedure Code. The provision of Cr.P.C. in Section 141 is such which would grant the industries fix time to perform the act as ordered by the District Magistrate. The provisions of Section 133 when compared to the provision of Chapter V of the Water Act, it would be very clear that the Sections are mutually exclusive and they can exist together. Neither the Water Act nor the provisions of Air Act have impliedly overruled the provision of Section 133 of the Cr.P.C.

The necessary questions to be asked while exercising power under both the legislations are:

1. Whether there is direct conflict between the two provisions.
2. Whether the legislature intended to lay down an exhaustive Code in respect of the subject matter replacing the earlier law.
3. Whether the two laws occupy the same field.
The Supreme Court after appreciating the provisions of Criminal Procedure Code, 1973 held that applicability of Section 133 and imminence of nuisance is necessary to attract operation of section 133 and Section 144.

However, certain limitations will have to be borne in mind regarding the limited application of Section 133 of Criminal Procedure Code be summarised as under:

(a) Relevance of duration of nuisance.
(b) Public Place
(c) Necessity to fix time for removal of nuisance
(d) No power to reject

The Water Act does not eclipse provisions of Criminal Procedure Code.

10 CONCLUSIONS AND SUGGESTIONS:

From 1962 to 1970, it appears lack of significant legislative effort curbing growing water degradation was only a reflection of overall apathy and indifference to environmental pollution issues. The Supreme Court or the High Courts had not stepped in with the zeal, which came to be seen after 1970. Before specific legislations were enacted wherever there was any complaint of causing damage or pollution actions were taken under the Indian Penal Code, Cr.P.C., Tort. (a) Nuisance and (b) Negligence were regarded as the spheres under which action could be taken against defaulting person.
The overall analysis of the decisions under criminal and writ jurisdiction goes to show that the criminal sanctions have failed to bring out desired deterrent effect. The lack of enforcement is due to defiant attitude of industrial units. The company wants to earn but does not wish to obey the orders of the Court under the principle of 'polluter pays' for the damage caused to the environment or to the water bodies and litigate before Courts. The industries and companies are operating without consent or despite refusal of consent. Various authoritative pronouncements, catena of decisions of various High Courts go to show that nothing has been done in such matters by the State or board.

It is interesting to note that the courts have saddled the Government with liability under the law of torts. The wide powers of the Higher Courts in exercise of writ jurisdiction so as to make the State and industries vicariously liable under the law of torts has developed in India leaving its British counterpart behind, where the law of torts developed.

The yeoman work in writ jurisdiction will have no meaning if accused are discharged. The polluting concerns go on polluting and then plead before the Court, invoking the principle, of polluters pays as is done in the case of Kamalnath before the Supreme Court. This should not be allowed. Certain aspects will have to be looked into by the legislation for the better implementation of pollution laws. These aspects are: (a) Giving special power to the Chairman because Chairman cannot go personally for lodging complaint and cannot as a complainant be expected to remain present in such proceedings, a provision under Section 11A and 49 A will have to be either amended by the legislation or interpreted by the Supreme Court and in future, interpret them so that the purpose of the legislation is served. The
analysis of the decisions shows that the High Court of Gujarat has deprecated the practice of delaying tactics. The proceedings would and are dynamited because of Nicosulf and Divine Chemicals Judgment.

From the analysis of the decisions and survey of legislations ground water is not given any importance, in the enactment. The Water Act, 1974 does not deal with ground water. The Act does not deal with preservation of water deposits, or pollution or contamination of ground water. The water policy of 1988 is silent about ground water.

The objects of the Water Act have not been fulfilled due to the in-action of the Gujarat Pollution Control Board; but it is the Hon’ble High Court of Gujarat, which has remained alive to situation.

It can be analytically observed that Water Act is a good legislation with average performance.

The Water Act, 1974 is the first major and comprehensive legislative step to combat water pollution in India. It is first of its kind for protection of Water. Unfortunately it appears though the legislation is well intended the political executive will to enforce it is very weak. The general perception is that the Act has bodily lifted the provisions of the River Act, 1951 (U.K.) The Water Act, 1974, does not prescribe standards or limits of discharge of pollution. The Act even does not attain technical proficiency. The legislative scheme has been formulated by compromises and adjustments. The definition of ‘stream’ under the Act does not include sea or tidal water. The Act, does not deal with pollution of seawater nor does it deal with the aspects to restore wholesomeness of water. The Act does not deal with
sanitation or drainage, which has been the main source of water pollution. The water Act after three decades of enactment and implementation of the Act would reveal the following drawbacks:

(a) Slow implementation of Act.
(b) Success of curbing less and ineffectiveness.
(c) Lack of Staff with pollution boards.
(d) Lack of experts to enforce stringent actions.
(e) Command and control approach has high cost factor.
(f) Due to technical interpretation of the water Act by Hon'ble High Court of the Gujarat in Nico-sulf and Divine Chemical decisions (Supra). The Trial Court cannot convict directors.

The interpretation of the Gujarat High court of the Water Act while deciding criminal matters has made section 44 of the Water Act nugatory in as much as the magistrates are bound by the decision of the High Court. The analysis of the tables and the majority of the cases pending in the trial courts would show that due to the interpretation of the Water Act by the High Court reversing the conviction of the directors of the company on interpreting the provisions of the Act has resulted into backlog of cases as the High Court has interpreted the provisions which would not permit the Trial Court to convict the accused.

The last observation is substantiated by the analysis of Nico-sulf decision (Supra). The Judgment has held all the four factors against prosecution namely lack of power of the Chairman to lodge complaint. In Criminal
Cases officer authorised by the Chairman lodges the complaint. In light of the ratio laid down by the Hon’ble High Court in the case of Nico-Sulf either the accused have to be discharged or acquitted. The other three observations also come to the rescue of accused as the ratio of the Hon’ble High Court is binding on the trial courts in the State.

The decision in *Nalin Thakor and othrs. vs. State of Gujarat and others*, 2004 (2) SCALE 61 shows that the situation is still to be resolved as to vicarious liability of Chairman under sub Section 1 or 2 of Section 47 till this controversy is resolved by the full bench to whom the matter is referred the trial courts will have to either discharge the accused relying on the judgment of Nico Sulf decided by the Gujarat High Court and that of the Supreme Court in Nalin Thakor judgment.

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