CHAPTER VI:
PREVENTION AND CONTROL OF WATER POLLUTION

6.1 INTRODUCTION:

Water is the most important element for human life. It is becoming an increasingly scarce commodity worldwide. There are vast water-stressed areas where people survive with little or no water. It is part of the right to life and human rights as enshrined in Article 21 of the constitution of India. The Resolution of UNO in 1977 to which India is a signatory, during the United Nation Water Conference resolved unanimously, *inter-alia*, as under:

“All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.”

The United Nations also emphasized the importance of purity of water when it proclaimed on 10th November, 1980 “International Drinking Water Supply and Sanitation Decade,” India is also signatory to this Declaration. Thus, the right to access to drinking water is fundamental to life and there is a duty on the state under Art. 21 to provide clean water to its citizens.


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

‘Water’ being a ‘state subject’, the Parliament can exercise the power to legislate on “water” only under Articles 249 and 252 of the Constitution of India. In pursuance of Art.252 (1) of the Constitution, resolutions were passed by all the Houses of the Legislatures of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West-Bengal and Union Territories to the effect that the matters relating to prevention and control of water pollution should be regulated by the Parliament by Law. Accordingly, the Parliament enacted the Water (Prevention and Control of Pollution) Act, 1974. The Water Act represents one of the India’s first attempts to deal with an environmental issue comprehensively. The Water Act was amended in 1978 and again amended in 1988 to conform to the provisions of the Environment (Protection) Act, 1986.

Objectives of the Water Act:

The purpose of the legislation is not only the prevention and control of Water Pollution but also the maintenance and restoration of the wholesomeness of water. This specialized legislative measure is meant to tackle one facet of environmental pollution. The fundamental objective of the Water Act is to provide clean drinking water to the citizens. Its main Objectives are as follows:

i) To provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water.

ii) To establish Central and State Boards for the prevention and control of water pollution.

iii) To provide for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

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See also Stella Silk Ltd, v. State of Karnataka, AIR 2001 Kant. 219 at 224.

iv) To provide penalties for the contravention of the provisions of the Water Act.

v) To establish Central and State water-testing laboratories to enable the Board to assess the extent of pollution, lay down standards and establish guilt or default.

Definitions:

Section 2 of the water Act, 1974 deals with definitions. Some of the important definitions are as follows:

According to Sec. 2 (d) of this Act, the term ‘Occupier’ is defined as, “in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance.”

According to Sec. 2 (dd) of the Act, ‘Outlet’ includes any conduit pipe or channel, open or closed, carrying sewage or trade effluent or any other holding arrangement which causes or is likely to cause, pollution.

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

Section 2 (g) of the Water Act, defines the term ‘Sewage Effluent’ means effluent from any sewage system or sewage disposal works and includes sullage from open drains.
“Sewer” means any conduit pipe or channel, open or closed carrying sewage or trade effluent.\textsuperscript{4}

“Stream” includes\textsuperscript{5} –

i) river,

ii) water course (whether flowing or for the time being dry),

iii) inland water (whether natural or artificial),

iv) subterranean waters,

v) Sea or tidal waters to such extent or, as the case may be, to such point, as the State Government may, by notification in the official Gazette, specify in this behalf.

“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{6}

Under Sec. 2 (a) of this Act, the term “Board” means the Central or State Board.

“Member” under Section 2 (c) means a member of a Board and includes the Chairman thereof.

“Central Board” means the Central Pollution Control Board constituted under Section 3 – [(Section 2 (bb)].

Section 2 (h) defines ‘State Board’ as the State Pollution Control Board constituted under Section 4.

According to Section 2 (i), “State Government”, defines, in relation to a union territory means the Administrator thereof appointed under Art.239 of the Indian Constitution.

\textsuperscript{4} Section 2 (gg) of the Water Act, Ins. by Act 44 of 1978.
\textsuperscript{5} Section 2 (j) of the Water Act.
\textsuperscript{6} Section 2 (k) of the Water Act.
The problem of pollution of rivers and streams has assumed considerable importance and the urgency in recent years as a result of the growth of industries and the increasing tendency to urbanization.

Thus, to ensure that the domestic and industrial effluents are not allowed to be discharged into the watercourses without adequate treatment as such discharges would render the water unsuitable as aforesaid drinking water as well as also putting fresh life and other aquatic animals and also for uses in irrigation.

The definition of Pollution covers all changes in physical, chemical and biological properties of water and also covers the rise in the temperature of water and discharge of radioactive substances in the water. The pollution is referable to only the legitimate use of the water.

6.3 PREVENTION AND CONTROL AGENCIES/BOARDS OF WATER POLLUTION:

Provisions for prevention and control of water pollution have been made through multifarious agencies under Chapter II, III and IV of the Water Act.

Chapter II deals with the Constitution of Central and State Boards,

Chapter III with the Constitution of Joint Boards,

Chapter IV deals with powers and functions of various boards.

a) Constitution of Central Board:

Chapter II of the Water Act deals with constitution of the Central and State Boards and their functions. It also deals with terms and conditions of service of members of the Boards including their disqualifications.

As provided under Sub-section 2 of Section 3 of the Act, the Central Board is constituted by the Central Government and is called Central Pollution Control Board. It shall consist of the following members:

i) A full time chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering
institutions dealing with the matters aforesaid. He shall be nominated by the Central Government;

ii) Officials, not exceeding five, to be nominated by the Central Government to represent that Government;

iii) Such number of persons, not exceeding five from amongst the members of the State Boards;

iv) Such number of non-officials, not exceeding three, to represent the interests of agriculture, fishery or industry or trade, or any other interest, in the opinion of Central Government, ought to be represented;

v) Two persons to represent the companies or corporations owned, controlled or managed by the Central Government to be nominated by the Central Government;

vi) A full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control to be appointed by the Central Government.

**Status of the Central Board:**

According to Section 3 (3) of the Act, the Central Board shall be a body corporate by the same name, have perpetual succession and a common seal with power subject to the provisions of this Act to acquire, hold and dispose of property and to contract. It may in the name of Central Board sue or be sued. The Central Board is thus a legal person.

**b) Constitution of State Boards:**

Section 4 of the Act empowers the State Governments to constitute a ‘State Pollution Control Board’ in their respective States. The State Government shall with effect from such date, as it may deem fit, by notification in the Central Gazette, appoint, constitute a State Pollution Control Board under such name as may be specified in the
notification to exercise the powers conferred on and perform the functions assigned to that Board under the Act.\(^7\)

Section 4 (2) of the Act provides that a State Board shall consist of the following members, who shall be nominated by the State Government:

i) A chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid. Provided that the chairman may be either whole time or part time member as the State Government may think fit,

ii) Such number of officials, not exceeding five, who shall represent that Government;

iii) Such number of persons, not exceeding five, from amongst the members of the local authorities functioning within the State,

iv) Such number of non-officials, not exceeding three, representing the interests of agriculture, fishery or industry or trade or any other interest which, in the opinion of the State Government, ought to be represented;

v) Two persons to represent the companies or corporations owned, controlled or managed by the State Government;

vi) A full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the state Government.

**Status of the State Board:**

Every State Board shall be a body corporate with the name specified by the State Government in the notification having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and

\(^7\) Section 4 (1) of the Water Act.
to contract and may by the said name sue or be sued. By this way the State Board has legal personality.

**Pollution Control Board for Union Territories:**

No State Board shall be constituted for any Union Territory and in relation to a Union Territory the Central Board shall exercise the powers and perform the functions of a State Board for that Union Territory. But in relation to any Union Territory the Central Board may delegate all or any of its powers and functions to such person or body of persons as the Central Government may specify.

**Terms and conditions of Service of Members:**

According to Section 5 of the Act the following terms and conditions of service are prescribed:

i) a member of a Board, other than a member Secretary shall hold office for a term of three years from the date of his nomination. But he shall continue to hold his office even after the expiry of his term until his successor enters upon his office.

ii) the term of office of a member of a Board nominated under clause (b) or clause (c) of Section 3 (2) shall come to an end as soon as he ceases to hold the office under the Central Government or the State Government or as the case may be the company or corporation owned, controlled or managed by the Central Government by virtue of which he was nominated.

iii) a member of Board may be removed before expiry of his term of office either by the Central Government or by the State Government as the case may be after giving him a reasonable opportunity of showing cause against him.

iv) a member of a Board other than a member Secretary may at any time resign his office by writing under his hand addressed:

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8 Section 4 (3) of the Water Act.
9 Section 4 (4) of the Water Act.
10 Section 5 (1) of the Water Act.
11 Section 5 (2) of the Water Act.
12 Section 5 (3) of the Water Act.
a) in the case of chairman, to the Central Government or the State Government as the case may be;

b) in any other case to the Chairman of the Board and, thereafter the seat of that member or the Chairman shall become vacant.\(^\text{13}\)

v) a member of the Board other than the member Secretary shall be deemed to have vacated his seat if he is absent without reasons sufficient in the opinion of the Board from three consecutive meetings of the Board or if he ceases to be a member of the State Board or of the local authority or of the company or corporation owned or controlled or managed by the Central Government or the State Government and such vacation of seat shall take effect from such date as the Central Government or as the case may be the state Government, may by notification in the official Gazette Specify.\(^\text{14}\)

vi) a casual vacancy in a Board shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term of the member in whose place he was nominated.\(^\text{15}\)

vii) a member of a Board shall be eligible for re-nomination.\(^\text{16}\)

viii) the other terms and conditions of service of a member of a Board other than the Chairman and member Secretary shall be such as may be prescribed.\(^\text{17}\)

ix) the other terms and conditions of service of the Chairman shall be such as may be prescribed.\(^\text{18}\)

In State of Manipur v. Chandam Manihar Singh,\(^\text{19}\) the Supreme Court held that under Section 5 the term of office of a member of a Board, which would include the Chairman as laid down by Section 4(2) (a) of the Water Act, would be three years from the date of his nomination. He would also be entitled to continue to hold office beyond

\(^{13}\) Section 5 (4) of the Water Act.
\(^{14}\) Section 5 (5) of the Water Act.
\(^{15}\) Section 5(6) of the Water Act.
\(^{16}\) Section 5 (7) of the Water Act.
\(^{17}\) Section 5 (8) of the Water Act.
\(^{18}\) Section 5 (9) of the Water Act.
\(^{19}\) (1997) 7 SCC 503.
the permitted time till his successor enters upon his office. However, where a casual vacancy in a Board is filled by a fresh nomination then the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the number in whose place he was nominated was to hold the office.

**Disqualifications:**

Section 6 of the Water Act prescribes the following disqualifications, for membership of the Board.

i) Insolvency, or  
ii) Unsound mind declared by competent court, or  
iii) Conviction for an offence involving moral turpitude, or  
iv) Conviction for an offence under the Water Act, or  
v) Partnership or any share or interest in any firm or company carrying on the business of manufacturing, sale, or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or  
vi) Working as a Director or a Secretary, Manager or employee of any company or firm having any contract with the Board, or with the Government or local authority in the State for carrying out sewage schemes or for the installation of plants for the treatment of sewage or trade effluents, or  
vii) For abusing position as a member of the Board which become detrimental to the interest of the general public.

The order of removal of a member shall be made either by the Central Government or the State Government only after giving him a reasonable opportunity to showing cause against the same.\(^{20}\)

A member who has been removed on the ground of disqualifications, shall not be eligible for re-nomination as a member.\(^{21}\)

\(^{20}\) Section 6 (2) of the Water Act.  
\(^{21}\) Section 6 (3) of the Water Act.
According to Section 7 of the Water Act, if a member of a Board becomes subject to any of the disqualifications specified above, his seat shall become vacant.

Meetings of Board:

As provided under Section 8, a Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed. But if in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

Constitution of Committees:

Section 9 of the Act provides that a Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons for such purpose or purposes as it may think fit. 22

A committee constituted under this section shall meet at such time and at such place of procedure in regard to the transaction of business at its meetings as may be prescribed. 23

Temporary Association of Persons with Board:

According to Section 10 of the Act the Board has power to associate with itself in such manner and for such purpose any person whose assistance or advice it may desire to obtain in performing any of its functions under the Act. 24

A person so associated with the Board shall have right to take part in the discussions of the Board relevant to the purpose, but shall not have right to vote at a meeting of the Board, and shall not be a member for any other purpose. 25

The person so associated shall be paid such fees and allowances for attending its meetings and for attending any other work of the Board as may be prescribed. 26

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22 Section 9 (1) of the Water Act.
23 Section 9 (3) of the Water Act.
24 Section 10 (1) of the Water Act.
25 Section 10 (2) of the Water Act.
26 Section 10 (3) of the Water Act.
As provided under Section 11 of the Act, no act or proceeding of a Board or any committee thereof shall be called in question on the ground namely of the existence of any vacancy in or any defect in the constitution of the Board or such committee as the case may be.

**Delegation of Powers to Chairman:**

Section 11-A was inserted in 1978 and it provides that the Chairman of the Board shall exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Board from time to time.

**Member Secretary and Officers and other Employees of Board:**

Section 12 of the Act provides that the terms and conditions of services of the member Secretary shall be such as may be prescribed by the Central Government or the State Government. He shall exercise such powers and perform such duties as may be prescribed from time to time or be delegated to him by the Board or its Chairman.

Subject to such rules as may be made by the Central Government or as the case may be the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions. The method of recruitment and the terms and conditions of service including the scales of pay of the officers and other employees whether of the Central Board or a State Board other than the member Secretary shall be such as may be determined by regulations made by the Central Board or as the case may be by the State Board. But no regulation made under this sub-section shall take effect unless:

a) in case of regulation by the Central Board, it is approved by the Central Government; and

b) in case of regulation made by State Board, it is approved by the State Government.

The Board may by general or special order and subject to such conditions and limitation, if may as may be specified in the order, delegate to any officer, of the Board such of its powers and functions as it may be deem fit.
The Board is empowered to appoint any qualified person to be a consulting engineer to the Board from time to time and pay him such salary and allowances and subject to such other terms and conditions of service as it thinks fit.

6.4 JOINT BOARDS:

Chapter III of the Act deals with the composition of Joint Board and its composition.

Constitution of Joint Boards:

Section 13 (1) of the Act provides that Joint Boards for a specified period, which can be further renewed, can be constituted by an agreement. The agreement may be entered into:

a) two or more Governments of contiguous States, or

b) by the Central Government (in respect of one or more Union Territories) and one or more Governments of States adjoining to such Union Territories.

An agreement to constitute a Joint Board may:-

i) Provide for the apportionment of the expenditures in connection with Joint Board between the participating States or between the Central Government and participating State or States.

ii) Determine which of the participating States or Central Government or participating State or States shall exercise and perform the several powers and functions of the State Government under the Act;

iii) Provide for consultation between participating States or between the Central Government and participating State or States either generally or with reference to particular matters arising under this Act;
iv) Make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.27

The agreement regarding the constitution of Joint Board shall be published in the official Gazette of the participating State where the agreement was entered into between two or more States and in the Official Gazette of the Union Territory or Union Territories and the State or States if it was entered into between the Central Government and the State or States.28

**Composition of the Joint Boards:**

Section 14 (1) of the Water Act provides that a Joint Board constituted by an agreement between two or more Governments of adjoining States shall consist of following members:

i) a full time Chairman being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with environmental matters. He should be nominated by the Central Government.

ii) Two officials from each of the participating States to be nominated by the concerned participating State Governments to represent that Government;

iii) One person to be nominated by each of the participating State Governments from amongst the members of the local authorities functioning within the State concerned;

iv) One non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry or trade in the State concerned or any other interest which in the opinion of the participating State Government, is to be represented;

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27 Section 13 (2) of the Water Act.
28 Section 13 (3) of the Water Act.
v) Two persons to be nominated by the Central Government to represent the companies or corporations, owned, controlled or managed by the participating State Government.

vi) A full time member Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of Pollution Control to be appointed by the Central Government.

Section 14 (2) provides that a Joint Board constituted by an agreement entered into by the Central Government (in respect of one or more Union Territories) and one or more Governments of States adjoined to such Union Territories, shall consist of following members:

i) a full time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid to be nominated by the Central Government;

ii) two officials to be nominated by the Central Government from the participating Union territory or each of the Union Territories as the case may be, by the concerned States;

iii) One person to be nominated by the Central Government from amongst the members of the local authorities functioning within the participating Union Territory or each of the participating Union Territories, as the case may be, by the concerned participating States.

iv) One non-official to be nominated by the Central Government and one person to be nominated by the participating State or States to represent the interest of agriculture, fishery, or industry or trade in the union Territory or in each of Union Territories or State or in each of the Union Territories or the State or in each of the States as the case may be or any other interest which in the opinion of the Central Government or as the case may be, of the State Government is to be represented;
v) Two to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central Government and situate in the participating Union territory or territories and two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

vi) A full time member Secretary possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control to be appointed by the Central Government.

When a Joint Board is constituted in pursuance of an agreement under Section 13 (1) (b) the provisions of Section 14 (4) shall cease to apply in relation to the Union Territory for which the Joint Board is constituted.29

But the provisions of Section 14 (3) and Sections 5 to 12 shall apply in relation to a State Board and its member Secretary,30 whenever relevant in this Act, a reference to the State Board shall, unless the context otherwise requires, be construed as including a Joint Board.

Special Provision Relating to Giving of Directions:

Section 15 provides that whenever a Joint Board is constituted under section 13, the powers of the Government of a State for which the Joint Board is constituted, shall be limited to give any direction under this Act only in cases where such direction relates to a matter within the territorial jurisdiction of the State. The Central Government alone shall be competent to give any direction under the Water Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union Territory.

6.5 POWERS AND FUNCTIONS OF BOARDS:

Chapter IV deals with the powers and functions of the Central and State Boards.

Functions of Central Board:

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29 Section 14 (3) of the Water Act.
30 Section 14 (4) of the Water Act.
Section 16 (1) provides that the main functions of Central Board shall be to promote cleanliness of streams and wells in different areas of the States. However, the Central Board may perform all or any of the following functions namely:

i) advise the Central Government on any matter concerning the prevention and control of water pollution;

ii) coordinate the activities of State Boards and resolve disputes among them;

iii) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

iv) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Government specify;

v) organize through mass media a comprehensive programme regarding the prevention and control of water pollution;

vi) to perform the functions of the State Board where the State Board has defaulted in complying with the directions of the Central Board resulting into grave emergency and where it is required to do so in the public interest;

vii) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

viii) lay down, modify or annual, in consultation with the State Government concerned, the standards for a stream or well. However, different standards may be laid down for the same for the same stream or well or for different streams or wells having regard to the quality of water, flow
characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

ix) plan and cause to be executed a nation wide programme for the prevention, control or abatement of water pollution;

x) To perform such other functions as may be prescribed.

xi) Establish or recognize a laboratory or laboratories to enable the Board to perform its functions efficiently including the analysis of samples of water from any stream or well or of sample of any sewage or trade effluents.31

Functions of State Board:

Under Section 17 of the Act, a State Board shall have the following functions:

i) To plan a comprehensive programme for the prevention, control or abatement of water pollution.

ii) To advise the State Government on matters concerning the prevention, control and abatement of water pollution.

iii) To collect and spread information relating to prevention, control and abatement of water pollution.

iv) To encourage and conduct investigations and research resulting to problems of water pollution.

v) To collaborate with the Central Board in organizing training programmes relating to the prevention, control or abatement of water pollution and to organize mass education programme relating thereto.

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

vii) To lay down standards for the sewage and trade effluents and classify waters of the State.

viii) To evolve economical and reliable methods for treatment of sewage and trade effluents.
ix) To evolve methods of utilization of sewage and suitable trade effluents in agriculture.

x) To evolve efficient methods of disposal of sewage and trade effluents on land.

xi) To evolve efficient methods of disposal of sewage and trade effluents to be discharged into any particular stream.

xii) To make any order for the prevention, control or abatement of discharge of wastes into streams or wells and requiring any person to adopt such remedial measures as are necessary to prevent, control or abate water pollution.

xiii) To lay down effluent standards to be complied with by persons while discharging sewage or sullage or both.

xiv) To advise the State Government with respect to the location of any industry which is likely to pollute a stream or well.

xv) To perform such other functions as may be prescribed by the Central or State Government.

xvi) To establish or recognize laboratories for analysis of water samples of any sewage or trade effluents.

Power to give Directions:

In the performance of its functions under this Act:

a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

b) Every State Board shall be bound by such directions in writing as Central Board or the State Government may give to it.

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31 Section 17 (1).
32 Section 17 (2).
33 Section 18.
Where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its direction.  

Where the Central Government is of the opinion that any State Board has defaulted in complying with any direction given by the Central Board as a result of which it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

Where the Central Board performs any of the functions of the State Board in pursuance of a direction of the Central Government, the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover, such expense, be recovered by the Central Government with interest at such reasonable rate as the Central Government may be order fix, from the date when a demand for such expenses is made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

However, any direction to perform the functions of any State Board given to the Central Board in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.

**6.6 PREVENTION AND CONTROL OF WATER POLLUTION:**

Chapter V Sections 19 to 33 A of the Water Act contains different provisions for prevention and control of water pollution. In order to control the water pollution, the Board has the following powers:

1. **Power of the State Government to Restrict the Application of the Act to Certain Areas:** - Provision in this regard is contained under Section 19 (1) of the Act. Sub-section (1) provides that notwithstanding anything contained in this Act if the State Government after consultation with, or on the recommendation of, the State Board, is of

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34 Section 18 (1) of the Water Act.
35 Section 18 (2).
36 Section 18 (3).
37 Section 18 (4) of the Water Act.
opinion that the provisions of this Act need not apply to the entire State it may by notification in the official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

The Water Pollution, Prevention and Control area may be declared either

i) by reference to a map or

ii) By reference to the line of any watershed or

iii) The boundary of any district or

iv) Partly by one method and partly by another.38

The State Government may by notification in the official Gazette

(a) alter any water pollution, prevention and control area whether by way of extension or reduction; or

(b) define new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

However, the State Government under Section 19 cannot grant exemption from pollution against polluting industry to be set up.39

2. Power to Obtain Information:- According to Section 20 of the Water Act, for the purpose of enabling a State Board to perform functions conferred on it the State Board or any officer empowered by it in that behalf may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of any stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus and works connected therewith, and carry out

38 Section 19 (2) of the Water Act.
39 A.P Pollution Control Board (II) v. Prof. M.V. Naidu, (2001) 2 SCC 62
stream surveys and may take such other steps as, may be necessary in order to obtain any information required for the purposes aforesaid.\textsuperscript{40}

A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into any such stream or well, give such information as to abstraction or the discharge at such times and in such form as may be specified in the directions.\textsuperscript{41}

A State Board may, with a view to preventing or controlling pollution of water, give directions requiring any person in charge of any establishment when any industry, operation or process or treatment and disposal system is carried on, to furnish to it information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto, in such establishment and such other particulars as may be prescribed.\textsuperscript{42}

3. Power to take samples of effluents and procedure to be followed in connection therewith: A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or over any place into any such stream or well. [Section 21 (1)]

The result of any analysis of a sample of any sewage or trade effluent taken under Sub-section (1) shall not be admissible in evidence in any legal proceeding unless the following requirements are complied with:

(1) When a sample of any sewage or trade effluent is taken for analysis the person taking the sample shall:-

(a) serve on the person in charge of or having control over the plant or vessel or in occupation of the place or any agent of such occupier, a notice then

\textsuperscript{40} Section 20 (1) of the Water Act.
\textsuperscript{41} Section 20 (2).
\textsuperscript{42} Section 20 (3).
or there in such form as may be prescribed on his intimation to have it so analyzed;

(b) in the presence of the occupier or his agent divide the sample into two parts;

(c) cause each part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith –

i) in a case where such sample is taken from any area situated in a union territory, to the laboratory established or recognized by the Central Board under Section 16; and

ii) in any other case, to the laboratory established or recognized by the State Board under Section 17;

(e) on the request of the occupier or his agent, send the second container;

i) in a case where such sample is taken from any area situated in a Union territory, to the laboratory established or specified by the Central Government.

ii) in any other case, to the laboratory established or specified by the State Government.

(2) When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent willfully absents him, then;

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory and he shall inform, the Government analysis in writing about the willful absence of the occupier or his agent;
(b) the cost incurred in getting such sample analyzed shall be payable by the occupier or his agent and in case of default in such payment, the same shall be recoverable from the occupier or his agent, as this case may be, as an arrear of land revenue or of public demand. But no such recovery shall be made unless the occupier, or as the case may be his agent has been given a reasonable opportunity of being in the matter. 43

(3) When a sample of any sewage or trade effluent is taken for analysis and the person taking the sample serves on the occupier or his agent notice and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into parts as provided in the section then the sample be marked and sealed and shall be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory for analysis. 44

The procedure prescribed under Section 21 of the Act is mandatory. The result of the analysis of samples will be admissible in legal proceedings provided the safeguards and the procedures prescribed under the statute are compiled with.

In Delhi Bottling Company Private Limited v. Central Board for the Prevention and Control of Pollution, 45 the Board took a sample of the trade effluent from a bottling company’s discharge stream. The Board got the trade effluent analyzed and found that it did not conform to the requirements of the consent order granted to the company. The Board filed a suit under Section 33 of the Act and accordingly the Court issued an injunction requiring the company to establish a treatment plant. The order of the Court was challenged on the ground that the representative of the company present at the time of taking sample by the Board, had requested that the sample be analyzed by the Delhi Administration laboratory as provided in Section 21 of the Water Act and as such it was not admissible in evidence. Thus the court decided the case in favour of the company because the Board could not prove that the company was violating its consent orders.

43 Section 21 (4).
44 Section 21 (5) of the Water Act.
It is commented on a literal interpretation, the ruling was correct, one has to note that the company did not challenge the results of the analysis itself, integrity of the sample, or ‘the method of’ analysis. It was also pointed out that the requirement of notice before the sample was taken, gives the polluters an immediate opportunity to temporarily reduce or cease discharge or pollutants when the sample was taken.46

In Abdul Hamid v. Gwalior Rayon Company, 47 the Madhya Pradesh High Court pointed out that the Section 21 of the Water Act was meant for the protection of the industries and industrialists ensuring a proper balance between the conflicting claims of the nation’s industrial progress and the hazards to the citizens and it seeks to implement the provision of Section 21 of the Water Act.

4. Reports of the Result of analysis taken under Section 21:- Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognized by the Central Board or State Board, the concerned Board shall analyse the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board as the case may be.48

On receipt of the report, one copy of the report shall be sent by the Central Board or the State Board as the case may be, to the occupier or his agent, another copy shall be preserved for production before the Court, in case any legal proceedings are taken against him and another copy shall be kept by the concerned Board.49

If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognized by the Central Board or State Board, as the case may be, and that of the laboratory established or specified under Section 51 or Section 52, the report of the latter shall prevail.50

48 Section 22 (2) of the Water Act.
49 Section 22 (3).
50 Section 22 (4).
Any cost incurred in getting any sample analyzed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case or default the same shall be recoverable from him as arrears of land revenue or of public demand.\footnote{Section 22 (5) of the Water Act.}

5. Power of Entry and Inspection: - In order to ensure that the provisions of the Water Act are complied with Section 23 of the Water Act confers the power of entry and inspection on the State Boards. This Section provides that any person empowered by the State Board in this behalf shall have a right at any time to enter, with such assistance as he may consider, necessary any place for the following purposes:-

a) for performing any of the function of the State Board entrusted to him;

b) for determining whether and if so in what manner, any such functions are to be performed or whether provisions of this Act or rules made thereunder, or any notice, order, direction or authorization, served, made, given or granted under this Act is being or has been complied with;

c) for examining any plant, record, register, document or any other material objects;

d) for conducting search of place in which he has reasons to believe that an offence under this Act or the rules made thereunder has been or is being or is about to be committed; and

e) for seizing any such plant, record, register, document or other material object, if he has reasons to believe that it may furnish any evidence for commission of offence punishable under this Act for the rules made thereunder.

However, the right to enter under this Sub-section 23(1) of Water Act, for the inspection of a well shall be exercised only at reasonable hours, in a case where such well is situated in any premises used for residential purposes and the water thereof is used for domestic purpose.
The provisions of the Code of Criminal Procedure, 1973, except the State of Jammu and Kashmir, the provisions of that State similar to those of Criminal Procedure shall apply to any search or seizure.\textsuperscript{52}

6. Prohibition on Use of Stream or Well for Disposal of Polluting Matter etc.:- Section 24 of the Water Act, provides that no person -

a) shall knowingly cause or permit any poisonous, noxious, or polluting matter to enter into any stream or well or sewer or on land; or

b) shall knowingly cause or permit to enter into any stream, any other matter which directly or in combination with other similar matters, may tend to impede the proper flow of water of the stream and which may aggravate for pollution substantially.\textsuperscript{53}

However, a person shall not be guilty of an offence under this Section for any of the following acts:

i) constructing, improving or maintaining in or across or across or on the bank or bed of any stream, any building, bridge or weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has right to construct, improve or maintain;

ii) Depositing any material on the bank or in the bed of any stream for the purposes of reclaiming land or for supporting. Repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream:

iii) Putting into any stream any sand or gravel or other natural deposit which has flowed from or have been deposited by the current of such stream; and

iv) Causing or permitting the deposit accumulated in a well, pond or reservoir to enter into any steam, with the consent of the State Board.\textsuperscript{54}

\textsuperscript{52} Section 23 (2).
\textsuperscript{53} Section 24 (1) of the Water Act.
\textsuperscript{54} Section 24 (2) of the Water Act.
But Sub-section (3) of this section empowers the State Government, either after consultation with, or on the recommendations of the State Board to exempt any person from the liability as mentioned in sub-section (1) subject to such conditions, if any, as may be specified may be altered, varied or amended. All these will be done by issuing a like notification in the official Gazette.

7. Restrictions on New Outlets and New Discharges: - According to Section 25 of this Act, provides that no person shall without the previous consent of the State Board:

(a) establish or take any steps to establish industry, operation or process, or any treatment and disposal system or any extension or addition thereto which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land; or

(b) Bring into use an new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage.

Provided that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of this Act for which no consent was necessary prior to such commencement may continue to do so for a period of three months from such commencement, of if he has made an application for such consent, within the said period of three months till the disposal of such application.  

An application for consent of the State Board shall be made in such form, contains such particulars and shall be accompanied by such fee as may be prescribed.

The State Board may make such enquiry as it may deem fit in respect of the application for consent and in making such inquiry shall follow such procedure as may be prescribed.

The State Board may grant consent subject to such condition as it may impose –

(a) (i) beings conditions as to the point of discharge of sewage or as to the use of that outlet for discharge of sewage;

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55 Section 25 (1)
56 Section 25 (2), of the Water Act.
57 Section 25 (3).
(ii) in the case of a new discharge, conditions as to the tenure and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made, and

(iii) that the consent will be valid only for such period as may be specified in the order.

Any of the conditions so imposed shall be binding on any person, establishing or taking any steps to establish any industry, operation or process or treatment and disposal system or extension or addition thereto or using the new altered outlet, or discharging the effluent from the land or premises aforesaid;

(b) Refuse such consent for reasons to be recorded in writing.\(^{58}\)

The Sub-section 5 of the Section 25 of this Act, provides where, any industry, operation or process or any treatment and disposal system or any extension or addition thereto is established without the consent of the Board or any new or altered outlet is brought into use for the discharge of the sewage, the State Board may serve on the concerned person a notice imposing any such conditions as might have been imposed on an application for the grant of consent in respect of such establishment.

Every Board shall maintain a register containing particulars of conditions imposed under this Section 25 (6). The register shall be opened to all interested persons for inspection at all reasonable hours. Such register shall also be the conclusive proof of the fact that the consent was granted subject to such condition.

The Board must decide the application for the consent within a period of four months otherwise the consent shall be deemed to have been given.\(^{59}\)

The State Pollution Control Board is a specialized agency created under the Act and is empowered to prevent the units from discharging the trade effluents which

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\(^{58}\) Section 25 (4) of the Water Act.

\(^{59}\) Section 25 (7) of the Water Act.
exceeded the tolerance limit as prescribed under the law.\footnote{M/S Narula Dyeing and Printing Press v. Union of India (Khari-cult Canal), AIR 1995 Guj. 191.} A mere consent issued by the State Pollution Control Board under

Section 25 (2) did not entitle applicants to discharge trade effluents and it was incumbent upon the applicants to comply with the conditions mentioned in the consent order and also to put up the Effluent Treatment Plants (ETP) within the time prescribed in the consent order. Failure of complying with the requirement of putting up their the ETP resulted in lapse of the conditions of the consent and therefore, the mere fact that the consent order so obtained by petitioners cannot insulate them against the requirements of putting up the ETP and complying with the standards of tolerance limits prescribed\footnote{Narula Dyeing & Printing Works v. Union of India, ibid.}. Granting or refusing consent in the very nature of the time is obviously at the discretion of the State Pollution Control Board. It is not for the courts to go into the propriety of the decision and to substitute its own opinion in place of the decision of State Board. It is the Board, which is empowered to prevent and control water pollution, and to maintain the wholesomeness of water as aimed by the Act\footnote{Mahabir Soap and Gudaku Factory v. Union of India, AIR 1995 Ori.221.}. Even on the basis of the recommendation of the State Pollution Control Board, the Panchayat authority is empowered to accord license for starting an Industry\footnote{S. Pathrose v. State of Kerala, AIR 1997 Ker. 50, 51.}.

In M.C. Mehta v. Union of India,\footnote{AIR 1988 S.C. 1037 at 1045. See also Vineet Kumar Mathur v. Union of India, (1997) 7 SCC 714; (2001) 2 SCC 62.} the Supreme Court held that the financial capacity of tanneries should be considered as irrelevant while requiring them to establish primary treatment plants. Just like an industry, which cannot pay minimum wages to its workers, cannot be allowed to exist, a tannery, which cannot set up a primary treatment plant, cannot be permitted to continue to be in existence.

In A.P. Pollution Control Board (II) v. Prof. M.V. Nayudu,\footnote{AIR 1998 S.C. 1037 at 1045. See also Vineet Kumar Mathur v. Union of India, (1997) 7 SCC 714; (2001) 2 SCC 62.} the Supreme Court has clarified that prohibition of Section 25 extends even to establishment of the industry or taking of steps for that process. Therefore, before the consent of the Pollution Control Board is obtained, neither can the industry be established nor can any steps be taken to establish it. Thus, the respondent company should have obtained neither the approval of
Gram Panchayat for its plans nor the Collector’s approval for the conversion of land use. It should have also not proceeded with the construction work and installation of machinery. Since all these actions were contrary to the provisions of the Water Act, the respondent Company could claim no equitable relief. The Court also held that the appellate authority under the water Act, the principle of ‘promissory estoppel’ was applicable to this case.

Provisions regarding existing discharge of sewage or trade effluent under Section 26, where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream, well or sewer or on land, the provisions of Section 25 shall, so far as may apply, in relation to such person as they apply in relation to the persons referred to in that subject to the modification that the application for consent to be made under sub-section (2) of the section, shall be made on or before such date as may be specified by the State Government by notification in this behalf in the official Gazette.

8. Refusal or Withdrawal of Consent by State Board: - Under Section 27 of the Water Act, a State Board shall not grant its consent for establishment of any industry, operation or process or treatment and disposal system or extension or addition thereto or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its rights to take samples of the effluent.\(^\text{66}\)

Sub-section 2 of this section empowers a State Board to review from time to time-

a) any condition imposed while granting consent and to serve on the person to whom consent is granted, a notice making any reasonable variation of or revoking any such condition;

b) the refusal of any consent or grant of such consent without any condition, and may make such orders as it deems fit.

\(^{66}\) Section 27 (1) of the Water Act.
Any such condition imposed or variation made shall continue in force until revoked.⁶⁷

9. Appeals: - Under Section 28 of the Water Act, any person aggrieved by an order made by the State Board may within thirty days from the date on which the order was communicated to him, prefer an appeal to such authority known as Appellate Authority as the State Government may think fit to constitution. The appellate Authority may, however, entertain the appeal after the expiry of the period of thirty days, if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.⁶⁸

The Sub-section 2 of the Section 28, an Appellate Authority shall consist of a single person or three persons as the State Government may think fit.

The provision of Section 28 (3) provides, the State Government has power to prescribe the fee to be payable for such appeal and the procedure to be followed by the Appellate Authority and the form and manner in which the appeal will be preferred. On the receipt of an appeal, the Appellate Authority after giving the appellant and the State Board an opportunity of being heard dispose of the appeal as expeditiously as possible.⁶⁹

If the Appellate Authority determines that any condition imposed or the variation made was unreasonable then –

i) when the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

ii) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either the condition shall be treated as

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⁶⁷ Section 27 (3).
⁶⁸ Section 28 (1) of the Water Act.
⁶⁹ Section 28 (4).
continuing in force, unvaried or that it shall be varied in such manner as appears to it to be reasonable.\textsuperscript{70}

The Supreme Court has suggested that there is an immediate needs that in all the States and Union Territories,\textsuperscript{71} the Appellate Authority under Section 28 of the Water Act, should always have sitting or retired judge of the High Court and a scientist or group of scientist of high ranking and experience to help in the adjudication of disputes relating to environment and pollution.

In another case, the Pollution Control Board had passed consent order in favour of one industry,\textsuperscript{72} against the consent order passed by Pollution Control Board; the respondent who was not a party to the consent order filed an appeal. The Board challenged the interlocutory order and it was pleaded that appeal by the respondent is not maintainable as he was not a party to the concerned order. The High Court held that since the Board itself is concerned to see that every citizen gets pollution free air and water, the petition filed by the Board challenging the said interlocutory order was liable to be dismissed and the respondent had the \textit{locus standi} to file the appeal.

\textbf{10. Revision:} Section 29 of the Act gives power to the State Government for revision. The power of Revision may be exercised by the State Government of its own motion or on application made to it in this behalf at any time. The State Government may call for the records of any case where an order has been made by the State Board for the purpose of satisfying itself as to the legality or propriety of any such order and may pass such an order in relation thereto as it may deem fit. But the State Government shall not pass any order without affording the State Board, and the person who may be affected by such order a reasonable opportunity of being heard in the matter.\textsuperscript{73}

However, where an appeal lies before the Appellate Authority against the order of a State Board, the State Government shall not revise any order even if appeal has not

\textsuperscript{70} Section 28 (5) of the Water Act.
\textsuperscript{71} A.P. Pollution Control Board v. Prof. M.V. Nayudu, (1999) 2 SCC 718 at 738.
\textsuperscript{72} Gujarat Pollution Control Board v. Parmar Devisinh Shersinh, AIR 2001 Guj.11.
\textsuperscript{73} Section 29 (1).
been preferred. There shall be no revision in all such cases in which appeal has been preferred and is pending before the Appellate Authority.\textsuperscript{74}

11. Powers of State Board to Carry Out Certain Works: - Section 30 provides that where, while granting permission under Section 25 or 26 any conditions have been imposed on any person and under the condition he is required to execute any work in connection therewith and such work has not been executed within such times as may be specified in this behalf, the State Board, may serve on the person concerned a notice requiring him within such time not being less than 30 days, as may be specified in the notice to executed the work specific therein.-[Section 30 (1)].

Under Section 30 (2) of the Water Act provides, if the person, under obligation, fails to execute the work, then after the expiration of the time specified in the said notice the State Board may itself, execute or cause to be executed such work.

All expenses incurred by the State Board for the execution of the aforesaid work, together with interest, as may be fixed by the State Government, may be recovered from the person concerned by State Board as an arrear of land revenue or of public demand. It shall be recoverable from the date when a demand for expenses is made and until it is paid.\textsuperscript{75}

12. Furnishing of Information to State Board and other Agencies in Certain Cases: - Section 31 of the Act lays down in this respect as follows:

“If at any place where any industry, operation or process or any treatment and disposal system or any extension or any addition thereto is being carried on, due to accident of other unforeseen act or event, any poisonous, noxious or pollution matter is being discharged, or is likely to be discharged into stream or well or sewer or on land and as result of such discharge, the water in any stream or well is being polluted or is likely to be discharged into stream or well or sewer or on land and as result of such discharge, the water in any stream or well is being polluted or is likely to be polluted, then the person

\textsuperscript{74} Section 29 (2) of the water Act.
\textsuperscript{75} Section 30 (3) of the Water Act.
incharge, of such place forthwith intimate the occurrence of such accident, act or event to the State Board and such other authorities or agencies as may be prescribed.”

Section 31 (2) of the Water Act provides that where any local authority operates any sewage system or sewage works, the aforesaid provisions shall apply to such local authority as they apply in relation to the person incharge of the place where any industry or trade is being carried on.

13. Emergency Measures in case of Pollution of Stream or Well: Section 32 provides that where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action it may for reason to be recorded in writing carry out such operations as it may consider necessary for all or any of the following purposes –

i) removing that matter from the stream or well or land and disposing it of in such manner as the Board may consider it appropriate;

ii) remedying or mitigating any pollution caused by its presence in the stream or well;

iii) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into stream or well or land, or from making in sanitary use of the stream or well. This power, however, does not include the power to construct any work other than works of a temporary character which are removed on or before the completion of the operation.

14. Power of the Board to make application to Court for Restraining Apprehended Pollution of Water in Streams or Wells: Under Section 33 of the Water Act provides that where it is apprehended by a Board that the water in any stream or well

76 Section 31 (1) of the Water Act.
77 Section 32 (2).
is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise the Board may make an application to a Court not inferior to that a Metropolitan Magistrate or a Judicial Magistrate of the first class for restraining the person who is likely to cause such pollution from so causing.\(^78\)

**15. Action by Court on Application of the Board:** The court on receipt of the application may make such order as it deems fit.\(^79\) Where the Court makes an order restraining any person from polluting the water in any stream or well it may in that order:

i) direct the who is likely to cause or as caused pollution of the water in the stream or well to desist from taking such action as is likely to cause pollution or as the case may be to remove from such stream or well, such matter, and

ii) authorize the Board if the direction being a direction for removal of any matter from such stream or well is not complied with by the person to whom such direction is issued to undertake the removal and disposal of the matter in such manner as may be specified by the Court.\(^80\)

All expenses incurred by the Board in removing any matter in pursuance of authorization or in disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person concerned as arrears of land revenue or of public demand.\(^81\)

In Maharaja Shri Umaid Mills Ltd., Pali v. State,\(^82\) it was held that the proceedings under Section 33 of the Water Act are criminal in nature. Therefore, if the complaint in proceedings under Section 33 of the Water Act is dismissed, then the restoration of the same is not permissible as there is no provision in Cr. P. C for review of an order.

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\(^{78}\) Section 33 (1).
\(^{79}\) Section 33 (2).
\(^{80}\) Section 33(3) of the Water Act.
\(^{81}\) Section 33 (4).
\(^{82}\) AIR 1998 Raj. 9
In the Kerala, High Court\textsuperscript{83} viewed that the orders issued by the Court under Section 33 directing the concerned person to remove the pollution or directing the person to do so are supplementary to each other and not opposed to one another.

In another case Bombay High Court\textsuperscript{84} said that only such Board has right to make application under Section 33 of the Act as has come into existence and has been properly constituted on that date when the application is being made. The Board was properly constituted after the date of application made. Accordingly the Court quashed the application made by the Board. In Indore Malwa Limited Mills v. Madhya Pradesh,\textsuperscript{85} the Court declared that the order passed by the Magistrate would be valid even if the name of the river whose water is possible to be polluted is not mentioned in the application. Similar view was expressed by the Allahabad High Court in the case of Sir Shadi Lal Enterprises Ltd. V. Chief Judicial Magistrate, Shaharanpur.

16. Power to Give Directions: - Under Section 33-A of the Water Act was incorporated by way of an Amendment in 1988. It gives the power to the Board to give directions. This Section provides that a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions.

The power to give direction includes:-

i) the closure, prohibition or regulation of any industry, operation or process; or

ii) the stoppage or regulation of supply of electricity, water or any other service.

In Mandu Distillers Pvt. Ltd. V. M.P Pradushan Niwaran Mandal,\textsuperscript{86} orders made by the State Board in the exercise of power to issue directions were found to be in excess of what was stated in the show cause notice. The Court observed as the Act, a beneficial

\textsuperscript{84} H.C.Kathiwala v. Maharashtra Water (Prevention and Control) Board, 1982 Cr. L. J 290 (Bombay).
\textsuperscript{86} A.I.R. 1995 M.P. 57 at P.63.
legislation permits preventive measure in case of industries to be established and remedial measures in cases of industries already established.

The petitioners, manufactures of India made foreign liquors were asked by the Board to stop discharge of effluents to the river. This was done after a show cause notice. Quashing the action and show cause notice, the Court said: “the Grounds stated in the show cause notice and basis of orders are not quite the ‘same and these seem to be distant neighbours.”

In Ambuga Petro chemicals Ltd. V. A.P Pollution Control Board, the effluent treatment plant of the industry were not in operation. Partially treated effluent was being discharged causing water pollution in the tank resulting in danger to public life. The State Board directed the industry to be closed. It was held that the order was neither shockingly disproportionate nor excessively severe.

In another case, the Pollution Control Board issued directions to the Industry to ensure proper storage of effluent in lagoons and proper treatment of effluent. Some of the directions issued by the Board were not complied with. As a result of it some quantity of effluent polluted the water of the River of Bhawani. Sufficient time was given to the Industry but no remedial measure was adopted by it. Accordingly order was issued to close the Industry.

In M.C. Mehata v. Union of India, popularly known as Calcutta Tanneries Case, the Calcutta Tanneries were operating in violation of the provisions of Water Act as well as Environment (Protection) Act, 1986. The Board directed for unconditional closure of tanneries, relocation, and payment of compensation by them for reversing the damage and also for rights and benefits to be made available to their workmen. The Supreme Court upheld the directions issued by the Board.

In Sector 14 Resident’s Welfare Association v. State of Delhi, the industrial units were not conforming to the prescribed standards. Accordingly the U.P. Pollution

89 (1997) 2 SCC 411.
Control Board was held at liberty to take such action as provided by the law against the
polluting industrial units.

6.7 FUNDS, ACCOUNTS AND AUDIT:

Chapter VI of the Water Act relating to Funds, Accounts and Audits of the Board
is contained in Sections 34 to 40. The provisions of the Act are of great importance as
they enable the Board to perform its duties efficiently. These provisions are as follows:

1. **Contribution by Central Government:** To carry on the functions of the
Central Board, the Central Government may after due appropriation made by Parliament
by law in this behalf, make in each financial year, such contributions to the Central Board
as it may think fit.\(^{91}\) Section 34 of the Water Pollution Act, 1974 and Section 32 of the
Air Pollution Act, 1981 relate to the contribution by Central Government.

2. **Contribution by State Government:** For enabling the State Board to carry on
its functions, the State Government may after due appropriation made by the Legislature
of State, make in each financial year, such contributions to the State Board as it may
consider necessary.\(^ {92}\)

3. **Funds of Central Board:** The Central Board shall have its own fund, and all
sums which may, from time to time, be paid to it by the Central Government and all other
receipts by way of gifts, grants, donations, benefactions, and fees or otherwise or that
Board, shall be carried to the funds of the Board and all payments by the Board, shall be
carried to the funds of the Board and all payments by the Board, shall be made there
from.\(^ {93}\)

The Central Board may expand such sums as it thinks fit for performing its
functions and where any law for the time being in force relating to the prevention, control
or abatement of air pollution provides for the performance of any function under such law
by the Central Board, also for performing its functions under such law and such sums
shall be treated as expenditure payable out for the fund of that Board.\(^ {94}\)

\(^{91}\) Section 34 of the Water Act.
\(^{92}\) Section 35 of the Water Act.
\(^{93}\) Section 36 (1).
\(^{94}\) Section 36 (2).
4. **Funds of State Board**: Section 37 of the Water Act provides similar provisions with respect to the fund of a State Board as Section 36 provides with respect to the Central Board. It is to expend money for similar purposes for which the Central Board is entitled to expend.\(^5\) Section 37 of the Water Pollution Act, 1974 and Section 33 of the Air Pollution Act, 1981 relate to the fund of State Board.

5. **Borrowing Powers of Board**: As provided under Section 37-A, a Board may with the consent of or in accordance with, the terms of any general or special authority given to it, by the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for the performance of all or any of its functions under this Act. Such provision was not under the original Act. This was inserted by the Act 53 of 1988.

6. **Budget**: According Section 38 of this Act, the Central Board as well as State Board shall during each financial year, prepare in such form and at such time as may be prescribed a budget for the ensuing financial year showing the estimated receipts and expenditure and copies thereof shall be forwarded to the Central Government or the State Government depending on the fact whether it was prepared by the Central Board or the State Board.

7. **Annual Report**: Section 39 of the Act provides that the Central Board shall during each financial year, prepare in such form as may be prescribed, an annual report giving full account of its activities under the Act during the previous financial year and copies thereof shall be forwarded to the Central Government within four months from the last date of the previous financial year and that Government shall cause every such report to be laid before both Houses of Parliament within nine months from the last date of the previous financial year.\(^6\)

Section 39 (2) of this Act requires that every State Board, during each financial year, prepare in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be

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\(^5\) Section 37 (2) of the Water Act, 1974.

\(^6\) Section 39 (1).
forwarded to the State Government within four months from the last date to the previous year and that Government shall cause every such report to be laid before State Legislature within a period of nine months from the last date of the previous year.

Section 39 of the Water Pollution Act, 1974 and Section 35 of the Air Pollution Act, 1981 relate to the Annual Report.

8. Accounts and Audit: The following Provisions are dealing with Section 40 of this Act, regarding Accounts and Audit:

i) Every Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government, or as the case may be, the State Government.\(^97\)

ii) The Accounts of the Board shall be audited by an auditor duly qualified to act as auditor of companies;\(^98\)

iii) The auditor shall be appointed by the Central Government, or as the case may be, the State Government on the advice of Comptroller and Auditor-General of India;\(^99\)

iv) Every auditor so appointed shall have right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board;\(^100\)

v) Every such Auditor shall sent a copy of his report together with an audited copy of the account to the concerned Government.\(^101\)

vi) The Government shall cause the same to be laid before Parliament or State Legislature as the case may be.\(^102\)

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\(^{97}\) Section 40 (1).
\(^{98}\) Section 40 (2) of the Water Act.
\(^{99}\) Section 40 (3).
\(^{100}\) Section 40 (4).
\(^{101}\) Section 40 (5).
\(^{102}\) Section 40 (6) & (7) of the Water Act.
Section 40 of this Act and Section 36 of the Air Pollution Act, 1981, relate to ‘Accounts and Audit’. The Annual statement of accounts of the Central Board shall be in Forms V to IX of the Rules.\(^{103}\)

**6.8 PENALTIES AND PROCEDURE:**

Statutory Provisions under Sections 41 to 50 deal with penalty and procedure where violation of the provisions of this Act has taken place. The Act does not prescribe same penalty for different Acts of violation. It lays down different penalties.

1. **Failure to Comply with Directions:** Whoever fails to comply with any direction under Section 20 (2), information about abstraction of water or discharge of effluents, or Section 20 (3), information regarding constitution, installation or operation of any establishment of or any disposal system etc., within such time as may be specified in the direction shall, on conviction be punishable with imprisonment for a term which may extend to three months or with fine which may extend to Rs. 10,000 or with both and in case failure continues, with an additional fine which may extend to Rs. 5,000 for every day during which such failure continues after the conviction for the first such failure.\(^{104}\)

Failure to comply with an order issued Under Section 32 (1) (c), restrain or prohibiting from discharging poisonous, noxious or polluting matter into stream or well or on land; or any direction issued by court under 104. Section 32 (2), directing any person from desisting from causing any pollution of the water in any stream of well etc., or any direction issued under Section 33-A, direction regarding closure, regulation, stoppage of electricity etc, is also punishable on conviction, with imprisonment for periods ranging from 18 months to 6 years and with fine. Continuing contravention attracts an additional fine of Rs.5,000/- for each day after the conviction for the first such offence,\(^{105}\) where such failure continues beyond one year the offender can be punished with imprisonment for a period of two to seven years and with fine also.\(^{106}\).

\(^{103}\) Rule 25.

\(^{104}\) Section 41 (1) of the Water Act.

\(^{105}\) Section. 41 (2).

\(^{106}\) Section. 41 (3).
Section 41 of the Water pollution Act, 1974 and Section 37 of the Air Pollution Act 1981, are the penal provisions and are based on the same footing. The provision relating to penalty has been provided in Section 15 of the Environment (Protection) Act, 1986.

2. **Penalties for Certain Acts:** Section 42 of this Water Act provides the following:-

(a) Destroys, pulls down, removes, injurious or defaces any pillar post or stake fixed in the ground or any notice or other matter put up, inscribed, or placed by or under authority of the Board; or

(b) Obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act; or

(c) Damages any work or property, belonging to the Board, or

(d) Fails to furnish any information required of him for the purposes of this Act, or

(e) fails to intimate the occurrence of any accident or other unforeseen act or event under Section 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, or knowingly or willfully makes a statement which is false in any material particular, or

(g) For the purpose of obtaining any consent under Sections 25 or 26, knowingly willing fully makes a statement which is false in any material particular,

Shall be liable to undergo imprisonment for a term which may extend to three months or fine upto Rs. 10,000/- or with both.\(^{107}\)

\(^{107}\) Section 42 (1) of the Water Act.
Sub-section (2) of Section 42 of this Act provided that where for the grant of a consent in pursuance of the provisions of Sections 25 or 26, the use of a meter or gauge or other monitoring device is required, then any person who knowingly or willfully alters or interferes with such device shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to Rs. 10,000/- or with both.

3. **Penalty for Contravention of Provisions of Section 24:** - Whoever contravenes the provisions of Section 24, i.e., prohibition on use of stream or well for disposal of polluting matter etc, shall be punishable with imprisonment for a term which shall not be less than one year and six months, but which may extend to six years and with fine.  

4. **Penalty for Contravention of Section 25 or Section 26:** - Whoever contravenes the provisions of -

   (i) Section 24 regarding restrictions on new outlets and new discharges; or

   (ii) Section 26 regarding existing discharge of sewage or trade effluent, shall render himself liable to be punished under Section 44 of the Water Act which provide that such act shall be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.  

5. **Enhanced Penalty After Previous Conviction:** Section 45 provides that if any person who has been convicted of any offence under Sections 24, 25 and 26 is again found guilty of an offence involving a contravention of the same provision he shall on the second and on every subsequent conviction be punishable with imprisonment for a term which shall not be less than two years but it may extend to seven years and with fine. But no cognizance shall be taken of any conviction made more than 2 years before the commission of the offence which is being punished.

6. **Penalty for Contravention of Certain Provisions of the Act:** - The Provisions of the Section 45-A provides that whoever fails to comply with any order or

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108 Section 43.
109 Section 44 of the Water Act.
direction given under this Act, for which no penalty is elsewhere provided under this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to Rs. 10,000/- or with both and in case of a continuing contravention or failure, with an additional fine which may extend to Rs. 5,000/- for every day during which such contravention or failure continues after conviction for the first such contravention or failure.

7. Publication of Names of Offenders: If any person convicted of an offence under this Act commits a like offence afterwards, it shall be lawful for the Court before which the second or subsequent conviction takes place, to cause the offender’s name and place of residence, the offence and penalty imposed, to be published at the offender’s expense in such newspapers or in such other manner as the Court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.\(^{110}\)

8. Offences By Companies: The Act has introduced the Doctrine of vicarious liability and joint liability under Sections 47 and 48 which are based on the maxim of *qui facit per alienum, facit per se, or respondeat superior*.

Section 47 provides that where an offence has been committed by a company, every person who, at the time of the offence was in charge and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

But there shall be no liability of any such person if he proves:-

(i) That the offence was committed without his knowledge; or

(ii) That he exercised all due diligence to prevent the commission of such offence.

If the offence is committed by the Company, any Director, Manager, Partner in firm, Secretary, other Officer of the Company shall also be deemed to be guilty of the offence and punished, if it can be proved that the offence was committed with

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\(^{110}\) Section 46 of the Water Act.
(a) his consent or connivance, or

(b) his attributable to any neglect on his part.¹¹¹

For the purpose of this Section,

i) ‘Company’ means any body corporate, and includes a firm or other association of individuals; and

ii) “Director” in relation to a firm means a partner in the firm.

In U. P. Pollution Control Board v. Modi Distillery,¹¹² there was pollution by the industrial unit resulting in prosecution of Chairman, Managing Director and other Directors of the Company. There was willful default on the part of the industrial unit in furnishing details. Consequently the name of the company thereof was wrongly described in the complaint. It was held by the Supreme Court that this cannot be the ground for quashing the complaint against the Chairman and others.

9. Offences by Government Departments: - Under the Section 48 of the Water Act, provides that where any Department of the Government commits an offence under this Act, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

However, there shall be no liability of the Head of the Department –

a) if he proves that the offence was committed without his knowledge; or

b) that he exercised all due diligence to prevent the commission of such offence.

10. Cognizance of Offences: - Under Section 49 of the Water Act, provides that the Court shall take cognizance of any offence, only if the complaint is made by –

a) A Board or any officer authorized in this behalf by Act; or

¹¹¹ Sub-section (2) of the Section 47.

¹¹² AIR 1988 SC 1128
b) Any person who has given the notice of not less than 60 days of the alleged offence and of his intention to make complaint to the Board or the authorized officer.

The Trial Court must not be inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of First class.\textsuperscript{113}

Under Section 49 (2) of the Water Act provides that, where a notice has been given by any person, the Board shall, on demand by such person, make available relevant reports in its possession to that person. But the Board may receive any such report available to such person, if the same is, in its opinion, against public interest.

The provision of the Section 49 (3) of the Water Act, it shall be lawful to any Judicial Magistrate of First Class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding Rs. 2,000/- on any person convicted of any offence punishable under this Act.

The 1988 Amendments modified Section 49 to allow citizens to bring actions under the Water Act. Now a State Board must make relevant reports available to complaining citizens, unless the Board determined that the disclosures would harm “Public Interest”\textsuperscript{114}. Previously, the Act allowed courts to recognize only those actions brought by a Board, or with a previous written sanction of a Board.

Only the Court of Metropolitan Magistrate or a Judicial Magistrate of the First Class or any Court superior to that can take the cognizance of the offence.

\textbf{11. Members, Officers and Servants of Board to be Public Servants:} Section 50 of the Water Pollution Act, 1974 provides that “all members, officers and servants of a Board when acting or purporting to act in pursuance of any of the provisions of this Act and the rules made thereunder shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.”

\textsuperscript{113} Section 49 (1) of the Water Act.
6.9 MISCELLANEOUS:

Chapter VIII of the Water Act contains certain Miscellaneous Provisions. The important Provisions are:

1. Central Water Laboratory: Section 51 of the Act provides that the Central Government may, by notification in the Official Gazette, -

(a) establish a Central Water Laboratory; or

(b) specify any Laboratory or institute as a Central Water Laboratory to carry out the functions entrusted to the Central Water Laboratory under this Act.\(^\text{115}\)

The Central Government may, after consultation with the Central Board, make rules prescribing –

(a) the functions of the Central Laboratory;

(b) The procedure to be followed by the said Laboratory in analyzing the sample and preparing the report;

(c) such other matter as may be necessary or expedient to enable the laboratory to carry out its functions.\(^\text{116}\)

2. State Water Laboratory: Section 52 of the Water Act provides that the State Government may, by notification in the Official Gazette, -

(a) establish a State Water Laboratory; or

(b) specify any laboratory or institute as a State Water Laboratory to carry out the functions entrusted to the State Water Laboratory under this Act.\(^\text{117}\)

The State Government may, after consultation with the State Board, make rules prescribing –

(a) The functions of the State Laboratory; or

\(^{115}\) Section 51 (1) of the Water Act.

\(^{116}\) Section 51 (2).

\(^{117}\) Section 52 (1).
(b) The procedure to be followed by the said Laboratory in analyzing the sample and preparing the report;

(c) such other matter as may be necessary or expedient to enable the laboratory to carry out its functions.\textsuperscript{118}

3. Analysts: (A) Section 53(1) Empowers the Central Government and Section 53(2) Empowers the State Government to appoint such persons as it thinks fit by notification in the official Gazette as Government analysts. They will have the qualifications prescribed by the Government for the purpose of analysis to any laboratory established or specified under Section 51 (1). Their function is to analyse the samples of water or the sewage or trade effluent, sent to them. The Central Board as well as a State Board to appoint with the proper approval of the Central Government or the State Government such persons as it thinks fit to be Board Analyst for the purpose of analysis of samples of water or of sewage or trade effluent. A Board analyst must also possess such qualifications as prescribed.\textsuperscript{119}

(B) Reports of Analysts: Any document purporting to be a report signed by the Government analyst, or as the case may be, a Board analyst may be used as evidence of the facts stated therein in any proceeding under this Act.\textsuperscript{120}

Section 54 of the Water Pollution Act, 1974 deals with the evidentiary value of the document purporting to be a report signed by a Government Analyst.

4. Local Authorities to Assist: Under Section 55 of the Water Act provides that ‘all local authorities shall render such help and assistance and furnish such information to the Board, as it may require for discharge of its functions, and shall make available to the Board for inspection and examination such records, maps, plans and other documents as may be necessary for the discharge of its functions.’

5. Compulsory Acquisition of Land for the State Board: Under Section 56 of the Water Act, provides that ‘Any land required by a State Board for the efficient performance of its functions under this Act shall be deemed to be needed for a public

\textsuperscript{118} Section 52 (2) of the Water Act.
\textsuperscript{119} Section 53 (3).
\textsuperscript{120} Section 54 of the Water Act.
purpose and such land shall be acquired for the State Board under the provisions of the 
Land Acquisition Act, 1894 or under any other corresponding law for the time being in 
force.’

The State Board is empowered to acquire any land for the efficient performance 
of its functions and such purpose shall be treated as “public purpose”.

6. Returns and Reports: Under Section 57 of this Act, the Central Board is 
required to furnish to the Central Government and a State Board to the State Government 
as well as to the Central Board such reports, returns, statistics, accounts and other 
information with respect to its fund or activities as that Government or, as the case may 
be, the Central Board may from time to time require.

7. Bar of Jurisdiction: Section 58 of the Water Act provides that no civil court 
shall have the jurisdiction to entertain any suit or proceeding in respect of any matter 
which an appellate authority constituted under this Act is empowered by or under this Act 
to determine, and no injunction shall be granted by any court or other authority in respect 
of any action taken or to be taken of any power conferred by or under this Act.

The Andhra Pradesh High Court, while exploring the true scope of Section 58, 
has very aptly observed in Sreenivasa Distillery v. S.R. Thyagarajan\textsuperscript{121}, that –

‘An appeal is provided against the order under Section 28 and Section 58 bars the 
jurisdiction of the Civil Court to entertain any suit or proceeding against an order passed 
by the appellate authority. Section 58 enacts two prohibitions.

i) Firstly, not to entertain any suit or proceeding in respect of any matter 
which the appellate authority constituted under the Act is empowered to 
determine.

ii) Secondly, no injunction shall be granted in respect of any action taken by 
any authority under the Act in pursuance of the provisions of the Act.

This is the only provision barring the jurisdiction of a Civil Court. The Section is 
intended to preserve the statutory protection given to the Boards untouched by civil

\textsuperscript{121} A.I.R. 1986 A.P. 328, at 329.
actions. Now, the present action is only preventing the defendant from polluting water. But this section is not directed to annul any orders passed by the authority constituted under this Act. Now, it is admitted that no orders are passed under the Act, and, therefore, any order passed by the civil court will not take away the jurisdiction of the authorities constituted under the Act. Thus Section 58 of the Water Act does not prohibit jurisdiction of a Civil Court to entertain any suit or proceeding, restraining the defendant to cause pollution.

8. Protection of Action taken in Good Faith: Section 59 of the Water Act provides ‘no suit or other legal proceedings shall lie against the Government or any officer of Government or any member or officer of a Board in respect of any thing which is in good faith done or intended to be done in pursuance of this Act or the rules made thereunder.

This section seeks to exempt the Government, officers of Government, members and officers of the Board from the legal proceedings in respect of anything done or intended to be done in good faith or in pursuance of the Act.

9. Overriding Effect: Section 60 of the Water Act provides that the Provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act.

By virtue of this non obstante clause, the provisions of the Water (Prevention and Control of Pollution) Act, 1974 shall have overriding effect on anything contained in any other enactment.

10. Power of the Central Government to Supersede the Central Board and Joint Board122: -

(1) If at any time the Central Government is of opinion –

(a) that the Central Board or any Joint Board has persistently made default in the performance of the functions imposed on it by or under this Act; or

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122Section 61 of the Water Act.
that circumstances exist which render it necessary in the public interest so to do,

The Central Government may, by notification, in the official Gazette, supersede the Central Board or such Joint Board, as the case may be, for such period, not exceeding one year, as may be specified in the notification;

Provided that before issuing a notification under this Sub-section for the reasons mentioned in clause (a), the Central Government shall give a reasonable opportunity to the Central Board or such Joint Board, as the case may be, to show cause why it should not be superseded and shall consider the explanations and objections if any, of the Central Board or such Joint Board, as the cause may be.

(2) Upon the publication of a notification superseding the Central Board or any Joint Board;

(a) all the members shall, as from the date of supersession, vacate their offices as such;

(b) all the powers, functions and duties which may, by or under this Act, be exercised or discharged by the Central Board or the Joint Board, as the case may be, is reconstituted, be exercised, performed or discharge by such person or persons as the Central Government, may direct;

(c) all property owned or controlled by the Central Board or Joint Board, until the Central Board or Joint Board is reconstituted, vest in the Central Government.

(3) On the expiration the supersession specified in the notification, the Central Government may –

(a) extend the period of supersession for such further term, not exceeding six months, as it may consider necessary; or

(b) Re constitute the Central Board or Joint Board, as the case may be, by fresh nomination or appointment, as the case may be, and in such case any
person who vacated his office shall not be deemed disqualified for nomination or appointment.

Provided that the Central Government may at any time before the expiration of the period of supersession, whether specified under Sub-section (1) or as extended under this sub-section, take action under clause (b) of this sub-section.

11. **Power of State Government to Supersede State Board:** Under Section 62 of the Act Provides (1) if at any time the State Government is of opinion –

(a) that the State Board has persistently made default in the performance of the functions imposed on it by or under this Act; or

(b) that circumstances exist which render it necessary in the Public interest, the State Government may, by notification in the official Gazette, supersede the State Board for such period, not exceeding one year, as may be specified in the notification.

Provided that before issuing a notification under this Sub-section for the reasons mentioned in Clause (a), the State Government shall give a reasonable opportunity to the State Board to show cause why it should not be superseded and shall consider the explanations and objections, if any, of the State Board.

Upon the publication of a notification superseding the State Board, the provisions of Sub-sections (2) and (3) of Section 61 shall apply in relation to the supersession of the State Board as they apply in relation to the supersession of the Central Board or a Joint Board by the Central Government.

In R.A. Goel v. Union of India, the Board was insisting from industrial units for No Objection Certificates against the Government Policy affecting the industrial policy of the Government. There were numerous complaints against the Board, which were received by the Government. It was held that the Government was justified in superseding the Board. The court further held that where order of supersession of Board

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was passed by the Government it was not necessary to issue show cause notice to Board or its members.

12. Power of Central Government to make Rules: - The Central Government has been given power under Section 63 of the Water Act to make rules –

(1) The Central Government may, simultaneously with the constitution of the Central Board, make rules in respect of the matter specified in Sub-section (2). Provided that when the Central Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting the Board.

(2) In particular, and without prejudice to the generality or the foregoing power, such rules may provide for all or any of the following matters, namely –

(a) The terms and conditions of service of the members (other than the chairman and member-secretary) of the Central Board under Sub-section (8) of Section 5;

(b) the intervals and time and place at which meetings of the Central Board or of any committee thereof constituted under this Act, shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business under Section 8, and under Sub-section (2) of Sec. 9;

(c) The fees and allowances to be paid to such members of a committee of the Central Board as are not members of the Board under Sub-section (3) of Section 9;

(d) the manner in which and the purposes for which persons may be associated with the Central Board under Sub-section (1) of the Section 10 and the fees and allowances payable to such persons;

(e) the terms and conditions of service of the Chairman and the Member-Secretary of the Central Board under Sub-section (9) of Section 5 and under sub-section (1) of Section 12;
(f) Conditions subject to which a person may be appointed as a consulting engineer to the Central Board under sub-section (4) of Section 12;

(g) The powers and duties to be exercised and performed by the Chairman and the member-secretary of the Central Board;

(h) The form of the report of the Central Board Analyst under Sub-section (1) of Section 22;

(i) The form of the report of the Central Board Analyst under sub-section (3) of Section 22;

(j) the form in which and the time within which the budget of the Central Board may be prepared and forwarded to the Central Government under Section 38;

(k) The form in which the annual report of the Central Board may be prepared under Section 39;

(l) The form in which the accounts of the Central Board may be maintained under Section 40;

(m) The manner in which notice of intention to make a complaint shall be given to the Central Board or officer authorized by it under Section 49;

(n) Any other matter relating to the Central Board, including the powers, and the functions of that Board in relation to Union Territories;

(o) Any other matter which has to be, or may be, prescribed.

(3) Every rule made by the Central Government under this Act shall be laid, as soon as may be after it is made, before each House of Parliament while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may
be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

13. Power of State Government to make Rules: 124

(1) The State Government may, simultaneously with the constitution of the State Board, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of Section 63;

Provided that when the State Board has been constituted, no such rule shall be made, varied, amended or repealed without consulting that Board.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:

(a) The terms and conditions of service of the members (other than the chairman and the member-secretary) of the State Board under Sub-section (8) of Section 5;

(b) the time and place of meetings of the State Board or of any committee of that Board constituted under this Act and the procedure to be followed at such meeting, including the quorum necessary for the transaction of business under Section 8 and under Sub-section (2) of Section 9;

(c) The fees and allowances to be paid to such members of a committee of the State Board under Sub-section (3) of Sec. 9;

(d) the manner in which and the purposes for which persons may be associated with the State Board under Sub-section (1) of Section 10 and the fees and allowances payable to such persons;

(e) the terms and conditions of service of the chairman and the member-secretary of the State Board under Sub-section (9) of Section 5 and under Sub-section (1) of Section 12;

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124 Section 64 of the Water Act.
(f) the conditions subject to which a person may be appointed as a consulting engineer to the State Board under Sub-section (4) of Section 12;

(g) the powers and duties to be exercised and discharged by the chairman and the member-secretary of the State Board;

(h) the form of the notice referred to in Section 21;

(i) the form of the report of the State Board Analyst under Sub-section (1) of Section 22;

(j) the form of the report of the Government Analyst under Sub-section (3) of Section 22;

(k) the form of application for the consent of the State Board under Sub-section (2) of Sec. 25, and the particulars it may contain;

(l) the manner in which inquiry under Sub-section (3) of Sec. 25 may be made in respect of an application for obtaining consent of the State Board and the matters to be taken into account in granting or refusing such consent;

(m) the form and manner in which appeals may be filed, the fees payable in respect of such appeals and the procedure to be followed by the appellate authority in disposing of the appeals under Sub-section (3) of Section 28;

(n) the form in which and the time within which the budget of the State Board may be prepared and forwarded to the State Government under Section 38;

(nn) the form in which the annual report of the State Board may be prepared under Section 39;

(o) the form in which the accounts of the State Board may be maintained under Sub-section (1) of Section 40;

(oo) the manner in which notice of intention to make a complaint shall be given to the State Board or officer authorized by it under Section 49;

(p) Any other matter which has to be, or may be prescribed.
These rules will have prospective effect and no rule made under this section can have retrospective effect.

The Water (Prevention and Control of Pollution) Rules, 1975 have been framed by the Central Government to streamline Water Pollution Control System.

6.10 THE WATER (PREVENTION AND CONTROL OF POLLUTION) CESS ACT, 1977:

The water Cess Act empowers the Central Government to levy a cess on water consumed by persons carrying on certain industries and the local authorities. The adoption of the Act was necessitated due to inability of the State Governments to provide for adequate funds to the State Boards for their effective functioning and to cope up with the increasing pressure on water resources. This Act was passed by the Parliament in 1977 to mobilize funds for the Central and State Control Boards. It was adopted by the Parliament without the approval of the States. The approval of the States was not perhaps necessitated, notwithstanding water is a State subject but the water cess is a tax, which parliament is authorized, to impose and legislative under Entry 97 of List I of the Schedule VII of the Constitution. The Courts have accepted the reasoning of the enactments of the statute by the Parliament.\(^{125}\)

The Act provides for incentives to the specified industries for the installation of water treatment plants. A rebate of 70% of the cess is given to industries and authorities for using water for specified purposes in case these industries and authorities install water treatment plants. But a person or a local authority will not be entitled to a rebate, if he or it –

(a) consumes water to in excess of the maximum quantity as may be preserved in this behalf for any specified industry of local authority; or

(b) fails to comply with any of the provision of Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 or any of the standards laid down by the Central Government under the Environment (Protection) Act, 1956.

It may be mentioned that when the water is supplied by any local authority to any person carrying on any specified industry or for domestic purpose or to other local authority and such person or other local authority is liable to pay cess, the first mentioned local authority will not be liable to pay such cess in respect of such water. The Schedule I and II contains the specified industries and the purposes with the rate of cess respectively. The aggrieved person or the local authority has right to appeal before the prescribed appellate authority.

In Tata Iron and Steel Co. Ltd. V. State of Bihar\(^\text{126}\), the High Court was concerned with the provisions of Section 7 as stood prior to 1991 amendment to relating to the rebate. The company claimed rebate though its water treatment plant could treat only part of the industrial effluent and sewage generated by the company. In its assessment order, the Bihar Pollution control Board refused to grant rebate. The Court accepted the contention of the company and held that the company is entitled to rebate though it was not in the position to treat the entire trade effluent. Here question may arise whether this approach was justified keeping in mind to the present state of water pollution. We can say that this approach of the High Court is not justifiable.

The Madras High Court adopted the same liberal view where the company installed a ‘relatively successful’ effluent treatment plant. The assessing authority had declined the rebate, since the plant could not meet the prescribed standard of chemical oxygen demand.

The logic was that as the assessee contributed towards the treatment of effluent, the revenue ought to allow rebate.

The proceeds of the cess will be first credited to the Consolidated Fund of India and the Central Government may pay to the Central or State Boards after deducting the cost of collection. The Central Government has to take into account of the tax collected by the State Government in deciding the amount payable to the State Board. Willful

\(^{126}\) A.I.R. 1991 Pat. 75.
evasion of tax by the concerned parties can make them liable to imprisonment up to six months or fine or fine up to thousand rupees or both.\textsuperscript{127}

It may be mentioned that it is not a pollution tax, ‘it may regarded as nominal royalty paid by the industry for using the water’.\textsuperscript{128}

\textbf{6.11 WATER QUALITY ASSESSMENT AUTHORITY:}

The Central Government in exercise of the powers conferred by Section 3 (1) and (3) of the Environment (Protection) Act, 1986 constituted an authority known as “Water Quality Assessment Authority” consisting of following members for a period of three years with effect from 22.06.2001.

1. Secretary, Ministry of Environment and Forests \hspace{1cm} Chairperson
2. Additional Secretary and Project Director, National River Conservation Directorate, Ministry of Environment and Forests \hspace{1cm} Member
3. Chairman, Central Water Commission \hspace{1cm} Member
4. Additional Secretary, Ministry of Water Resources \hspace{1cm} Member
5. Advisor, National River Conservation Directorate, Ministry of Environment and Forests. \hspace{1cm} Member
6. Joint Secretary, Ministry of Agriculture and Cooperation \hspace{1cm} Member
7. Joint Secretary, Ministry of Urban Affairs and Poverty Alleviation. \hspace{1cm} Member
8. Chairman, Central Ground Water Authority. \hspace{1cm} Member

\textsuperscript{128} Ibid, foot note p-105.
9. Chairman, Central Pollution Control Board. Member

10. Director, Indian Agricultural Research Institute, New Delhi. Member

11. Director, National Environmental Engineering Research Institute, Nagapur. Member

12. Commissioner (Water Management), Ministry of Water Resources Member-Secretary

The authority shall exercise the following powers and functions:

1. The authority shall exercise powers under Section 5 of the Environment (Protection) Act, 1986 for issuing directions and for taking measures with respect to following matters:

   (a) Carrying out and sponsoring investigations and research relating to problems of environmental pollution;

   (b) Establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under the Environment (Protection) Act, 1986;

   (c) Collection and dissemination of information in respect of matters relating to environmental Pollution;

   (d) Preparation of manuals, codes or guides relating the prevention, control and abatement of environmental pollution.

2. The authority shall direct the agencies (government/local bodies/non-governmental) for the following:

   (a) to standardize method(s) for water quality monitoring and to ensure quality of data generation for utilization thereof;
(b) to take measures so as to ensure proper treatment of waste water with a view to restoring the water quality of the river/water bodies to meet the designated-best-uses;

(c) to take up research and development activities in the area of water quality management;

(d) to promote recycling/re-use of treated sewage/trade effluent for irrigation in development of agriculture;

(e) to draw action plans for quality improvement in water bodies, and monitor and review/assess implementation of the schemes launched/to be launched to that effect;

(f) to draw scheme(s) for imposition of restriction in water abstraction and discharge of treated sewage/trade effluent on land, rivers and other water bodies with a view to mitigating crisis of water quality;

(g) to maintain minimum discharge for sustenance of aquatic life forms in riverine system;

(h) to promote rain water harvesting;

(i) to utilize self-assimilation capacities at the critical river stretches to minimize cost of effluent treatment;

(j) to provide information to pollution control authorities to facilitate allocation of waste load;

(k) to review the status of quality of national water resources (both surface water and groundwater) and identify “Hot Sports” for taking necessary actions for improvement in water quality’;

(l) to interact with the authorities/committees constituted or to be constituted under the Provisions of the said Act for matter relating to management of water resources;
(m) to constitute /set-up State-level Water Quality Review committees to co-ordinate the work to be assigned to such committee; and

(n) to deal with any environmental issue concerning surface and ground water quality which may be referred to it by the Central Government or the State Government relating to the respective areas, for maintenance and/or restoration of quality to sustain designated – best – uses.

3. The authority shall exercise the powers under Section 19 of the Environment (Protection) Act, 1986, which relates to cognizance of offences.

4. The authority may appoint domain experts for facilitating the work assigned to it.

5. The Ministry of Water Resources shall create a cell to assist the authority to carry out the assigned functions.

6. The Authority is required to furnish report about its activities at least once in three months to the ministry of Environment and Forest.

**6.12 POST-STOCKHOLM: CITIZEN SUITS; RIGHT OF INFORMATION;**

**Citizen’s suits**

Some people suggest that the beginnings of the Indian environmental laws were sown at the United Nations Conference on Environment held in Stockholm, Sweden in 1972. The conference came after wider realization that environmental crisis had reached global proportions and that countries around the world needed to establish a universal framework with which they could protect their global environment. The crisis had reached near global catastrophe and that what was needed was stringent regulations for environmental statutory laws to help the body of common laws which were already being outdone in the name of growth and development. So began the water (Prevention and Control Pollution) Act, 1974 as the real foundation for the environmental protection Act, 1986, followed.
The real focus, as in any other enforcement issue, is the accessibility and transparency of the whole enforcement process as well. Section 19 of the Environment Protection Act, 1986 states that if any person violates any provision of the Act or any orders or directions made there under, such persons can be prosecuted in a criminal court. But this only happen if the authority (in this case the pollution control board) responsible for prosecuting the polluter fails to do so within 60 days of receiving complaint, people can approach the criminal court and have that polluter appropriately punished under Sections 15, 16, or 17 of the Act.

Until the coming of the Environmental protections Act, 1986, the prosecutions under the Indian environmental laws could only be done by the Government. Public Interest Groups or citizens had no statutory remedy against a polluter who discharged effluents beyond legally permissible limits other than those in common laws. But now, under the Section 19 of the EPA, a citizen could now use the law to prosecute any polluter/company but provided that a 60-day notice was given of the intent to prosecute. Based on this provision the Air and Water Acts were amended to fall in line with the above EPA provision. Section 49 of the Water (Prevention and Control of pollution) as amended in 1988 and section 43 of the Air Act as amended in 1987 provided that new window of the citizens enforcement of environmental laws of India other than those of the common law.

Evidently, the Bhopal Gas tragedy compelled the government of India to began thinking about citizen’s empowerment in environmental enforcement issues. Eventually, in 1995, the government of India issued a gazette notification empowering local communities with the right of information regarding hazardous activities surrounding their environment, predominantly from the industries. The rules set in the gazette were in accordance with Section 10 and Section 11 of the EPA, 1986. it was suggested that the four-tier crisis group at the Local, District, State and Central levels comprising of village heads, local NGOs, social workers, media persons, health practitioners, and local administrators would be empowered by the Central Government to “..enter, inspect, and collect suspected industrial samples from their neighborhood factory units, and therefore
respond to all public enquiries on that subject in that particular area. As per the draft notification, the Central Government was going to constitute a central crisis group and set up an alert system within 30 days of notification which will comprise state, district, and local level groups.

Consequently, these provisions did not fully accommodate citizen’s empowerment tools. First, the 60-day prior notice given in the Section 19 of EPA, 1986 gave a polluter enough time to legally get away with the purported environmental crime. Nevertheless, a citizen’s sample was not legally admissible in the court of law. Only a pollution control board was a legal institution to submit an environmental sample in a court of law. In the United States, a citizen has a right to submit an environmental sample under an affidavit and hence have that sample allowed in a court of law. This is not the case with India.

The Right to Know:

The Right to know comes under fundamental Right to speech in the constitution of India as stipulated in Article 21 of the Indian Constitution. In the aspects of Environmental law, this has been recognized by Justice Mathew in 1975 in a ruling on State of Uttar Pradesh vs. Narain and also by Justice Mukherji in 1989 in Reliance Petrochemical Ltd vs. Proprietors’ of Indian Express Newspapers Bombay. However, the right to know has become a costly issue in Indian Environmental Justice movement. For example, to obtain information from a particular polluting unit in question, one has to approach the Pollution Control Board. Being a government’s agency, the PCB is liable to the Indian Evidence Act that prohibits a person from parting with any information passed on to him in his official capacity. Section 123 and 124 of the Act implies that the Court of Law can be denied access to documents if it is the Government’s opinion that the documents relate to affairs of the state or country. Similarly, the amendments made to the commission of Inquiry Act (1962) make it possible for the Government to withhold information if it feels that it is in the state or national interest to do so.
6.13 LEGAL CHALLENGES FACING THE POLLUTION CONTROL BOARDS (PCBS):

In India, the Central Pollution Control Board was established under the provision of the Water (Prevention and Control of Pollution) Act, 1974. This follows the recommendations of the special committee that was set up in 1962 to draw a draft enactment for the prevention of water pollution. CPCB was a response that was sought to curb the pollution of various water resources in the country that was already affecting the quality of potable water and the overall ability of water to sustain rapid level of pollution by development activities.

Any environmental legislation is based on resources and tools for enforcement. Any pollution control authority must require instruments for such regulatory approach. These include a variety of economic incentives; fair, efficient, relevant and updated regulation with accompanying environmental standards and norms; effective guidelines for enforcement and effective public participation. For a long time since 1974, many polluters have disregarded the directions of pollution control boards and violating the conditions of consent with impunity. This is because since from the start, PCBs have not been fully empowered to exercise coercive powers of their own; and most part of this comes from the clash of jurisdiction of powers. The core of contention is the fact that PCBs face hostile legal provisions for penal action against polluters.

Overdependence of the legal system is perhaps one of the major problems engulfing enforcement actions by the PCBs. Unlike several other countries such as the US, UK, Canada and Australia where regulatory agencies have clearly defined mandate to prosecute polluters without approaching the courts of law, in India, PCBs are required to approach the judiciary for this purpose. This often encourage legal wrangling by polluters.

In accordance with the EPA, the PCB must file a case before the lower court for action against a polluting unit and therefore the “onus of proof” is always vested with the PCB. The fact is lower courts are too busy to devote enough time for environment related
litigations, unlike in the case of Supreme Court and Green Benches of Higher Courts. As a result, thousands of legal cases filed by PCBs against polluters are still pending for many years. Nevertheless, in the number of cases where decisions have been reached, polluters have been given benefit of the doubt because of failure of PCBs to satisfy the courts with the “onus of proof”. Polluters also engage in prolonged legal wrangling even after convictions to escape deterrent penalties. They recruit highly paid professional lawyers to plead with their cases whereas the PCBs are disenchanted with the legal procedures. This is why most PCBs would rather go for an arbitrary decision by taking direct action as under Section 33 (A) of the Water (Prevention and Control of Pollution) Act, 1974. This sometimes comes with heavy legal consequences against the PCB.

6.14 CONCLUSION:

The Government as well as Parliament both have taken a number of steps to control the water pollution, but nothing substantial has been achieved. The Water (Prevention and Control of Pollution) Cess Act, which deals with the collection of duty for consumption of water by various authorities. This duty has been said to be not a tax, but pollution duty. Object is to collect the resources for the effective functions of the Boards from the person carrying on the specified industry and by the local authorities. It means, more the pollution, more the collection. As the collection will be assigned to the Boards, the financial dependence of the Board is made upon the collection of duty for pollution. This may create a trend to allow the pollution on payment of cess. Negative impact may come out from the detection of pollution, not the control and abatement of pollution, being the basis of collection of fund.

The Environment (Protection) Act is the umbrella Act dealing with all the components of the environment. The Central Government has been given wide powers to make rules, fix standards of water.

Thus, for the abatement of water pollution, there are sufficient of laws dealing with various matters, sometimes overlapping one another.

From the above accounts of various legal environmental aspects that both pre-Stockholm and post-Stockholm provisions are as much important when mutually taken
into account as they would be if taken separately. There is a need to improve penalties in common law provisions so that they can match up with the impact of environmental crimes. Bar of jurisdiction as laid down in the Water and Air Acts should not be allowed to interfere with the Common law jurisdiction. Justice is a fundamental right of every citizen and so it is important that citizens should be empowered to present legal sample in the court of law. The right to know is a basic pillar for environmental justice and denying a citizen that right is equal to denying the citizen the right to fight pollution crimes. Despite their success, PILs still do not entirely give a citizen the right of claims or compensation. Moreover, in India, many environmental lawyers are classified under the ‘pro bono’.

The most important part in the post-Stockholm statutes is the ability of citizens to pursue environmental justice in various legal gateways one of which involving the inclusion of the Government Agency in fighting the environmental crime. Pollution Control Boards have been clear and visible powers to make sure that the industrial facilities comply with the laws laid down and what enforcement is carried out at maximum efficiency. But, clearly, the only way to carry out environmental enforcements is the active inclusion of ordinary citizens in ensuring that the environmental loss of the land or not flouted.