CHAPTER - IV

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INTRODUCTION:

The Indian Constitution, the Supreme law of the land, exhibits keen interest in conservation of the environment. It does not explicitly, mention the word ‘environment’; but the prolific document deals with every aspect of it\(^{257}\). The Constitution mandates in favour of equitable development in consonance with sustainable development. The Indian Constitution at the time when it came into effect did not contain any specific provision dealing directly with environment. The only provision which was of some significance was Article 47 of the Directive Principles of State Policy\(^{258}\). Article 21\(^{259}\) of the Constitution was given a very restrictive and narrow meaning in the beginning. But in due course of time, the problem of pollution and environment started drawing attention by environmentalists.

In the year 1972, the then Prime Minister, late Mrs. Indira Gandhi, attended the United Nations Conference on Human Environment and Development at Stockholm. In that conference two resolutions were passed\(^{260}\) which are known as the Magna Carta of our environmental law\(^{261}\).


\(^{258}\) Article 47 of the Indian Constitution which reads as, “The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties.”

\(^{259}\) Article 21 of the Constitution which deals with right to life and personal liberty runs as follows: “No person shall be deprived of his life or personal liberty except according to procedure established by law.”


a) Man has the fundamental right to freedom, equality and adequate conditions of life in an environment of quality that permits a life of dignity and well-being; and

b) Man bears a solemn responsibility to protect and improve the environment for the present and future generations.

The declaration further resolved that the natural resources must be safeguarded for the benefit of present and future generations through careful planning and management\(^{262}\). The Stockholm declaration is an important document so far as the international and national environmental movement is concerned. The General Assembly of the U.N. also passed a resolution on 15\(^{th}\) December, 1972 emphasizing co-operation between the States in the field of conservation of human environment. \textit{June 5\(^{th}\) is designated as the World Environment Day} by the U.N. and it has urged the member States to undertake on that day every year world-wide activities reaffirming their concern for the preservation and enhancement of the environment. The courts often had to decide on the conflicts of rights between citizens. For instance, the freedom of speech and expression; the right to carry on a business, trade or occupation; the freedom of religion; and above all the right to equality are the areas, where these conflicts arise in contra-distinction to the right to healthy environment under art 21.

Four years after the Stockholm Conference, the forty-second amendment\(^{263}\) to the Constitution of India introduced some significant provisions relating to environment. The Constitution guarantees every citizen fundamental rights to equality, right to freedom and the right to life and personal liberty. Article 15 (2) of the Constitution further states that no citizen shall be subjected to any restriction with regard to “the use of wells, tanks, bathing ghats”. It took

\(^{262}\) Stockholm Declaration, 1972 Principle 2.
\(^{263}\) The Constitution (Forty-second Amendment) Act 1976, which came into force with effect from 3 January 1977.
a long time for the Apex court to pronounce explicitly that the right to life includes the right to live in a healthy environment. The courts often had to decide on the conflicts of rights between citizens. For instance, the freedom of speech and expression; the right to carry on a business, trade or occupation; the freedom of religion; and above all the right to equality are the areas, where these conflicts arise in contra-distinction to the right to healthy environment under art 21.

**FUNDAMENTAL HUMAN RIGHT AND DUTY TO WATER:**

Over the past couple of decades, the laws concerning water have been complemented by a human rights dimension. The core message is that all human beings are entitled to equal and non-discriminatory supply of a sufficient amount of water. This has led to the demand for legal recognition of the right to water and corresponding changes in water-related laws and policies. The Constitution of India does not specifically recognize a fundamental right to water. Instead, this right has been asserted on the basis of the fundamental right to life enshrined in Article 21 of the Constitution. The Supreme Court of India and various High Courts have confirmed this right and the obligation of the government to provide water.

The 42nd Constitution Amendment Act, 1976, inserted specific provisions for environmental protection. Under the new provisions enshrined in the Directive Principles, which guide the state in moulding its laws, the state shall endeavour to protect and improve the environment and to safeguard the forest and wildlife of the country. Among the fundamental duties of the citizens, the duty to protect the environment is significant. Every citizen has a fundamental ‘duty to protect and improve the natural environment including forests, lakes, rivers

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264 Constitution of India 1950, Art 48A.
and wildlife and to have compassion for living creatures\textsuperscript{265}. Two entries 17A – Forests and 17B – Protection to wild animals and birds were added in the Concurrent List.

**Responsibility for providing water**

There is no legislation in India that says governments have to provide water to citizens. But, as noted earlier, courts have ruled that the right to water is part of the constitutional guarantee of right to life. It has also been implicitly accepted since Independence that Central and State governments have a primary responsibility for providing water for drinking, and, subsequently, for other purposes.

Provisions for supplying drinking water have been made in all the Five-Year Plans, and the responsibility was made explicit in the Twenty-Point Programme drafted in 1975 and modified in 1982 and 1986. Accordingly, a host of programmes have been framed and implemented at the Central and State levels, such as the Accelerated Rural Water Supply Programme and the Rajiv Gandhi National Drinking Water Mission.

**Legislative powers on water under the Indian Constitution:**

According to the state list, under the Seventh Schedule of the Constitution, states have jurisdiction over water resources within their borders. The powers of the states are subject to:

- The Union list under the Seventh Schedule of the Constitution that allows the central government to regulate and develop inter-state rivers and river valleys when declared by Parliament as a matter of public interest.
- The central government’s regulatory role in inter-state water projects, under Article 252.

\textsuperscript{265} Constitution of India 1950, Art 51(g).
The Environment (Protection) Act, 1986, and notifications issued under it by the Union Ministry of Environment and Forests (MoEF), which require states to get Central Clearance for major water projects. The Central Government’s role in resolving inter-state water disputes as per the provisions under Article 262. Under this Article, Parliament enacted the Inter-State Water Disputes Act of 1956, under which a number of tribunals have been set up to resolve water disputes among the states.

The Central Government can also acquire legislative powers on water when two or more states desiring uniform water legislation request the Union Government, with the approval of their respective Assemblies, to provide such legislation. The Indian Constitution provides for a federal structure within the framework of parliamentary form of government. Part XI of the Constitution governs the division of legislative and administrative authority between the Centre and States. Article 246 divides the subject areas for legislation into three lists, viz, Union List, State List and Concurrent List. Under the Concurrent List, both Parliament and State

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266 Entry 6 Atomic energy and mineral resources necessary for its production,
14 Entering agreements with foreign countries and implementing of treaties, agreements with foreign countries,
24 Shipping and navigation on inland waterways,
25 Maritime shipping and navigation, including shipping and navigation on tidal waters,
29 Airways, regulation and organizations of air traffic and of aerodromes,
52 Industries, the control of which by the Union is declared by Parliament by law expedient in the public interest,
53 Regulation and development of oil fields and mineral oil resources,
54 Regulation of mines and mineral development,
56 Regulation and development of inter-state rivers and river valleys,
57 Fishing and fisheries beyond territorial waters.

267 Entry 6 Public health and sanitation, hospitals and dispensaries,
10 Burials and burial grounds, cremations and cremation grounds,
14 Agriculture,
15 Preservation, protection and improvement of stock and prevention of animal diseases,
17 Water, that is to stay, water supplies, irrigation and canals, drainage and water, water power subject to the provisions of Entry 56 of Union List,
18 Land,
21 Fisheries
Legislatures can enact laws. Article 248 gives the centre the residual power to legislate on any subject not covered in the three lists. Articles 251 and 254 state that a central law on any subject in the Concurrent List generally prevails over a state law on the same subject. Article 249 states that the centre can legislate in the national interest on any subject in the State List provided it can obtain a two-thirds majority in the Rajya Sabha, the upper house of Parliament. Article 252 states that the centre can also pass laws on state subjects if two or more state legislatures consent to such legislation. Article 253 empowers the Parliament ‘to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body’. These provisions of the Constitution of India give a dominant role for the central government on matters relating to environmental protection.

Even though many entries in the three lists deal with location-specific subjects which generally come under the jurisdiction of local bodies viz., municipalities and panchayats, until 1992, they were not given the necessary powers to deal with these subjects. Part IV, Article 40 provides that ‘the State shall take steps to organize village panchayats and endow them with such power and authority as may be necessary to enable them to function as units of self

### Table of Entries

- 17 Prevention of cruelty to animals,
- 18 Adulteration of food stuffs and other goods,
- 19 Drugs and poisons,
- 20 Economic and social planning,
- 20A Population control and family planning,
- 29 Prevention of the extension from one state to another of infecting or contagious or pests affecting, men, animals or plants,
- 32 Shipping and navigation on inland waterways as regards mechanically propelled vessels,
- 36 Factories,
- 37 Boilers,
- 38 Archaeological sites and remains other than those declared by or under law Parliament to be of national importance.
government. These are only guidelines for policy formulation. Until the 73rd and 74th amendments to the Constitution in 1992, the Constitution did not assign powers to the local bodies; local government was simply treated as a subject in the State List.

The Water Pollution related Laws are comprehensive in their coverage, applying to streams, inland waters, subterranean waters, and seas or tidal waters. Standards for the discharge of effluent or the quality of the receiving waters are not specified in the Acts itself. Instead these Acts enable the State Boards to prescribe these standards. These Acts also provides for a permit system or ‘consent’ procedure to prevent and control water pollution. These Acts generally prohibits disposal of polluting matter in streams, wells and sewers or on land in excess of the standards established by the State Boards. A person must obtain consent from the State Board before taking steps to establish any industry, operation or process, any treatment and disposal system or any extension or addition to such a system which might result in the discharge of sewage or trade effluent into a stream, well or sewer or onto land.

The Water (Prevention and Control of Pollution) Act was enacted in 1974 to provide for the prevention and control of water pollution, and for the maintaining or restoring of wholesomeness of water in the country. The Act was amended in 1988. The Water (Prevention and Control of Pollution) Cess Act was enacted in 1977, to provide for the levy and collection of a cess on water consumed by persons operating and carrying on certain types of industrial activities. This cess is collected with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. The Act was last amended in 2003.

In this chapter the researcher is discussing elaborately the provisions of the central water pollution related laws and their application in groundwater pollution. The important Central Water Laws and Rules are listed hereunder:

- National Water Policy.

**THE WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974**

The Water (Prevention and Control of Pollution) Act, became effective from March 23, 1974 and was amended by Act 44 of 1978 and Act 53 of 1988. The main objective of the Water Act is to provide for the prevention, control and abatement of water pollution and the maintenance or restoration of the wholesomeness of water through the establishment of water boards. It is designed to assess pollution levels and punish polluters. The Central Government and State Government have set up PCBs to monitor water pollution. The Water Act was passed by the Parliament in pursuance of the resolutions passed by the legislatures of the states of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala,
Madhya Pradesh, Rajasthan, Tripura, and West Bengal. According to the Water Act\textsuperscript{270}, it extends to the whole of the abovementioned states and to any other that adopts it by a resolution under Art 252(1) of the Constitution.

\textbf{Contents of the Act:} The Water Act, 1974 contains 64 sections. These sections have been comprised in eight chapters\textsuperscript{271}.

\textbf{Main Definitions:}

Though the term ‘\textit{water pollution}’ has not been defined in the Water Act, the term pollution takes into account only aspects relating to water. ‘\textit{Pollution}’ under the Water Act 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 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, agricultural or other legitimate uses, or to the life and health of animals or plants or of aquatic organisms\textsuperscript{272}.

\textsuperscript{270} Section 1(2) of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{271} The eight chapters are classified under the following headings:
- Preliminary (Sections 1-2)
- The Central and State Boards (Sections 3-12)
- Joint Boards (Sections 13-15)
- Powers and Functions of Boards (Sections 16-18)
- Prevention and Control of Water Pollution (Sections 19-33)
- Funds, Accounts and Audit (Sections 34-40)
- Penalties and Procedure (Sections 41-50)
- Miscellaneous (Sections 51-64).
\textsuperscript{272} Sec.2 (e) of the Water (Prevention and Control of Pollution) Act, 1974.
“Trade effluent” includes “any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process, or treatment and disposal system, other than domestic sewage\textsuperscript{273}.”

The term “stream” includes (i) river, (ii) water course (whether flowing or for the time being dry); (iii) inland water (whether natural or artificial); (iv) subterranean waters; and (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\textsuperscript{274}.

The term ‘sewage effluent’ means ‘effluents from any sewerage system or sewage disposal works and includes sullage from open drainage\textsuperscript{275}.’

The above definitions are wide in ambit and cover almost every aspects of water pollution including contamination, alteration of bio/chemical properties, sewage, trade effluent, nuisance etc. The Act covers aspects of public health and safety in various sectors such as domestic, commercial, agricultural including the life and health of plants and animals as well as aquatic organisms. But the Act does not cover groundwater protection and prevention of pollution separately.

**The Central and State Boards:**

It was the Water Act of 1974 which established a Central Pollution Board and a State Pollution Control Board. Subsequently, the same Boards have been given the power to govern all the pollution regulations passed since then and any other to be put in regulations in the future.

\textsuperscript{273} Sec.2 (k) of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{274} Sec.2 (j), \textit{ibid.}
\textsuperscript{275} Sec 2(g), \textit{ibid.}
The CPCB was constituted in September, 1974. There are 18 State Boards besides the Central Board.276

**Constitution and Authority of the Board:**

Pollution Boards are to be headed by a Chairman and a few members who are all appointed. The Chairman as well as the Board members are appointed by the respective governments. The members to be appointed to the Boards are to be selected from various interest groups such as Corporations, Public Health Engineering, Agriculture, Forestry, Fishery, etc. Basic purpose of these Boards is to advise their respective governments on any matter concerning the prevention and control of pollution in their area of jurisdiction. The Central Board coordinates as well as oversees all the other State Boards and their functions. To implement any environmental pollution control act, the Board has the power to obtain information “make surveys of any area and gauge and keep records of the flow of volume... of the stream.” It has the power to take samples, analyze any matter from the industry. The Boards also have the authority to establish or recognize any laboratory for chemical analytical work.

**Structure of Board:**

The structure and the mode of constitution of the Central and State pollution control boards are provided in the Water Act. Each board will have a Chairman, having special knowledge and experience on matters relating to environmental protection and a full-time member secretary possessing qualifications, knowledge and experience of scientific, engineering

276 The State Boards are constituted in Andhra Pradesh, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Maharashtra, Meghalaya, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh and West Bengal.

277 Section 3(2) of the Water (Prevention and Control of Pollution) Act, 1974.

278 Section 4(2), *ibid.*
and management aspects of pollution control. A board has official members, not exceeding five members; not exceeding three, from the fields of agriculture, fishery, industry or trade; and two persons representing government corporations. While Central Pollution Control Board has members, not exceeding five, representing the members of the State Boards, and the state board has members, not exceeding five, representing the local bodies within the state. The governments concerned nominate all members and appoint the member secretary. The Members of the Board other than Member Secretary shall hold office for a period of 3 years from the date of his nomination. A Member of the Board is also eligible for re-nomination.

In *State of Manipur v. Chandam Manihar Singh*\(^\text{279}\) the Supreme Court held that a casual vacancy in the State Pollution Control Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold the office only for the remainder of the term of the member in whose place he was nominated to hold office. This observation was made by the Supreme Court in a Special Leave Petition relating to the appointment and removal of Manipur State Pollution Control Board Chairman.

**Authorities:**

The primary authorities under the Act are the ‘Central and State Boards for Prevention and Control of Water Pollution’ though certain powers have also been vested with the Central and State Government. There is a Central Pollution Control Board (CPCB) at the Centre, which is constituted by the Central Government\(^\text{280}\), and the State Pollution Control Boards at the State Level constituted by the state governments\(^\text{281}\). So far as the union territories are concerned, the

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\(^{279}\) (1999) 7 SCC 503.  
\(^{280}\) Section 3 of the *Water (Prevention and Control of Pollution) Act, 1974*.  
\(^{281}\) Section 4, *ibid*. 

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CPCB exercises the powers and performs the function of the State Board\textsuperscript{282}. Though under sec 4, the states can set up their own water boards, unlike the Air Act, they also have the option of setting up joint boards with contiguous states and union territories. Such joint boards can be formed by an agreement between the states or union territory for a specified length of time\textsuperscript{283}. To avoid conflict, only the Central Government has the power to give directions under the Act in case of matters within the territorial jurisdiction of two or more states or union territory. However, in cases where the matter is within the exclusive territorial jurisdiction of a state, the state government is empowered to give directions.

The CPCB, in all matters, is bound by any directions given by CPCB or state government bind the state board. However in case of inconsistency between directions given by either the state government or the CPCB, the matter is to be referred to the Central Government\textsuperscript{284}. The boards (both central and state) also have the power to constitute committees or associate itself with persons for certain specific purposes under ss 9 and 10.

**Functions and powers of authorities:**

**Central Board:**

The main function of the CPCB is to ‘promote cleanliness of streams and wells’ in different areas of the states. Specifically, the functions of the CPCB range from advising the Central Government on matters concerning the prevention and control of pollution, assisting and coordinating the activities of state boards, planning and organizing training and research

\textsuperscript{282} Section 4(4), \textit{ibid.}
\textsuperscript{283} Section 13, \textit{ibid.}
\textsuperscript{284} Section 18, \textit{ibid.}
programs to laying down standards for streams and wells etc.\textsuperscript{285} Besides, the CPCB also has the power to make application to court for restraining apprehended pollution of water in streams or wells\textsuperscript{286}, and to give directions to any person, officer or authority\textsuperscript{287}.

Some of the main responsibilities of the Central Board, pursuant to promoting cleanliness and pollution abatement of streams and wells, include: coordinating Activities of State Boards and resolving disputes among them; providing technical assistance; conducting investigations; opening laboratories for analysis of samples; establishing fees for different types of sample testing; researching issues and problems; training personnel; conducting media and public awareness campaigns; collecting and disseminating data on water pollution; and working with State Boards to set standards by stream or well.

In addition to its functions at the national level, the Central Board acts as a State Board for the Union Territories. The functions of the CPCB at the national level are to advise the Central Government on all matters concerning prevention and control of water and air pollution; provide technical assistance and guidance to the SPCB and coordinate their activities for effective implementation of pollution abatement programme; lay down standards for the quality of natural water, trade and domestic effluents and for the quality; personnel awareness towards preservation of the quality of environment through mass media. The Central Board constitutes activities of the SPCB, statutorily constituted in nationwide implementation of pollution control.

\textsuperscript{285} Section 16 of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{286} Section 33, \textit{ibid}.
\textsuperscript{287} Section 33 A, \textit{ibid}.
To facilitate closer coordination between the SPCBs and the CPCB, the country is divided into five regions. The CPCB has established five regional offices so far;288

3. The South Region Office (SRO) was earlier located at Madras is relocate at Hyderabad to facilitate coordination.
5. Western Region Office (WRO) – Gujarat and Maharashtra.

State Board:

The State Boards have similar responsibilities, although they also play an important subsidiary role of doing plant-level inspections and monitoring, and advising the Central Board of problems and trends at the local level. The functions of the SPCB include planning and executing programs for prevention, control or abatement of pollution of streams and wells in the state, advising the state government, collaborating with CPCB in training programs, inspecting sewage trade effluents, works and plants, laying down standards for such effluents and for quality of receiving waters (not being water in an inter water stream)289, classifying waters of the state, evolving methods of sewage and trade effluents and their utilization and disposal, laying down standards of treatment of sewage and trade effluents to be discharged into any stream,

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289 In Dr. Z. Kotasek v. State of Bihar 1984 Cr LJ 683, the court held that the term ‘inter-water system’ related to water exclusively belonging to the inter-water stream. The flow of the water of Ganga being continuous, and pollution being alleged for a particular spot, the jurisdiction of state board cannot be ousted.
passing order for discharge of waste and for construction of new systems for disposal of trade effluents\textsuperscript{290}.

Plants can be required to provide the State with information on their pollution control technologies, and the State may acquire effluent samples, which are admissible in court. Particularly, the SPCB has the power to obtain information and take samples of effluents\textsuperscript{291}. For this purpose, any person, empowered by the SPCB, can enter and inspect any place\textsuperscript{292}. Samples taken by the SPCB have to be in strict compliance with the provisions of Sec 21 to be admissible as evidence. In the case of Delhi Bottling Company\textsuperscript{293} the CPCB took a sample of trade effluent from a bottling company’s discharge stream that was found not to confirm with the consent requirements. The Board got an injunction under Sec 33 of the Act requiring the company to establish a treatment plant. The company pleaded that the samples taken by the board were not taken in strict compliance with Sec 21 of the Act. Based on this, the court ruled in favour of the company, holding that consent order was not violated, as samples not taken in strict compliance with Sec 21 are inadmissible as evidence.

In \textit{M/s Narula Dying & Printing Works v. Union of India}\textsuperscript{294}, the Gujarat High Court held that a mere consent order issued by the SPCB does not entitle the applicant to discharge trade effluents into a stream and it is incumbent upon the applicant to comply with the conditions mentioned in the consent order. If the applicant fails to do so, the SPCB can, under Sec 25 of the Water Act, withdraw the consent order. Further if the conditions laid down by the SPCB relating to execution of some work are not fulfilled, it may itself execute such work, the expenses of

\textsuperscript{290} Section 17 of the \textit{Water (Prevention and Control of Pollution) Act, 1974.}  
\textsuperscript{291} Section 21, \textit{ibid.}  
\textsuperscript{292} Section 23, \textit{ibid.}  
\textsuperscript{293} AIR 1986 Del 152.  
\textsuperscript{294} AIR 1995 Guj 185.
which can be charged to the industry. State Board members also have unfettered access to any plant site at any time. In situations where a State Board believes immediate action is necessary, it has the authority to prevent further discharges, and can also apply to a Judicial Magistrate for a restraining order. In the case of an emergency, State Boards are empowered to take whatever measures they deem necessary.

The Act imposes a duty upon the local authorities to assist and furnish information to the board. The SPCB can also acquire land for efficient performance of its functions. Further, the SPCB can also delegate powers and functions on the chairman, including the power to sanction prosecution\textsuperscript{295}. The court, in the case of \textit{Gujarat PCB v. Indian Chemicals Manufacturer}\textsuperscript{296}, has reiterated this power of the Chairman. The Court held that the Chairman can sanction prosecution of polluter if the state board delegated the function to the chairman.

The Central Government can issue directions to the Central Pollution Control Board, the latter in turn can issue directions to the state pollution control board\textsuperscript{297}. The directions issued by the Central Government and the state government will bind both the CPCB and SPCB respectively. Consequent to the enactment of the Environment Protection Act, 1986\textsuperscript{298} an amendment to the Water Act conferred more potent and meaningful powers on the boards. It laid down that a board may, in exercise of its powers and performance of its functions, issue any direction in writing to any person, officer or authority and such person is bound to comply with such direction. This means that the CPCB as well as the SPCB can issue directions to an industry to stop functioning. This power includes the power to direct closure, prohibition or regulation of

\textsuperscript{295} Section 11 A of \textit{the Water (Prevention and Control of Pollution) Act, 1974.}  
\textsuperscript{296} 1990 (2) Guj LR 1306.  
\textsuperscript{297} Section 18 of \textit{the Water (Prevention and Control of Pollution) Act, 1974.}  
\textsuperscript{298} \textit{Inserted by Act No 53 of 1988.}
any industry, operation or process or stoppage or regulation of supply of electricity, water or any
other services\textsuperscript{299}.

The state government under the act has no functions; it only has powers. One of the
most important amongst these is the power to declare an area as ‘water pollution, prevention and
control area.’ The state government can make such a declaration in three ways: by reference to a
map or reference to the line of a watershed or the boundary of any district. The government can
also define a new area or alter an existing area. Further, the state government, in consultation
with the state board can restrict the application of the act to designated are as compared to the
whole state\textsuperscript{300}. Section 24(1) prohibits the use of streams or wells for disposal of polluting
matter. However, under sec 24(3), the state governments can after consultation with the state
board, exempt any person from disposing of polluting matters in streams or wells.

The definition of stream becomes important in this context. ‘Stream’ for the purposes
of the Act, includes ‘river, watercourse (whether or for the time being dry), inland water
(whether natural or artificial), sub-terranean waters, sea or tidal waters to such extent or to such
point as the government may, by notification in the official gazette specify’. The restrictions
imposed under sec 24(1) cannot be challenged as being unreasonable vis-à-vis the petitioners
right to carry on his business under art 19(1)(g) of the constitution. The Rajasthan High Court, in
Aggarwal Textile Industries v. State of Rajasthan\textsuperscript{301}, has held that:

It is true that the prevention and control of pollution of water may involve expenditure
beyond the means of a particular individual carrying on a particular industry and it may require

\textsuperscript{299} Explanation to sec 33 A of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{300} Section 19 of the Water (Prevention and Control of Pollution) Act, 1974.
\textsuperscript{301} SBC Writ Petition No 1375/80 (unreported).
cooperation amongst various units. But this does not mean that an individual, while exercising his right to carry on his trade or business, is free to pollute the source of water supply to other citizens, and thereby cause harm to the interests of the general public and it is therefore not possible to hold that sec 24(1) imposes unreasonable restrictions on the right of the petitioners to carry on their trade or business. Lastly, the state government also has the power to make rules relating to subjects mentioned in sec 64.

**Offences and Penalties:**

The Act specifically prohibits “any poisonous, noxious or polluting matter’ into any stream or well. Consent from the State Board is required for any type of new discharge into any new stream or well. This also includes consent for “temperature” discharges to such Boards powers and functions relating thereto and for matters connected therewith.” This is the Act that established the Central and a State Board and also the authority and power as done by cooling tower users. In general, this means that a State consent or permit is required for all types of intake and/or discharge of any type of liquid or water either from a running stream or well. Under these rules, “effluent standards to be complied with by persons while causing discharge of sewage or sullage or both” have been specified. Standards for small scale industries have been specified separately.

Penalties for non-compliance with the permit or polluting in any way are imprisonment for three months and fine of Rs. 10,000 (One US Dollar equals about thirty six Indian Rupees) or fine up to Rs. 5,000 per day of violation or both plus any expenses incurred by the Board for sampling, analysis, inspection etc. These penalties can also be imposed for “obstructing any person acting under the orders or direction of the Board” or for “damages to any work or
property of the Board.” There are penalties also which extend up to seven years plus other monetary fines for other similar offenses. Any “director, manager, secretary or other officer of the company may also be deemed to be guilty” if proved that the offense occurred with their “consent or connivance.” In case of the government, department head could be held liable.

The central as well as the state government can start a lab to do analysis on samples of water or of sewage or trade effluents for tests. A fee will be charged for these services. The law can also stop or restrain a person from discharging any pollutant to any stream or well “which is likely to cause such pollution from so causing.” Imprisonment up to three months and a fine up to Rs. 10,000 for every day of violation during which such failure continues after the conviction for first such offence.

The legislation also sets out specific penalties (prison sentences and fines) for violations of the Act. For example, anyone destroying Board property, preventing a Board employee from performing his or her duties, knowingly providing false information to the Board, tampering with monitoring devices installed by the Board can be imprisoned up to three months, or fined as much as Rs. 10,000, or both. More serious violations of the law can incur stiffer penalties, some as high as seven years of imprisonment or Rs. 5,000 per day fines.

Amendment to the Water Act, 1988:

The discretion to give or not to give consent for discharge of trade effluents is vested in the pollution control boards. No doubt such a regulatory power is the most potent weapon in the control of pollution. The power to withdraw consent when conditions are violated is equally effective. However, the conglomeration of too many powers in the board seems to reduce the
significance of the consent-granting and consent-withdrawing powers. Till the amendment in the year 1988, the board could not exercise coercive powers of its own for bringing the delinquent obedience, except in case of an emergency.

The amendment conferred on the board gave the power to ask for closure of any industry, operation or process. Undoubtedly, this added new vigour and dynamism to the functioning of the board and in most cases it has helped to avoid the situation where the board has had to wait for an order from the magistrate’s court for restraining a person likely to cause pollution. By issuing binding and coercive directions, the board can take timely and speedy action to check apprehended pollution. This power is to be exercised subject to the provisions of the Water Act, and to any directions from the Central Government. Next is the change relating to prosecution. It is an improvement over the past practice where a court could take cognizance of such complaint only with the permission of the board.

Currently, the court can admit a complaint if the person has already given the board 60 days’ notice of his intention to make the complaint\(^\text{302}\). The mandatory notice period has its merits and demerits. On one hand, it induces the board to energize its preventive measures. On the other hand, it renders the polluting entity sufficient time to cover up their commissions or omissions. Another change is that, once a complaint has been made, the board, on demand, has to make available to the complainant relevant reports in its possession\(^\text{303}\). This change will enable the complainant to prove the contentions before a court of law.

Submission of annual reports by the Central Pollution Control Board and the State Pollution Control Boards to the respective governments is another change brought out by the

\(^{302}\) Section 49 of the *Water (Prevention and Control of Pollution) Act, 1974.*

\(^{303}\) Section 49(2), *ibid.*
amendment Act, 1988. The original position was that on receipt of the report from the board, the government had to submit the report to the legislature within six months. Manifestly, such a position does not provide a definite date for the submission of a report to the legislature, as it is always dependent upon the submission of a report by the board to the government. The Amendment Act filled up this lacuna and specifically laid down that the annual report should be submitted to the government by the board within four months from the first date the previous financial year. This made it peremptory to bring the annual reports to the legislature for the deliberations within a period of nine months of the board’s activities of the relevant year. The change is meant to give greater control to the legislature over the working of the boards.

Groundwater Pollution in Water Act:

The water act does not refer to groundwater pollution. Unlike the British law, the Water Act does not provide specifically for the control of dumping of waste on the land, which may eventually pollute underground water streams. The question can be examined in the light of the definition of ‘stream’ given in the Water Act which includes subterranean waters. The plain meaning of subterranean waters are nothing but ‘underground’ waters. Thus, the control of pollution of subterranean streams includes control of pollution of groundwater. However in the beginning scant attention was paid by the pollution control boards in taking up measures of control over groundwater. Dumping of polluting matter on the land, which may eventually pollute groundwater, came to be regulated after the introduction of the amendment to the Water

\footnotesize{Section 39, ibid.}
\footnotesize{Sections 25 and 28 of the Water (Prevention and Control of Pollution) Act, 1974. It is unlawful to discharge into underground strata by means of a well, bore hole or pipe, any trade effluent or sewage except with the consent of the river authority.}
\footnotesize{Reader’s Digest Universal Dictionary, 1988, p 1511.}
Act. Such a liberal interpretation may be viewed as conferring on the pollution control board, powers to take up appropriate measures against pollution of groundwater.

Rules have been framed under Environment Protection Act\textsuperscript{307} for the control, collection, treatment, storage and disposal of hazardous wastes. These rules have conferred on pollution control boards, the power to grant authorization for the activities connected with disposal of hazardous wastes. The rules are silent on the question whether the board should consider the various effects of hazardous waste on groundwater before it grants authorization for disposal in a particular locality. The boards are reluctant to act because they are overburdened with too many responsibilities and weakened by institutional pressures. A specific and definite legislation with a comprehensive mechanism of control and management is necessarily to be enacted for sustainable use of groundwater. Hence, it is desirable to look at the problem of groundwater from a wider perspective.

The first important environmental law enacted by Parliament is the Water (Prevention and Control of Pollution) Act, 1974. As water is a state subject and as 12 states had passed the enabling resolutions, the Government of India, in pursuance of clause 19 of Article 252, passed this legislation\textsuperscript{308}. This Act paved the way for the creation of Central Pollution Control Board (CPCB) and State Pollution Control Boards (SPCBs)\textsuperscript{309}. The main function of the CPCB ‘shall be to promote cleanliness of streams and wells in different areas of the states’. The term stream

\textsuperscript{307} Hazardous Waste (Management and Handling) Rules, 1989. Rule 5 empowers the Board to issue authorization after the Board is satisfied that the operator of a facility or an occupier, as the case may be, possesses appropriate facilities, technical capabilities and equipment to handle hazardous waste safety’. Rule 6 empowers the Board to cancel the authorization or suspend it, if in its opinion, the authorized person has not complied with the conditions of authorization.

\textsuperscript{308} It is worth noting that a few industrially advanced states like Gujarat, Maharashtra and Tamil Nadu did not pass the enabling legislations even though the need for such a legislation was felt as early as 1961. Tamil Nadu passed the necessary legislation only in 1982 and set up the Tamil Nadu Pollution Control Board in 1984.

\textsuperscript{309} This Act mentions Central Board and State Boards. Later on these names were changed to Central Pollution Control Board and State Pollution Control Boards.
includes river, watercourse, inland water, subterranean waters, and sea or tidal waters to such extent or such point a state government may specify in this behalf.

Dwivedi (1977) points out that this Act left many grey areas that were difficult to administer. This Act does not cover groundwater contamination. Municipalities which are primarily responsible for treating residential wastes remain free from direct liability. It allows the government agencies too much flexibility. For example the Act states that the head of a polluting unit would not be punished ‘if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent it’. This Act does not give the victims the right to go to the courts to punish the erring units; charges can be brought to courts only by the Boards. The penalties for non-compliance with the standards or directions are independent of the extent of violations.

The Boards are expected to depend largely on government grants for their operations. As it was found that the Boards were overburdened and underfunded, the Water Cess (Prevention and Control of Pollution) Act, 1977 was enacted. Even after revisions in 1992, the rates of water cess varied between 1.50 paise to 5.00 paise for kilolitre for various uses. These rates are too low compared with the opportunity costs of water. Many SPCBs raise large proportion of their revenues from the consent fees.

The Tiwari Committee, 1980

The Government of India set up a Committee in January 1980, under the Chairmanship of N.D. Tiwari, then Deputy Chairman of the Planning Commission, to review the existing environmental legislation and to recommend legislative measures and administrative machinery for environmental protection. This Committee stressed the need for the proper management of
the country’s natural resources of land, forest and water in order to conserve the nation’s ecological base. Its major recommendations are:

(a) creation of a comprehensive environmental code to cover all types of pollution and environmental degradation;

(b) constitution of environment courts in all District Head Quarters, and the appointment of experts to assist the Court;

(c) creation of a Department of Environment;

(d) setting up of a Central Land Commission;

(e) provision of economic incentives to industries to encourage environment friendly products, income tax and sales tax benefits for adopting clean technology, investment tax credits for purchases of purification devices, inclusion of replacement cost of purification equipment in annual operating costs, and minimal tax or no tax on the manufacture of pollution control devices; and

(f) environmental impact assessment (EIA) not only be a prerequisite for industry to start, but also must be repeated periodically.

The government had constituted the Department of Environment in 1980, which was transferred to the newly created Ministry of Environment & Forests (MoEF) in 1985. It had also set up the Land Commission. Fiscal incentives such as rebates on excise/customs duties for pollution control equipments, accelerated depreciation allowance on selected pollution control equipments, financial and technical assistance to small scale units in industrial clusters to set up common effluent treatment plants are now available. EIA has become mandatory for highly polluting industries since 1994.
THE WATER (PREVENTION AND CONTROL OF POLLUTION) RULES, 1975:

A document that details the rules underlying the Water (Prevention & control of Pollution) act and includes information on the committee formed its powers & functions, its role & responsibilities, budget and associated accounts. This document provides information on the rules underlying the Water (Prevention and Control of Pollution) Act\textsuperscript{310} and includes:

- Title and the definition of terms underlying the rules
- Information on the terms and conditions of service of the members of the central board and of committees of the central board
- Power and duties of the chairman and the member secretary and appointment of officers and employees
- Rules in case of temporary association of persons with the central board
- Rules for the appointment of a consultant engineer
- Budget of the central board
- Annual report of the central board
- Account of the central board
- Report of the central board analyst
- Rules for the establishment and functioning of the central water laboratory
- Powers and functions of the central board in relation to the union territories

\textsuperscript{310} Section 63 of the Water (Prevention and Control of Pollution) Act, 1974.
CENTRAL BOARD FOR THE PREVENTION AND CONTROL OF WATER POLLUTION (PROCEDURE FOR TRANSACTION OF BUSINESS) RULES, 1975

In exercise of the powers conferred by section 63 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974), the Central Government after consultation with the Central Board for the Prevention and Control of water Pollution makes the following rules:

Rule 1 provides Short title and Commencement and Rule 2 defines some of the important terms. Rule 3 provided Notice of Meetings under the following circumstances by adopting certain measures. Under Rule 4 it has been stated that every meeting shall be presided over by the Chairman and, in his absence, by a Chairman to be elected by the members present from amongst themselves. Rule 5 stated about all questions to be decided by majority and in case of an equality of votes, the presiding officer shall have a second or casting vote.

Quorum: Rule 6 deals with the constitution, purpose and the procedure of forum. It contains the following rules. Rule 7 deals with Minutes. Rule 8 requires the presiding officer shall preserve order at a meeting and Rule 9 provides business to be transacted at meeting. Rules 10 & 11 deals with Order of business and the procedure for transaction of business of Committees constituted by the Board.

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311 Rule 2 of the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975 defines the following terms: “Act” means the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974); “Government” means the Central Government; “Chairman” means the Chairman of the central Board; “Member” means a member of the Central Board and includes the Chairman thereof; “Member Secretary” means the Member Secretary of Central Board; “Meeting” means a meeting of the Central Board; “Section” means a section of the Act;
THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977

The Water (Prevention and Control of Pollution) Cess Act, 1977, as amended by Amendment Act, 1991. The Water Cess Act was passed to meet the expenses of the Central and State Water Board. The Act creates economic incentives for pollution control through a differential tax structure and requires local authorities and certain designated industry to pay a Cess (tax) for water consumption. These revenues are used to implement the Water Act. The Central Government, after deducting the expenses of collection, pays the Central Board and the States such sums, as it deems necessary to enforce provisions of the Water Act. To encourage capital investment in pollution control, the Act gives a polluter a 25 per cent rebate for the applicable Cess upon installing effluent treatment equipment and meeting the applicable norms.

This law provides for the levy and collection of a Cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central and State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974.”

Industries were specified in Schedule I\(^{312}\). The State government had the authority to collect the Cess from the industry. Collection of Cess was based on the quantity of water consumed. According to this Act, anyone consuming water has to pay certain amount of Cess

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\(^{312}\) Schedule I of the Water (Prevention and Control of Pollution) Cess Act, 1977 specified the following industries:
1. Ferrous: Metallurgical industry
2. Non-Ferrous: Metallurgical industry
3. Mining industry
4. Ore processing industry
5. Petroleum industry
6. Petro-chemical industry
7. Chemical industry
8. Ceramic industry
9. Cement industry
10. Textile industry
11. Paper industry
12. Fertilizer industry
13. Coal (including coke) industry
14. Power (thermal and diesel) generating industry
15. Processing of animal or vegetable products industry.
depending on certain issues. Those industries that had installed a suitable treatment plant for the treatment of industrial effluents can get a rebate of 70 per cent on the Cess payable.

**THE WATER (PREVENTION & CONTROL OF POLLUTION) CESS RULES, 1978**

In exercise of the powers conferred by Section 17 of the Water (Prevention & Control of Pollution) Cess Act, 1977, the Central Government has made the Water (Prevention & Control of Pollution) Cess Rules, 1978.

1. Rule 1 gives the short title and commencement date (24-7-1978).
2. Rule 2 defines the terms of act, assessment authority, consumer, form, section, State Government.
3. Rule 3 states that the meters to be fixed are standard meters and they shall be affixed at the entrance of the water supply connections with the premises of the consumer.
4. Rule 4 states that the returns shall be submitted by the consumer on or before the 5th of every calendar month in form I annexed hereto.
5. Rule 5 explains the manner of payment of the Cess (i.e., by Bank draft) to the Account Officer Department of Environment, New Delhi and the time within which it shall be paid i.e., before the 10th day of the calendar month succeeding month in which it is collected from the consumer.
6. Rule 6 provides that the consumer who installs any plant for the treatment of sewage or trade effluent shall be entitled to the rebate under Section 7 on and from the expiry of

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313 They are as follows: 1. Whether the industry is using water for industrial cooling, spraying in mine pits or boilers feed, 2. For domestic purposes. 3. In processing, whereby water gets polluted and pollutants are easily biodegradable. 4. In processing whereby water gets polluted and the pollutants are not easily bio-degradable and are toxic.
fifteen days from the date on which such plant is successfully commissioned and so long as it functions successfully.

7. Rule 6-A states that cess collecting authority of the State/Union Territory shall furnish a statement with the Central Government before the 10th day of the calendar month of January, April, July and October showing assessment of cess of specified industries, its collection and arrears.

8. According to Rule 7, the Officer or authority of the State Government shall have in addition to the powers referred to in clauses (a) and (b) of Section 9, the power to inspect the manufacturing process or plant of the consumer, the water supply systems and installations in the plant of the consumer, water treatment system installations in the plant of the consumer, the drainage system and installations, including storm water disposal in the plant of the consumer, records.

9. As per Rule 8, the authority to impose penalty under Section 11 shall be the assessing authority.

10. Under Rule 9, any consumer aggrieved by an order of assessment made under Section 6 or by an order imposing penalty made under Section 11 appeal in Form II annexed hereto to the Appellate Committee.

THE ENVIRONMENT (PROTECTION) ACT, 1986

In 1976, when the Indian parliament passed the 42nd amendment to its constitution safeguarding the environment, it became the first country in the world to do so. The amendment was to “endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.” It imposes a duty on every Indian citizen “to protect and improve the natural
environment including forests, lakes, rivers, and wild life, and to have compassion for living creatures.”

According to the Environment Protection Act of 1986, Environment is that which includes the “inter-relationship which exists among and between water, air, and land and human beings, other living creatures, plants, micro-organism and property.” Essentially, The Water (Prevention & Control) Act, 1974 can be considered to be truly the first regulations. It has been amended many times since then. The Public Liability Insurance Act 1991 has been included as the sixth environmental regulation because it is the first regulation which gives some teeth to the other five pollution regulations listed above.

The Environment (Protection) Act, 1986 was enacted to “provide for the protection and improvement of environment and for matters connected therewith.” this act defined environment which includes “water, air, and land and the inter-relationship which exists among and between “water, air and land, and human beings, other living creatures, plants, micro-organisms and property”\(^{314}\). It also defined a hazardous substance as “any substance or preparation which, by reason of its chemical or physics-chemical properties, or handling, is liable to cause harm to human beings, other living creatures, plants, microorganisms, property or the environment”\(^{315}\).

This law enlists general powers of the central government which included “all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution”\(^{316}\). The Central Government has also the power to make rules to regulate environment pollution.

\(^{314}\) Sec 2(a) of the Environment (Protection) Act, 1986.
\(^{315}\) Sec 2(e), ibid.
\(^{316}\) Sec 3(2), ibid.
The Government in exercise of this power has already enacted the “Environment (Protection) Rules, 1986” which provide for, “the standards of quality of air, water, or soil for various areas and purposes, the maximum allowable limits of concentration of various environmental pollutants, procedures and safeguards for the handling of hazardous substances”.317

The Act also deals with prevention, control and abatement of environmental pollution by specifying the restrictions allowed to the discharge or emit any environmental pollutant in excess of such standards as may be prescribed318. Nor is anyone allowed to handle hazardous substances except “as may be prescribed.” In case of discharge of excess of any material the industry must forthwith. Under Section 3(1) and Rule 5(3)(d) of this Act, Coastal Regulation Zone (CRZ) have been declared and which restrictions on industries and processes have been imposed. This restricts setting up or expansion of any industry. “(a) Intimate the fact of such occurrence or (b) be bound, if called upon, to render all assistance, to such authorities or agencies.”

This law requires that all companies must have some sort of a Spill Prevention Control and Countermeasures Plan (SPCC). Environmental auditing is required by this law starting in 1993. This report is to be submitted to the State Pollution Control Board. The Central Government may establish or recognize one or more laboratories under this Act. The Central Government may also appoint or recognize qualified persons as government analysts319. The report of the analyst can be used as evidence of fact stated therein in any proceedings under this Act. Penalty for contravention of the act may be punishable by imprisonment up to seven years or fine up to Rs 1 lakh (One lakh equals one hundred thousand). Additional fine of up to Rs

317 Sec 6, ibid.
318 Sec 7 of the Environment (Protection) Act, 1986.
319 Sections 12 and 13, ibid.
5,000 for every day of violation\textsuperscript{320}. Specific standards for emission or discharge of environmental pollutants from industries, operations or processes have been specified. However, the government may prohibit or limit certain emissions from specific locations due to environmental factors.

It is under this Act that makes it mandatory for the specified 29 industries which have investment beyond certain threshold that an Environmental Impact Assessment (EIA) is required. They require public hearings. The Amendment was issued on January 27th and subsequently amended on May 4, 1994. EIA was initially introduced for the River Valley Projects in 1978-79. Also under this act\textsuperscript{321}, National Environmental Tribunals Act of 1995 and National Environmental Appellate Authority Act of 1997 were enacted.

**HAZARDOUS WASTE (MANAGEMENT AND HANDLING) RULES, 1989:**

The Ministry of Environment and Forests came out with Wastes (Management and Handling) Rules, 1989 under the Environment (Protection) Act, 1986. The main purpose for promulgation of these Rules was for management and handling of hazardous substances. The basis of any environmental pollution has been the generation and disposal of hazardous substances. To regulate them, all the above regulations have been promulgated. Proper disposal is probably the most important aspect of any industry. For this reason, guidelines have been issued under this set of rules.

\textsuperscript{320} Sec 15, \textit{ibid.}

\textsuperscript{321} The Environment (Protection) Act, 1986.
Guidelines for Occupier/Generator of Hazardous Wastes

These rules apply to listed hazardous wastes:

The occupier or generator is required to take all the necessary steps for proper handling and disposal of these chemicals. The occupier or generator is also responsible “for collection, reception, treatment, storage and disposal of these wastes either himself or through the operator of a facility.” The generator is allowed to store a maximum quantity of 10,000 Kilograms or a truck load, whichever is less of his hazardous wastes on-site for a maximum period of 90 days. They may extend the storage period under unforeseen circumstances on a case-by-case basis.

The occupier/generator may be allowed to store their hazardous wastes only in closed specified containers in the designated protected area. When the hazardous waste are to be shipped for disposal, it must be done through the use of manifest. This is to track the waste from the point of its production until its final disposal, sometimes referred to as “cradle to grave.”

Guidelines for Transportation of Hazardous Waste:

The Board is required to register the authorized transports for transportation of hazardous wastes only in the specified transport vehicles. This is required to make sure that the transports of the waste, such as drivers and helpers, are sufficiently trained to respond to any spill, accident or any other emergency situation that may develop during the transit of the vehicle. The law specifically prohibits import of hazardous wastes for dumping and disposal into the country. However, import of such wastes may be allowed for processing or re-use as raw material. This must be approved by the Board before import of the chemical.
Guidelines for Owner/Operator of Hazardous Waste, Storage, Treatment and Disposal Facility:

The Board is required to issue license to the owner/operator of Hazardous Wastes Management facility for storage, treatment and disposal after having verified their technical, financial, and managerial capabilities. These sites are on an approved location taking into consideration factors such as the damage to the environment in case of a spill or any other accident. Licenses to such sites are to be given after due inspection of the facility at the time of construction and operation and also closure of landfill facility. The Board has to identify and establish standards for Principal Organic Hazardous Constituents (POHC) for stack emissions from incinerator. Also, the Board is to monitor the stack emissions, effluent and ground water quality regularly. Each hazardous waste management facility must have an approved Emergency/Contingency Plan which must have been duly approved by the Board. The Board is required to inspect the facility after any incident for appropriate measures taken in order to avert such incidents and also to make sure that the Emergency/Contingency Plan is modified accordingly. It is the responsibility of the waste facility to make sure that the copy of the manifest reaches the authorities after receiving the hazardous waste from the occupier/generator. The owner/operator should indicate the proposed treatment and disposal scheme to be followed for the hazardous waste. The copy of the manifest should be linked with the copy of the manifest sent by the occupier/generator. This is to make sure that the waste has been delivered from the “cradle to grave” safely.
THE PUBLIC LIABILITY INSURANCE ACT, 1991:

The purpose of this Act is “to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance and for matters connected therewith or incidental thereto. The Act defines an “accident” as involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous damage to any property but does not include an accident by reason only of war or radioactivity. For the first time, this Act holds the owner liable for death or injury to any person, damage to any property resulting from an accident.

The “claimant shall not be required to plead and establish that death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any person. With the above aim this Act was enacted. From its reading, it is clear that the makers of this law had in mind the Bhopal Gas Disaster Case and Shri Ram Gas Leak or Oleum Gas Leak Case. This is an Act to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling hazardous substances and for matters connected therewith or incidental thereto. It came into force on April 1, 1991. It was amended in 1992 to make it more effective. It is, thus, a ‘Special Law’.

Only Workman has been excluded from this Act as he is covered under the separate Act\(^{322}\). The Owner is required to take out insurance policies so that he can give relief\(^{323}\). This insurance is required within a period of one year from such commencement. Minimum amount of insurance is the paid-up capital of the undertaking handling any hazardous substance or Rs. 5 crores maximum. Penalty for not taking insurance coverage is imprisonment for one year and six

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\(^{322}\) Workmen’s Compensation Act, 1923 (8 of 1923).

\(^{323}\) Section 3(1) of the Public Liability Insurance Act, 1991.
months and fine of not less than one lakh rupees or both. Under this Act, Environment Relief Fund has been established. This fund may be used in case of any emergency. Non-compliance is punishable by 3 months imprisonment or fine which may extend to Rupees ten thousand or both. Medical expenses are also payable under this Act.

This Act provides for immediate relief of Rs. 25,000 per person in case of death and Rs. 12,500 in case of injury to be paid immediately. This amount is payable by the insurance coverage of the spiller or the company where the accident has occurred. Additional compensation, if any, will have to be settled through court. List of chemicals with quantities for Application of Public Liability Insurance Act are specified. It also lists chemicals which are extremely hazardous.

**NATIONAL ENVIRONMENT TRIBUNAL ACT OF 1995:**

This Act has been enacted to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for the establishment of a National Environment Tribunal for effective and expeditious disposal of cases arising from such accidents, with a view to giving relief and compensation for damages to persons, property and the environment and for matters connected therewith or incidental thereto.

**NATIONAL APPELLATE AUTHORITY ACT OF 1997:**

This Act has been enacted to “hear appeals with respect to restriction of areas in which any industries, operations or processes or class of industries, operations or process shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986 and for matters connected therewith or incidental thereto.” According to
this Act\textsuperscript{324}, the Authority shall not be bound by the procedure laid down in the code of civil procedure, 1908, but shall be guided by the principles of natural justice. Subject to the other provisions of this Act and of any rules made by Central Government, the Authority shall have power to regulate its own procedure, including the fixing of places and times of its enquiry and deciding whether to sit in public or private. Also, with the effect from the date of establishment of the Authority, no civil court or other authority shall have jurisdiction to entertain any appeal in respect of any matter with which the Authority is empowered by or under this Act.

\textbf{THE NATIONAL GREEN TRIBUNAL ACT, 2010}

India is a signatory to the conclusion arrived at the United Nations Conference on the Human Environment ended at Stockholm in June, 1972 which calls upon the nations to take effective measures for the conservation and improvement of human environment. The Conference\textsuperscript{325} also decided that the States shall take steps for judicial and administrative proceedings, redress and remedy, develop municipal law regarding the obligations and compensation for the persons aggrieved of pollution and other damage caused to the environment due to human intervention. Additionally, Article 21 of the Constitution of India has been interpreted by the judiciary to include the right to healthy environment. Hence, the National Green Tribunal Act was enacted on June 2, 2010\textsuperscript{326}.

The Act empowers the Central Government to establish the National Green Tribunal for the purpose of implementing jurisdiction and authority conferred under the Act. The Tribunal

\begin{itemize}
\item \textsuperscript{324} Sec 12 of the National Appellate Authority Act of 1997.
\item \textsuperscript{325} The Stockholm Conference, 1972.
\item \textsuperscript{326} The main objects of the Act are the effectual and speedy disposal of matters connected with protection of environment, conservation and preservation of forests and natural resources, enforcement of legal rights, compensation for damage to environment etc.
\end{itemize}
shall comprise of Chairperson, Judicial members and Expert members. A person shall be eligible to be appointed as the Chairperson or Judicial Member of the Tribunal only if he is presently or retired Supreme Court Judge or Chief Justice of the High Court. A Judicial Member shall also be a person who is or retired High Court Judge. A person shall be appointed as the Expert Member if he holds Masters Degree in Science with Doctorate degree or Masters in Engineering or Technology and has the specified experience in the field of environment and forests in the National level institution or has experience in the administrative field in the environmental matters.

The members of the Tribunal shall be appointed by the Central Government, where the Chairperson shall be appointed on the advice of the Chief Justice of India and the Judicial Member and the Expert Members shall be appointed on the approval of the Selection Committee. The members of the Tribunal shall continue to hold office for five years from the date of appointment but he shall not be reappointed. The members of the Tribunal shall resign from the office by notice in writing addressed to the Central Government. The Chairperson of the Tribunal is vested with financial and administrative powers under the rules formulated by the Central Government.

The Tribunal is conferred civil jurisdiction where a substantial question about the environment and the enforcement of legal right to the environment is included. The Tribunal shall entertain cases relating to the environmental issues and settle the disputes and pass appropriate orders. The Tribunal shall pass orders for relief and recompense to the victims of environmental pollution and damage including accidents happening due to the handling of hazardous substances, restoration of the damaged property and the environment.
The aggrieved party is permitted to prefer an appeal against the order or direction of the appellate authority or the Board under the Water (Prevention and Control of Pollution) Act, 1974 or by the State Government or any other authority under the Forest (Conservation) Act, 1980 or appellate authority under Air (Prevention and Control of Pollution) Act, 1981 or Environment (Protection) Act, 1986 or an order of the National Biodiversity Authority or a State Biodiversity Board under the Biological Diversity Act, 2002. The aggrieved person from the order of the Tribunal shall prefer an appeal to the Supreme Court. The Act penalizes for the non-compliance with the orders of the Tribunal. The Tribunal shall have all the powers of a civil court under the Civil Procedure Code, 1908.

The National Green Tribunal Act, 2010 repealed The National Environment Tribunal Act, 1995 and the National Environment Appellate Authority Act, 1997. The 2010 Act\textsuperscript{327} also dissolved National Environment Appellate Tribunal constituted under The National Environment Tribunal Act, 1995. The establishment of the National Green Tribunal is considered to be a landmark in the environmental law in India.

\textbf{Water policy:}

Following a severe drought across the country in 1987, the Centre framed a National Water Policy (NWP) that laid down certain principles, listed below. Specifically, the NWP recommended the promotion of:

- Conjunctive use of water from surface and sub-surface sources.
- Supplemental irrigation.

\textsuperscript{327} The National Green Tribunal Act, 2010.
- Water-conserving crop patterns.
- Water-conserving irrigation and production technologies.

Other important recommendations included:

- Raising canal water charges.
- Promoting user participation in canal management.

Though the policy recognized the need to limit individual and collective water withdrawals, it did not identify the institutional mechanisms needed to define and enforce such limits. The National Water Policy, 1987 was modified in 2002. Major policy additions included recognition of the role of private sector participation and the need to shift from development of new projects to performance improvements in existing ones. Several states, including Maharashtra, came out with their own water policy statements along the lines of the NWP.

National Water Policy: key principles

- Water is a precious national resource and its development should be governed by national perspectives.
- Available sources of both surface and groundwater should be made utilizable to the maximum extent.
- Appropriate organizations should be established for planned development and management of river basins.
- Water should be made available in areas where there is a shortage by transfer from other areas including transfers from one river basin to another, after taking into account the requirements of the basins.
In the allocation of water, ordinarily, first priority should be for drinking purposes, with irrigation, hydro-power, industrial and other uses following in that order.

Groundwater potential should be periodically re-assessed and its exploitation regulated with reference to recharge possibilities and considerations of social equity.

Maintenance, modernization and safety of structures should be ensured through proper organizational arrangements.

There should be close integration of water use and land use policies; distribution of water should be with due regard to equity and social justice.

Water rates should be such that they foster motivation for economy in use, and should cover maintenance and operational charges and a part of the fixed costs.

Farmers should be progressively involved in the management of irrigation systems.

The needs of drought-prone areas should be given priority in the planning of projects for the development of water resources.

Legal Status of Contamination-Related Liability:

Although India does not have specific soil or groundwater contamination standards, there have been many instances where companies have been penalized and held liable for soil and groundwater contamination. Contamination is identified and evaluated subjectively based on actual impact, potential impact, or risk to natural resources (soil quality and productivity, surface water, groundwater, etc.) and human health. Applicable environmental laws concerning the cleanup of contaminated property follow the polluter pays principle and impose liability on property owners and operators. The penalties imposed have included site closure and recovery of the cost of remediation from the responsible companies.
Liability typically extends to individuals who have operational control, executive powers, or individual or joint ownership of assets. Since a board of directors has executive powers, statutory liability extends to all board members who are declared as Directors of the Company with the Registrar of Companies. Liability may also extend to senior officials who are not board members if they fulfill the above criteria.

Under the provisions of the Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986, it is a criminal offence to cause or knowingly permit any poisonous, noxious, or polluting matter to enter into the rivers, streams, groundwater, and coastal waters. The occupier of a facility has “strict liability” in this regard and the regulators (in this case the state or central pollution control board) need only prove that the pollutants originated from the concerned facility for the liability to be imposed.

Seepage of contaminants into a neighboring property causing damage to that property may also result in legal liability through modes of judicial activism. The remedy sought may lead to injunction through the Public Liability Insurance Act, 1991. The claim for cost of correction may be combined with a claim for direct and indirect damages.

A significant legal reference to contamination-related liability is in the Hazardous Wastes (Management and Handling) Rules, 1989, as amended in 2003. These rules mentions that the occupier of a facility shall be liable for damages to the environment resulting from the improper handling and disposal of hazardous waste listed in Schedules 1, 2, and 3\textsuperscript{328}. The liability extends to remedial costs (costs to “reinstate or restore damaged or destroyed elements of the

\textsuperscript{328} Section 16 of the Hazardous Wastes (Management and Handling) Rules, 1989.
environment”), which are payable in advance to the SPCBs, and also any fine that may be levied by relevant authorities.

Rule 25 of these rules states that the occupier of the facility shall be liable for all damages caused to the environment or third party due to improper handling of the hazardous waste or disposal of the hazardous wastes. The occupier of the facility shall be liable to pay financial penalties as levied for any violation of the provisions under these rules by the State Pollution Control Board with the prior approval of the Central Pollution Control Board.

Public grievances, community complaints, and environmental activism by nongovernmental organizations most often take the form of PILs filed in courts by those who perceive themselves to be directly or indirectly impacted by contamination caused by industry. The liability in such cases may extend to remedial costs (costs to “reinstate or restore damaged or destroyed elements of the environment”), which are payable in advance to the SPCBs. Compensation for direct and indirect damages and punitive fines levied by the authorities may also be required.

Case laws refer to imposition of “strict and absolute liability” in contamination cases. A significant judgment may result in imposition of severe liability irrespective of the financial capacity of the polluter. In another litigation, it was ruled that the environmental liability is not limited by the asset value of the polluting facility and extends to the owners and top executives of the polluting facilities, unless “the person(s) concerned was able to prove that the offence was committed without his/her knowledge or that he/she exercised all diligence to prevent the offence.”
Duty to disclose Environmental Contamination:

Disclosure in the event of environmental contamination may be a regulatory requirement in India. The Water (Prevention and Control of Pollution) Act, 1974, states that “forthwith information” is to be given to the pollution control board in cases of discharge (or apprehension of discharge) of any poisonous, noxious, or polluting matter into a stream, well, sewer, or land. The duty to disclose is the responsibility of the person who is in charge of the facility that caused the pollution.

Ground Water Monitoring:

Annual groundwater monitoring reports are required to be submitted to the state pollution control boards (SPCBs) if a facility falls within the purview of the Hazardous Wastes (Management & Handling) Amendment Rules, 2003. Although the courts in India follow the polluter pays principle, the precise scope of this principle and its implications for those involved in past polluting or potentially polluting activities remains to be settled. In any case, applicable case laws clearly indicate that the onus of proof regarding the origin of contamination lies with the property occupier.

Groundwater is an important source of freshwater in India. It accounts for around 58 percent of the total irrigated area and satisfies around 80 percent of drinking water need. However, owing to indiscriminate exploitation, depletion and contamination of groundwater has

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become a serious problem in almost all parts of India. As early as 1987, the National Water Policy (revised in 2002) recognized need for regulation of groundwater.

Institutions:

The Central Groundwater Board, set up under the Ministry of Agriculture in 1972, and now a subordinate office in the Ministry of Water Resources, is responsible for groundwater investigation, exploration, development and management. Some States have established a State Groundwater Board, e.g. Andhra Pradesh. The Central Groundwater Authority (CGWA) regulates and controls the management and development of groundwater resources in India. It identifies critical/over-exploited areas for regulation and control of groundwater, and issues policy guidelines to state governments to take measures for the development and augmentation of groundwater. The creation of CGWA was the result of the directions of the Supreme Court in M.C. Mehta v. Union of India.\(^\text{330}\).

Considering the need for regulating the abstraction of groundwater and enabling equitable use of groundwater, the Ministry of Water Resources, in 1992, prepared a model bill called “Development of Ground Water (Regulation and Control) Bill”, 1992 for the guidance of State Legislatures. Under the Constitution of India, the legislative subjects such as water supplies, irrigation and canals, drainage and embankments, water storage and waterpower are conferred upon the States as per Entry, List II of the 7\(^{th}\) Schedule. The 1992 model bill empowers the State Government to establish a Groundwater authority.\(^\text{331}\) The State Government/Union Territory is authorized to declare any area as notified area for the purpose of regulating the extraction or use or both of groundwater if the government is of the opinion that it is necessary to do so in the

\(^{330}\) (1997) 11 SCC 312.

\(^{331}\) Development of Ground Water (Regulation and Control) Bill, 1992, Section 3.
interest of the general public\textsuperscript{332}. The model bill provides that in such notified areas, no person is entitled to sink a well for any purpose unless they have been granted the permit by the groundwater authority\textsuperscript{333}. However, small and marginal farmers are exempted from this provision if they desire to sink a well for personal purpose.

The Central Groundwater Authority with a view to regulate indiscriminate boring and withdrawal of groundwater in the country and to issue necessary regulatory directions with a view to protect and preserve groundwater, has made the rules called “The Groundwater (Development and Protection) Rules, 1998 in exercise of the powers conferred by sections 6 and 25 of the Environment (Protection) Act, 1986. Under these rules “Groundwater” is defined to mean “the water existing in aquifers beneath the ground surface or discharged from below the ground surface on the earth or rivers\textsuperscript{334}”.

**Functions of the Central Ground Water Authority:**

The Central Ground Water Authority is conferred with the following functions:

1. Notifying areas for the protection and conservation of groundwater from pollution and depletion.
2. Regulating construction of wells, bore wells, tube wells, and any other groundwater abstraction structure.
3. Issuing of guidelines for conservation of groundwater.
4. Give directions for re-circulation of water in industry including hotel, tourism and related areas.

\textsuperscript{332} Ibid, section 5.
\textsuperscript{333} Ibid, section 6
\textsuperscript{334} Rule 3(g), The Groundwater (Development and Protection) Rules, 1998.
5. Issue directions for the protection of groundwater consequent to human interference in natural processes.

6. Promulgate directions for monitoring the behavior of groundwater system and quality regime.

7. Formulate guidelines for augmenting groundwater recharge, conservation of water using rooftop and storm runoff.

8. Technical clearance of scheme by the State Governments, financial and other agencies.

9. Issue guidelines for maintenance of groundwater levels at minimum depth, below ground, in different areas.

10. Issue directions and to make measures for the implementation of the above guidelines and all matters considered relevant in this connection.

11. Formulate and issue guidelines for data collection and setting up of information centres at various levels.

12. Recommend norms for the allocation of groundwater for various sub-sectoral uses like domestic, irrigation and industry and suggest inter-se priorities.

13. Issue directions for the identification and monitoring of groundwater vulnerable areas.


The rules provide for the grant of permit to extract and use groundwater in an area\textsuperscript{335} and also for the registration of existing users\textsuperscript{336}. The rules prohibit the carrying on of the business of sinking wells without permission from government\textsuperscript{337}. It also provides for recharge and reuse of

\textsuperscript{335} Rule 7, \textit{ibid.}
\textsuperscript{336} Rule 8, \textit{ibid.}
\textsuperscript{337} Rule 10, \textit{ibid.}
surplus monsoon run off. The rules empower the Central Ground Water Authority to enter, inspect, take specimen, search, and to exercise such other powers as may be necessary for carrying out the purposes of the Environment (Protection) Act, 1986 or any rules made there under. The rules prescribe offences and penalties for contravention.

**Laws:**

Legal regulation of groundwater is necessary to prevent further depletion and contamination and to augment the resource and restore its quality. However, in the absence of an exclusive law to regulate or control groundwater use, the legal framework in India comprises common law, and (formal) groundwater laws and (informal) customary laws at the state-level.

**Common Law:**

The regulation of groundwater resources in India is primarily based on the outdated rule of common law (or law developed through decisions of English courts) that considers groundwater as part and parcel of the land and grants preferential rights over groundwater to landowners. This rule ignores the nature and depth of groundwater aquifer, and that the shape and spread of groundwater aquifer has no relation to the property boundaries of the land on the surface. This common law rule was endorsed by the courts during the pre-independence period.

*Karathigundi Keshava Bhatta v. Sunnanguli Krishna Bhatta*[^341^], “[t]he general rule is that the owner of a land has got a natural right to all the water that percolates or flows in undefined channels within his land and that even if his object in digging a well or a pond be to cause

[^338^]: Rule 14, *ibid.*
[^339^]: Rule 18, *ibid.*
[^340^]: Rule 19, *ibid.*
[^341^]: AIR 1946 Madras 334.
damage to his neighbour by abstracting water from his field or land it does not in the least matter because it is the act and not the motive which must be regarded. No action lies for the obstruction or diversion of percolating water even of the result of such abstraction is to diminish or take away the water from a neighboring well in an adjoining land.” [p. 335].

This rule is also reflected in some laws dealing with land rights. According to the Indian Easements Act, 1882\(^\text{342}\), every owner of land has the right “to collect and dispose within his own limits of all water under the land which does not pass in a defined channel and all water on its surface which does not pass in a defined channel”. However, the common law rule should not be a dominant part of the legal framework governing groundwater in India.

(i) It evolved when the knowledge of groundwater hydrology was minimal or nil. The possibility of over extraction as limited and legal regulation was not required. These reasons have now become obsolescent.

(ii) The right to pollution-free water is a part of the fundamental right to life\(^\text{343}\). Over-exploitation of groundwater resources by one person is likely to affect availability for others. The application of the rule may violate the right to life.

(iii) It ignores the inequity in access, use and ownership rights to land resources.

**State Groundwater Laws:**

The state governments are responsible for the regulation and control of groundwater resources, including their use, conservation, management and development. In order to provide guidance to the state governments, the Ministry of Water Resources drafted the Model Bill to

\(^{342}\) See illustration (g) to section 7 of the Indian Easements Act, 1882.

\(^{343}\) Article 21 of the Indian Constitution.
Regulate and Control the Development and Management of Groundwater (the ‘Model Bill’) in 1970\textsuperscript{344}, and circulated it to the States. The revised version of the central Bill proposes:

- Compulsory registration of borewell-owners.
- Compulsory permission for sinking a new borewell.
- Creation of a groundwater regulatory body.
- Restrictions on the depth of borewells.
- Establishment of protection zones around sources of drinking water.

The Bill mandates:

- Periodical reassessments of groundwater potential on a scientific basis, considering quality of water available and economic viability.
- Regulation of exploitation of groundwater sources so that extraction does not exceed recharge.
- Development of groundwater projects to augment supplies.
- Integrated and coordinated development of surface water and groundwater so that they are used conjunctively.
- Prevention of over-exploitation of groundwater near the coast to stop the ingress of seawater.

These mandates, which have yet to become law in most parts of the country. But there is one basic flaw with reference to implementation which is entirely in the hands of government authorities. The people who use groundwater have no role in decision-making or implementation. This runs contrary to customary belief regarding ownership of groundwater.

\textsuperscript{344} The Model Bill was revised in 1972, 1992, 1996 and last in 2005.
(discussed above) and the experience of groundwater regulation anywhere in India and the rest of the world. Since 2002, some of the States have introduced separate laws to regulate and conserve groundwater resources\(^{345}\). However, the laws do not mandate environmentally sustainable groundwater use by landowners. The groundwater laws also continue the sectoral treatment of surface water and groundwater. The Andhra Pradesh Land, Water and Trees Act, 2002 directly links surface water and groundwater in the context of environmental conservation but it addresses groundwater in the same manner as other laws.

These laws extend State control over groundwater use by imposing registration of groundwater infrastructure, introducing permits for groundwater extraction in over-exploited regions and licensing requirements. In addition to State groundwater laws, some metropolitan areas have enacted additional laws relating to groundwater extraction\(^{346}\). The Government of Tamil Nadu enacted the Madras Metropolitan Area Groundwater (Regulation) Act, 1987 for the following objects:

- To regulate and control the extraction, use or transport of groundwater; and
- To conserve groundwater in certain areas in the State of Tamil Nadu.

*The Madras Metropolitan Area Groundwater (Regulation) Act, 1987* extends to the whole of City of Madras and certain revenue villages in the Chengalpattu District (now in the Kancheepuram and Tiruvallur District) specified in the schedule to the Act\(^ {347}\). Hence, this Act

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\(^{345}\) The West Bengal Groundwater Resources (Management, Control and Regulation) Act, 2005 provides for a decentralized institutional mechanism by setting up groundwater regulatory authorities at the state, district and corporation levels. The Kerala Ground Water (Regulation and Control) Act, 2002 recognizes the need for conservation. The title of the Andhra Pradesh law – the Andhra Pradesh Water, Land and Trees Act 2002 - also indicates the emphasis on ‘protection and conservation’.


\(^{347}\) Sec 1(2), the Madras Metropolitan Area Groundwater (Regulation) Act, 1987.
has a very limited scope with reference to limited areas for regulating groundwater issues. The Tamil Nadu Groundwater (Development and Management) Act, 2003\textsuperscript{348} for the purpose of attaining certain objectives:

- To protect groundwater resources;
- To provide safeguards against hazards of its over exploitation; and
- To ensure its planned development and proper management in the State of Tamil Nadu.

The Act of 2003\textsuperscript{349} failed to achieve its objectives and also several agitations were raised against this Act which lead to its repeal in the year 2013 by the Tamil Nadu Groundwater (Development and Management) Repeal Act, 2013. As of now only the institutional machineries are available for taking care of the groundwater issues in Tamil Nadu.

As previously mentioned, conservation is one of the bases for the introduction of water sector reforms. Some of the groundwater laws have incorporated the objectives of water conservation and development. But some of the State governments like Nagaland, Sikkim, Tripura, Punjab, Chandigarh, Manipur and Arunachal Pradesh have considered that it is not necessary to enact separate legislation.

**Rainwater Harvesting:**

Rainwater harvesting to augment groundwater has received significant policy attention.\textsuperscript{350} The Model Groundwater Bill, 2005, recognises the adoption of rainwater harvesting as a method to improve the groundwater situation in critical areas (section 19). In the absence of a

\textsuperscript{348} Act No. 3 of 2003 – Received the assent of the President on 4\textsuperscript{th} March 2003.

\textsuperscript{349} The Tamil Nadu Groundwater (Development and Management) Act, 2003.

\textsuperscript{350} The National Water Policy 2002 as well as the Karnataka State Water Policy 2002 recognize the role of traditional water conservation practices like rainwater harvesting, including rooftop rainwater harvesting to further increase the utilizable water resources.
comprehensive statutory framework for rainwater harvesting, legal provisions addressing rainwater harvesting are found in different water related laws\textsuperscript{351}.

In 2008, the Ministry of Water Resources introduced the Groundwater Management and Regulation Scheme to demonstrate the efficacy of artificial recharge and rainwater harvesting techniques. The Ministry has also announced the Groundwater Augmentation Award (Bhoomijal Samvardhan Puraskar) and the National Water Award (Rashtriya Jal Puraskar) for Innovative Practices of Ground Water Augmentation through Rainwater Harvesting and Artificial Recharge/promoting Water Use Efficiency/Recycling & Re-use of water/Awareness creation.

\textbf{New Initiatives:}

Having recognized the adverse implications of the existing groundwater laws, the Planning Commission of India has undertaken an initiative to trigger changes in groundwater laws. In April 2011, the Planning Commission constituted a Subgroup under its Working Group on Water Governance to prepare a new Model Groundwater Bill addressing the flaws of the existing groundwater laws. The Subgroup has prepared a draft Model Groundwater Bill and submitted it to the Planning Commission in November 2011. Two public consultations were organized in July 2010 and September 2011 for comments and suggestions from a wider range of stakeholders. The final document as submitted by the Sub-group envisages various fundamental changes.

changes in the groundwater law\textsuperscript{352}. The need is circulation of the new groundwater model bill by the Central Government and implementation of the new model groundwater bill by the states either by making changes in the existing law or by enacting a new law.

**SUMMARY:**

Man is Nature’s best promise and worst enemy. If industry is the necessity, pollution is inevitable. Since progress and pollution go together, there can be no end to progress, and consequently, no escape from pollution. If industry is a necessary evil, pollution is the surest sufferance. The problem of water pollution assumes special significance in developing country like India because environment protection is the major issue, which affects the well being of people and economic development.

The Indian Parliament drew immense inspiration from the proclamation adopted by the United Nations Conference on the Human Environment\textsuperscript{353}, which took place at Stockholm, 1972 and enacted the Water (Prevention and Control of Pollution) Act, 1974. Subsequently, the Government has enacted the Water (Prevention and Control of Pollution) Rules, 1975 and Water (Prevention and Control of Pollution) Cess Act, 1977. The Central Government has also enacted the Central Board for the Prevention and Control of Water Pollution (Procedure for Transaction of Business) Rules, 1975 and the Water (Prevention and Control of Pollution) Cess Rules, 1978. The United Nations also emphasized the importance of purity of water when it proclaimed on

\textsuperscript{352} It includes, abolition of groundwater rights based on ownership of land, declare groundwater as a public trust and prevent groundwater from becoming a natural resource in private control, legal protection of groundwater sources, regulation and management of groundwater at the local level, enhanced role for Panchayat Raj Institutions, community participation in groundwater management.

\textsuperscript{353} Stockholm Declaration, 1972.
10th November, 1980. “International Drinking Water Supply and Sanitation Decade.” India is also signatory to this Declaration.

Groundwater is the main source of water across India, for all purposes. Around 80-90% of rural drinking water needs are met by groundwater, and groundwater serves around half of India’s net irrigated area. Groundwater extraction has risen exponentially since the 1950s due to various reasons such as the introduction of Green Revolution technologies, increased cultivation of cash crops, and electricity subsidies for irrigation pumpsets. Extraction exceeds natural recharge in many parts of the country. In this chapter the researcher has made an attempt to analyze the provisions under the Indian Constitution relating to water and environmental protection and the Central Laws relating to prevention and protection of water from pollution and the position of Groundwater.