CHAPTER-V

WATER POLLUTION:
SPECIFIC WATER LEGISLATIONS

It is now universally proved fact that water pollution is not a new phenomenon, but is in existence, from the very beginning of the human race on this planet earth, though, at that time it was not in such challengeable form as it is today. With the progress of civilization the quantity of water pollution started increasing, because earlier there was no system, which could help in preventing the degradation of natural resources. As, India was conquered and ruled by many foreign rulers, therefore, they did not bother to pass any legislation for the protection of water.

At the time of British rule in India, the condition of natural resources was worsened. It was the water pollution, forestry and wild life, which attracted the attention of British rulers. The first enactment of Forest Act, took place in 1865. This facilitated the acquisition of forests by the State, it was enacted, in 1878. Apart from the forest laws, attempts were made during the nineteenth century, to regulate water pollution by enacting various laws the Shore Nuisance Act of 1853, the Oriental Gas Company Act, 1857, the Indian Fisheries Act, 1897 were the relevant legislations under which the relevant provisions for the regulation of water pollution are contained and penalties are also provided in these Acts, for the non-observance of the provisions thereof.\footnote{For detail See Chapter-IV.}

After independence of India, our planners did not pay much attention, towards the solution of destructive condition of environmental sources, as at that time, we were burdened to solve
a number of other problems i.e. social, economic and political. In the year 1968, the Insecticides Act was enacted, to regulate the manufacturing, sale, transportation and use of insecticides in agriculture which pose a formidable threat to the water. At present industry is also great hurdle in the protection and conservation of water resources. This problem is not only of India but whole world, is facing the same.

The pressing environmental problems led to the convening of the United Nations Conference at Stockholm, on the Human Environment in 1972. After this Conference almost every participating country in this Conference, whether developed or developing regulated strict laws in their respective States and are trying their best to protect and maintain the ecology from further destruction. In wake of this Conference, India enacted, the Water (Prevention and Control of Pollution) Act, 1974, after that the Water (Prevention and Control of Pollution) Cess Act, 1977 was passed. In this chapter, the following legislations will be studied:-


A. The Water (Prevention and Control of Pollution) Act, 1974: An Analysis

Water is a State subject, therefore, the Parliament can pass law on water only under article 252 of the Constitution of India.²

² Article 252 of the Constitution provides: If it appears to the legislations of two or more States to be described that any of the matters with respect to which Parliament has no power to make laws for the States except as provided in articles 249 and 250 should be regulated in such States by Parliament by law, and if resolution to that effect are passed by all the houses of the Legislatures of those States. It shall be lawful for Parliament to pass an Act for regulating that matter accordingly, and any act so passed shall apply to such States and to any other State by which it is adopted afterwards by resolution passed in that behalf by the House or, where there are two Houses, by each of the Houses of the Legislature of that State.
In pursuance of clause I of article 252 of the Constitution, resolutions were passed by various States which included, Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal to the effect, that the matters pertaining to the prevention and control of water pollution should be regulated by the Parliament by law, therefore, the Water (Prevention and Control of Pollution) Act, 1974 (hereinafter Water Act) was enacted. It was first amended in the year 1978 and again in the year 1988.

The main objective of the Water Act is following:

i. To provide clean drinking water to the citizens.

ii. The other important pursuits are to make provisions for the prevention and control of water contamination and preserving wholesomeness of water\(^3\).

iii. To tackle this problem to establish the Central and State Boards and conferring such powers and functions on Boards, which would help in eliminating this grave problem.

iv. In case of contravention of provisions of this Act, Boards have power to punish the defaulters.

v. To assess the extent of pollution to establish the Central and the State water testing laboratories.

Section 2, of the Act defines some important terms, which are given here under:

“Occupier”, means in connection to any factory or premises, such person who has control over the affairs of factory or the

\(^3\) A.P. Pollution Control Board (III) v. M.V Nayudu, (2001) 2 SCC 79.
premises, it also includes in relation to any substance, such person who holds such substance. “Outlet” includes any pipe or other channel whether open from either side or closed which carries sewage or trade effluents and other refuse, which amounts to pollution. “Pollution” means, when water loses its purity and adulterated to such an extent that it loses its physical, chemical, biological form. It may be for any reason, e.g. due to discharge of sewage waste or other liquid or solid materials of various industries whether directly or indirectly. This may leave bad effects on the health of general masses, fauna and flora.

Section 2 (g) defines, “Sewage Effluent”. It means effluents discharged from any sewerage system or sewage disposal works and includes sullage from open drains. Section 2 (gg) defines, ‘Sewer’. It means conduit pipe or channel which is opened or closed and carries sewage or trade effluents. “Stream” is defined under section 2 (j). It includes river, watercourse (whether flowing or for the time being dry), inland water (whether natural or artificial), subterranean waters, 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. In *Punjab State Board For the Prevention and Control of Water Pollution v. Raja Ram Corn Products (Punjab) Pvt. Ltd.*, in this case it was held that when the trade effluents are discharged on ground, it will be either mixed with the subterranean or shall go to some stream or river. Even if the river is stagnant, the trade effluents which are discharged into it, will be mixed with

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4 Section 2 (d), *Water (Prevention and Control of Pollution) Act, 1974.*  
5 Section 2 (dd).  
6 Section 2 (e).  
7 (1990-1) 97 PLR 61.
subterranean water. Therefore, the subterranean water is also included in the definition of stream.

“Trade Effluent” includes, the waste discharge by commercial activities. It may be in the form of liquid, solid or gas. But domestic wastes are not covered under this definition.8

(a) The Central, State and Joint Boards for the Prevention and Control of Water Pollution

The prime features of the Act, are the establishment of the Central Board for the prevention and the control of water pollution and the creation of State Boards. There is also provision for the establishment of Joint Boards for two or more States. Composition of the Central and the State Boards are given under part II of the Act, while constitution of the Joint Boards are mentioned under part III of the Act.

(b) Constitution of Central Board

The Central Government constitutes one Central Board which will be called the Central Board for the Prevention and Control of Water Pollution. The Board will exercise the powers conferred on it for the performance of the functions assigned to it under the Act. It shall be composed of following members:

i. One Chairman, who should be well conversant in environment relating matters, and will be appointed by the Central Government. He should have special knowledge and practical experience relating to environmental protection. A person having knowledge and experience in administering institution dealing with matters related to environment protection is also eligible to be appointed as the Chairman.

8 Section 2 (k).
ii. Five officials would be nominated from State Boards out of which two will belong to local authorities functioning within the State.

iii. Not more than five officials to be nominated by the Central Government to represent the Central Government.

iv. Three non officials, who would represent interests of agriculture, fishery, industry or trade by the Central Government.

v. Two persons to be nominated by the Central Government who would represent company, corporation owned or controlled by the Central Government.

vi. There will be one Secretary who will have knowledge of scientific, engineering or management aspects of pollution and will be appointed by the Central Government.9

Section 3 (3) provides that the Central Board shall be considered as a body corporate having perpetual succession with the power to acquire, hold and dispose of property. It can also enter in contract with any person. It can be sued or sue in the name of Central Government.

(c) Constitution of State Boards

The constitution of State Boards are defined under section 4. The State Board is constituted by the State Government and it is known as the State Pollution Control Board. The State Board shall consist of following members:

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9 Section 3.
i. There shall be one full time Chairman, who will be nominated by the State Government. The person to be appointed as Chairman, should have a special knowledge or practical experience in respect of matters relating to environment protection. Besides this a person having knowledge and experience in administering institutions relating to environment protection is also eligible for the post of Chairman. It is on the discretion of the State Government either to appoint full time Chairman or part time.

ii. The State Government can appoint upto five official in the State Board, who will represent the State Government.

iii. Five members are appointed by the State Government from the local authorities functioning within the State.

iv. The State Government has discretion to nominate three non-officials, who will represent the interests of agriculture, fisheries, industry or trade etc., which in the opinion of the State Government ought to be represented.

v. Two persons to be nominated by the State Government to represent companies, corporations which are owned or controlled by the State Government.

vi. The State Government will nominate one full time Member Secretary. He should have qualifications, knowledge and experience of scientific, engineering and management aspects of pollution control.

For the constitution of Board, it is necessary that it should consist of all the members. If there would be any vacancy in the Board then its constitution would not be valid. The similar view was expressed by the Bombay High Court in *H.C. Kathiwalla v.*
In this case the High Court held, that Central Board is a corporate body, therefore, all the components mentioned under section 4(2) of the Water Act, 1974 should be taken together, and any single component can not constitute a Board.

Every State Board shall be considered as a body corporate having perpetual succession with the power to acquire, hold and dispose of property. It can also enter into contract with any other person or party. It can sue or be sued in the name of State Board.11

(d) Pollution Control Board for Union Territories

There is no provision of State Board in the Water (Prevention and Control of Pollution) Act, 1974 for a Union Territory. In relation to a Union Territory, the Central Board shall exercise the powers and perform the functions of a State Board for Union Territory. The Central Board, in relation to any Union Territory, may also delegate any of its functions to such a person or body of persons as the Central Government specify.12

(e) Terms and Conditions of Service of Members

Members of the Board, other than the Member Secretary hold office for a term of three years from the date of their nomination. However, a member shall notwithstanding the expiration of his term, continue to hold his office until his successor enters upon his office. The term of office of the member of a Board nominated in official capacity comes to an end as soon as he ceases to hold the office by virtue of which he was nominated under the Central Government or State Government or

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11 Section 4 (3).
12 Section 4 (4).
as the case may be, the company or corporation owned, controlled
or managed by such government.\textsuperscript{13}

The Central Government or the State Government may
remove any member of a Board before the expiry of his term of
office, after giving him reasonable opportunity of hearing. A
member of a Board, other than a Member Secretary, may at any
time resign from his office. In case of Chairman, the resignation
shall be submitted to the Central Government or the State
Government, as the case may be. In any other case the
resignation is to be submitted to the Chairman of the Board. After
resignation the seat of such Member/Chairman becomes vacant.
A member of a Board, other than Member Secretary shall be
deemed to have vacated his seat if he remains absent for three
consecutive meetings of the Board without sufficient reasons. A
casual vacancy in the Board shall be filled by a fresh nomination.
The person nominated to fill the vacancy shall hold office only for
the remainder of the term for which the member in whose place
he was nominated. A member of the Board shall be eligible for re-
nomination.\textsuperscript{14}

However, no act or proceeding of a Board or any Committee
thereof shall be called in question merely on the ground of the
existence of any vacancy or any defect in the constitution of the
Board or the Committee as the case may be.\textsuperscript{15} However, it is
submitted that for the control of water pollution it is necessary
that the Board meetings should be attended by all the members
as they are expert in different areas i.e. agriculture, industry etc.
which also poses threat to the water resources, therefore, in

\textsuperscript{13} Section 5.
\textsuperscript{14} Ibid.
\textsuperscript{15} Section 11.
Board meetings they can give their suggestions regarding how to save our water resources from these pollution creating elements.

In *State of Manipur v. Chandam Manihar Singh*, the Apex Court held that under section 5 of the Water Act, the term of office of a member of Board, which would also 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 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 member in whose place he was nominated was to hold the office.

(f) **Disqualifications for Membership of the Board**

Following persons are disqualified for the membership of the Board, under the Water Act, 1974:

i. An insolvent person,

ii. a person declared to be of unsound mind by a competent Court,

iii. if a person is convicted for an offence involving moral turpitude,

iv. a person who is convicted for an offence under the Water Act, 1974,

v. any person having 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,

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16 (1997) 7 SCC 503.
17 Section 6.
vi. Director, 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,

vii. a person who abuses position as a member of the Board which become detrimental to the interest of the general public.

However, before passing the order of removal the concerned member has to be given reasonable opportunity of showing cause for such action. A member who has been removed under section 6 shall not be eligible for re-nomination as a member of the Board and his seat shall become vacant.18

The above discussed provision of the Water Act, which imposes restrictions on the membership of people who deals with business relating to such material which treats causes of water pollution is appreciable because these people while passing any law for the control of water pollution would be influenced by their self interests and would not be able to put any restriction on that material which is not adequate to control water pollution. By putting such restriction on these vested interests the Act has tried its best to control and maintain the purity of water.

(g) Meetings of Boards and Constitution of Committees

Pollution Control Board is required to meet at least every three months. However, if business of urgent nature to be transacted, the Chairman can convene the meetings of the Board at any time.19 The Board has also power to constitute Committee of the members who will meet from time to time. Such

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18 Sections 6 (3) and 7.
19 Section 8.
Committees may consist of partly members and other persons or wholly members or only other persons.\textsuperscript{20}

The Pollution Control Board has power to associate any person with the Board, whose assistance or advice would be beneficial for the Board in performing any of its functions under the Water Act, 1974. Such persons shall have a right to take part in the discussions of the Board, however, they will have no right to vote at a meeting of the Board and such member shall not be a member for any other purpose.\textsuperscript{21}

By the above discussed provision it is clear that the Act was passed with an object to control the water pollution by adopting any measures, that is why the outsiders are also included in the members of Boards and they can also participate in the meetings of the Boards on the issues relating to control water pollution. If such people are aware how to control water pollution than the Board can add their suggestion in its books relating to control of water pollution and implement them property to maintain and protect the quality of water.

The Water (Prevention and Control of Pollution) Act, 1974 was amended in the year 1978 and section 11-A was inserted in the Act. It provides that the Chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may be delegated to him by the Pollution Control Board from time to time.

The terms and conditions of service of the Member Secretary shall be such as may be prescribed in the Water Act, 1974. He shall exercise such powers and perform such duties as may be prescribed or delegated to him by the Board or its

\begin{footnotesize}
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\item[20] Section 9.
\item[21] Section 10.
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Chairman. The Board may appoint such officers and employees, as it considers necessary for the efficient performance of its functions. Their method of recruitment and the terms and conditions of service shall be such as may be determined by regulations made by the Board. However, these regulations are required to be approved by the Central Government or the State Government as the case may be. The Board may delegate to any officer of the Board such powers and functions under this Act as it may deem necessary. The Board may also appoint any qualified person to be a consulting engineer to the Board.22

(h) Constitution of Joint Boards

Two or more than two State Governments have right to enter into an agreement for the constitution of Joint Boards for their respective States. Similarly Central Government can constitute Joint Boards for two or more Union Territories. However, the participating States have right to proportionate their respective shares in the Joint Boards.23

An agreement under this section may:

i. provide for appointment of any person to calculate the expenditure in connection with the Joint Board,

ii. to determine, which participating governments shall exercise and perform the several powers and functions under this Act,

iii. to provide for the constitution with reference to particular matters arising under this Act,

iv. to make such incidental and such ancillary provisions, not inconsistent with this Act, as may be deemed

22 Section 12.
23 Section 13.
necessary or expedient for giving effect to the agreement.\textsuperscript{24}

Agreement under this section is required to be published in the official gazette of the participating States and participating Union Territories as the case may be.\textsuperscript{25}

\textbf{(i) Composition of the Joint Boards}

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

i. The Central Government will nominate one full time Chairman. The person to be appointed as the Chairman of the Board should have special knowledge or practical experience relating to environmental protection. A person having knowledge and experience in administering institutions dealing with environmental protection is also eligible.

ii. Two officials from each of the participating States to be nominated by the concerned participating State Government to represent that government.

iii. One person to be nominated by each of the participating State Governments to represent local authorities functioning within the State concerned.

iv. Each participating State Governments will nominate one non-official member, who will represent the interests of concerned State in agriculture, fishery, industry, or trade.

\textsuperscript{24} Ibid.
\textsuperscript{25} Ibid.

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v. The Central Government nominates two persons, who will represent the companies or corporations owned, controlled or managed by participating State Governments.

vi. The Central Government will also appoint one full time Member Secretary. He must have knowledge and experience of scientific, engineering or management aspects of pollution control.

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 State Governments adjoining to such Union Territories, shall consist of following members.\textsuperscript{26}

(i) The Central Government shall appoint one full time Chairman. He should have special knowledge or practical experience relating to environmental protection. Besides this a person having knowledge and experience in administering institutions dealing with environment protection is also eligible.

(ii) Two officials are nominated by the Central Government from the participating Union Territories and two officials to be nominated from the participating States.

(iii) One person to be nominated by the Central Government representing the local authority functioning within the participating Union Territory and one person to be nominated by the State Government representing the local authority functioning within that participating State.

\textsuperscript{26} Section 14 (2).
(iv) The Central Government will nominate one non-official member and one person would be nominated by participating State Government, who will represent the interests of agriculture, fishery, industry or trade of Union Territory or the State as the case may be.

(v) Two persons will be nominated by the Central Government, who will represent the companies or corporations owned, controlled or managed by the Central Government and situated in the Union Territory, besides this, two more persons to be nominated by the Central Government, who will represent the companies or corporations owned, controlled or managed by the participating State Governments.

(vi) The Central Government will nominate one full time Member Secretary. The person to be appointed as Member Secretary should possess qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

When a Joint Board is constituted by entering into an agreement by the Central Government in respect of one or more Union Territories and one or more Governments of the adjoining States, then the Central Board shall cease to exercise the powers and to perform functions of a State Board for that Union Territory.

By including private persons in the Board who have special knowledge in the field of agriculture, fishery, industry etc. the

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27 Section 14 (3).
Board has tried to solve problem of water pollution to some extent because water is polluted mainly due to industry agriculture etc. Therefore, when the participants are well versed about the effects of industry, agriculture etc., on water resources if pesticides are used non judiciously and industry is established without proper implementation of the provisions of the Water Act, then they can give suggestions regarding how to use pesticides etc. judiciously, so that it may not leave negative effects on water resources.

(j) **Powers and Functions of Boards**

The powers and functions of the Boards are given under chapter IV of the Act. Which are being discussed here under.

(k) **Functions of the Central Board**

The functions of Central Board are defined under section 16 of the Water Act, 1974. The prime function of the Central Boards is to promote cleanliness of streams and wells in different areas of the States. Besides it, Board advice the Central Government on matters relating to prevention and control of pollution and to maintain co-operation amongst the States on the issues relating to control of water pollution. It may also perform all or any of the following functions:

(i) It provides technical assistance and guidance to State Boards and sponsor investigation and research relating to water pollution.

(ii) It advises the Central Government on matters concerning prevention and control of water pollution.

(iii) To co-ordinate the activities of the State Boards and to resolve disputes among themselves.
(iv) To plan and organize the training of persons engaged in prevention, control or abatement of water pollution.

(v) It organizes through mass media a comprehensive programme regarding 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) It collects, compiles and publishes technical and statistical data relating to water pollution.

(viii) It lays down the standards for a stream or well.

(ix) To plan and organise nation wide programme for the prevention and control of water pollution.

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

(xi) It also establishes or recognizes laboratories for analysis of water samples of any sewage or trade effluent.

(e) Functions of the State Boards

The State Board has the following functions:-

(i) Planning a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution there of;

(ii) to advice the State Government on any matter concerning the prevention, control or abatement of water pollution;

(iii) to collect and disseminate information relating to water pollution and the prevention, control or abatement there of;
(iv) encourage to conduct and participate in the investigations and research relating problems of water pollution and prevention, control or abatement of water pollution;

(v) collaboration with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relation thereto;

(vi) to inspect sewage or trade effluents work and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage of trade effluents or in connection with the grant of any consent as required by this Act;

(vii) laying down, modifying or annuling effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-state stream) resulting from the discharge of effluents and to classify waters of the State;

(viii) evolving economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
(ix) evolving methods of utilization of sewage and suitable trade effluents in agriculture;

(x) evolving efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(xi) lays down standards for the treatment of sewage and trade effluents which are discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and also take into consideration the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(xii) it can make, vary or revoke any order which is laid down in the Act, for the prevention, control or abatement of waste into streams or wells.

(xiii) lays down effluents standards to be complied with by persons, who discharge sewage or sullage or both.

xiv) advise the State Government regarding location of any industry, which can pollute any river or well;

(xv) it can also establish laboratories for the analysis of water samples.28

In M.C. Mehta v Union of India29, the brief facts of this case were that the tanneries at Jajmau, Kanpur were discharging their trade effluents in river Ganga, which polluted river’s water. The Court directed all the tanneries which were polluting holy river Ganga to install primary treatment plants, but these tanneries failed to comply with the orders of the Court and took the plea

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28 Section 17.
29 AIR 1988 SC 1037.
that it is extra financial burden on them, which they can not afford. The Court rejected their plea and held if they can not afford primary treatment plants, they should stop working.

In *D.K. Joshi v. Chief Secretary, State of U.P.*, the Court rejected their plea and held if they can not afford primary treatment plants, they should stop working.

In *D.K. Joshi v. Chief Secretary, State of U.P.*, a public interest litigation was filed by the petitioner under article 32 of the Constitution for the prevention and control of water pollution of Agra and to ensure safe drinking water for its inhabitants. The Apex Court directed the State to set up monitoring committee to oversee functioning of Government Agencies, which would be responsible for the prevention of the water pollution.

*State of M.P v Kedia leather and liquor Ltd.*, the brief facts, of this case were that some liquor industries were causing water pollution to the water resources of the State, but the M.P State Pollution Control Board did not bother even to inspect the industries which were discharging pollutants in the water resources of the State in contravention of the provisions of the Water (Prevention and Control of Pollution) Act, 1974.

The Apex Court deprecated the negligence shown by the State Pollution Control Board in discharging its statutory functions. The court held that the Board is expected to discharge its functions without directions being issued by the Court in that regard. It was observed by the Apex Court that no purpose would be served in maintaining such a Statutory Board. Therefore, the court issued the directions to the Chief Secretary of Madhya Pradesh and the Chairman of the State Board to identify and take appropriate action against the officers of the Board, who were responsible for the failure.

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30 (1999)9 SCC 578.
32 Ibid.
This is common practice in India, that dairies usually discharge their waste either through sewage or in open grounds, which causes pollution to water resources including ground water. Therefore, for the control of water pollution these diaries should be established at such places where it cannot pose any threat to our water resources. The similar view was expressed by the Apex Court in Ramji Patel v Nagrik Upbhokta Marg Darshak Manch. The brief facts of this case were that the respondent/petitioner moved a public interest litigation, accusing the dairy owners that they stored animals dung and other wastes of dairy products near the main drinking water pipeline, which polluted the pure water of the area.

The High Court directed the owners of these diaries to shift these dairies to some other place. Against this order of the High Court the respondent filed Special Leave Petition before the Apex Court. The Court issued directions to the Central Pollution Control Board to submit a project report, so as to stop altogether the contamination of water through pipeline.

(m) Powers to give directions

The Central Board will be bound by such directions as given to it in writing by the Central Government. On the other hand, the State Boards are bound by the directions given in writing to it by the Central and the State Government and in case the directions given by the State Government are inconsistent with the directions given by the Central Government then the instructions given by the Central Government will prevail over the former. If the State Board is empowered to recover any expenses from any person in the performance of its functions, which are

34 Section 18.
performed by the Central Board under the directions of the Central Government then the Central Board may recover the said expenses with interest from the person concerned as arrears of land revenue or of public demand.35

For the prevention and control of water pollution the Act, has conferred certain powers on the Boards, which are contained under chapter V of the Act. These powers are following:

(i) Power of the State Government to Restrict the Application of the Act to Certain Areas:

Section 19 deals with the power of State Governments for restricting the application of the Act, to certain areas if the State Government, after consultation with the State Board is of the opinion that the provisions of this Act, need not to be applied to the entire State. Then it may, by notification restrict the application of the provisions of the Act to certain areas of the State. The State Government can also alter or define a new water pollution, prevention and control area. Thus, the upper hand in the matter lies with the State Government.

However, there is no power with the State to grant exemption to any particular industry in an area which is prohibited for the location of industry which is causing pollution of water.36 In M.C. Mehta v. Union of India,37 the Apex Court held, that whenever applications for licenses to establish new industries are made such application shall be refused, if the industry has not disclosed about the adequate provision which it has made for the treatment of trade effluents flowing out of the factories which are responsible for the pollution of water.

35 Ibid.
37 AIR 1988 SC 1127.
(ii) Power to Obtain Information

The State Board has power to question any person if he establishes, constructs or installs any industrial unit. It has also power to collect data of any river regarding its flow or to know, whether any sewage waste is discharged into it and how much pollution is added to the river by such waste. The State Board or any of its authorised officer may make surveys, gauge and keep records of flow or volume and other characteristics of streams or wells and obtain any information regarding them.

Hence, by obtaining such information about the water resources the Pollution Control Boards can take relevant steps for the abatement of menace of water pollution, if water of any water resources found to be of deteriorate quality, than the Board can also punish the persons whom it found responsible for the pollution of water.

(iii) Power to take Samples of Effluents and Procedure to be followed

According to section 21 of the Act, the State Board has power to take samples of water from any river, well or other water resources or samples of any sewage or trade effluent for the purpose of analysis. The result of the analysis of such sample is admissible in evidence if it gets information regarding discharge of any trade effluent by any industry. It is mandatory on the State Board to issue notice on such industry regarding taking of such sample. If it wants to use that sample before any competent court, then it is mandatory on the Board to serve notice to that industry at the spot regarding taking of samples and that sample must be divided into two parts and it should be placed into separate

38 Section 20.
39 Ibid.
containers in the presence of the owner of the industry. It is mandatory to mark and seal the containers. Afterwards, these samples should be sent to the laboratories. It is mandatory on the Board while collecting effluent samples from any company to strictly comply with the provisions of the Water Act, 1974.

If there is any contravention of these provisions than the Board would not be able to prove those samples. The similar view was expressed by the Court in Delhi Bottling Co. Pvt. Ltd. v. Central Board for the Prevention and Control of Pollution.\textsuperscript{40} The brief facts of this case were that the Board took samples of trade effluents discharged by a bottling company in a river. After analysis of those samples, Board found that the discharge of the effluents was in excess from permissible limit. The Board filed a suit against the bottling company and got injunctions against the company. The company challenged this order of the Court on the ground that, when sample was taken by the Board the company had requested the Board to get it analysed from Delhi administration’s laboratory, but the Board did not comply with the request of the company, which was violation of section 21 of the Act, therefore, it cannot be taken into evidence. The Court held, that company was not liable, because the State Board failed to prove the allegations against the company.

However, if the occupier or his agent willfully absent himself while the sample is being collected than sample shall be sent to the laboratory by the person who collected the sample and he shall inform about the willful absence of the occupier or agent to the government analyst. The cost of the analysis of the sample shall be borne by the occupier himself or his agent.\textsuperscript{41}

\textsuperscript{40} AIR 1986 Delhi 152.
\textsuperscript{41} Section 21 (4).
When sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognized by the Central or State Board or to the laboratory established by the Central or the State Government, the concerned analyst in the said laboratory shall analyse the sample and submit the report.

The analyst is bound to collect three copies of the report of the sample from the laboratory. The analyst is bound to send one sample to the occupier, one to the concerned Board and third one is kept by the analyst himself, which he has to produce in the Court.

(iv) Power of Entry and Inspection

In order to ensure that the provisions of the Water Act, 1974 are complied with, the Act confers the power of entry and inspection on the State Boards. The State Board has authority to appoint any person to enter any place on behalf of the Board for the following purposes:

(a) To performing any functions, which are entrusted to him by the Board;

(b) to search the premises, of any industry to check whether the provisions of the Water Act, are being complied or not;

(c) during the examination of any plant, record or register etc. if he finds out that any offence is being committed in the premises, he has power to seize any register record etc. for the evidence of the offence to punish the culprit under the Act;

(d) for determining whether the functions of the Board given under the Water Act, are being performed properly or not
or whether any notice, order or direction is issued under the Act to any person or not and if it is issued whether it is complied with or not.42

(h) **Restriction on Use of Water Resources for Disposal of Polluting Matters**

Section 24 prohibits general masses from discharging any polluting or poisonous matter into any river or other water resources. No person shall be allowed to commit such offence either directly or indirectly. There is one exception to this rule, if any person is engaged in construction work of any dam, bridge etc. on the banks of some river and due to that if some waste enters into the river, then he would not be liable.

The Act further provides that no person:

(i) shall knowingly cause or permit any poisonous, noxious or polluting matter to enter into any stream, well, sewer or land,

(ii) shall knowingly cause or permit to enter into any stream, any other matter which directly or in combination with other similar matter, may tend to impede the proper flow of water of the stream and which may aggravate the pollution substantially.

However, there are following exceptions to this rule43:

a. If a person has right to construct, improve or maintain on the banks or bed of any river, any building, bridge, weir, dam, dock, drain, sewer or any other work.

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42 Section 23.
43 Section 24.
If there is any deposition of material on the bank of river or on the bed of any stream for the purposes of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream, however, such materials are not capable of polluting such stream.

c. If the water of stream is polluted due to 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.

d. Causing or permitting the deposit accumulated in a well, pond or reservoir to enter into any stream with the consent of the State Board.

From this provision it is clear that stagnant water also degrades quality of water, therefore, to maintain and protect the quality of water, it should not let to be accumulated for long.

In case any industry etc. is not directly discharging its trade effluents in open grounds but indirectly than also the Court can take strict action against such industry. The similar view was expressed by the Court in *Sir Shadi Lal Enterprises v. CJM, Sahampur.*44 The brief facts of this case were that the petitioner factory was discharging its effluents in lagoons without proper arrangement of trade effluents due to that the water was getting polluted because the trade effluents which were being discharged into lagoons without proper layering. These trade effluents usually seeped into ground after sometime and were degrading the groundwater of the area.

44 All L.J 1989 at 7.
The Court held, that the petitioner should ensure the Court that these lagoons have proper polythene layering, without that and without installing treatment plant the factory was not entitled to discharge any effluents even in lagoons and till then the factory would stop working.

No person can without the previous consent from the State Board, bring into use any new or altered outlet, stream or well for the discharge of sewage or trade effluent. Before discharge of these effluents, he will have to move an application to the State Board for its consent. The application for the consent of State Board shall be made in prescribed form and shall contain particulars regarding the proposed construction, installation or operation of the industrial or commercial establishment or any treatment and disposal system, any extension, addition thereto and such other particulars as may be prescribed. After the receipt of the application the State Board may initiate such inquiry against the applicant as it may deem fit. Consent of Board which is mandatory for the establishment of new industry, if it is neither given nor refused and four months have expired, when such application was made, then it would be presumed that consent is given unconditionally.45

Every Board shall maintain a register containing particulars of conditions imposed under this section. 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 conditions.46

45 Section 25.
46 Ibid.
In *Narula Dyeing & Printing Works v. Union of India*,\(^4\) the brief facts of this case were that Narula Dying was discharging untreated effluents into the Kharicut canal for over a decade. This Dying industry got consent from the Board to discharge its trade effluents into canal. The Board granted it consent subject to condition that the industry would set-up a treatment plant within six months from the consent of the Board but the Dying industry failed to do so even after 12 years from the consent.

The court held that a mere consent order issued by the State Board under section 25 (2) did not entitle the applicant to discharge trade effluents into stream and it is incumbent upon the applicant to comply with the conditions mentioned in the consent order. The Court further held that failure by the industry to comply with the requirement of putting up effluent treatment plant resulted in the lapse of the consent.

Before establishing any industry, it is necessary to obtain consent from the State Pollution Control Board, because it is duty of State Board to check, whether a particular industry which is going to be established has made proper arrangements for the discharge of its trade effluents or not and the Board will provide consent to an industry if it is satisfied that it would not pose any threat to the water resources. The similar views were expressed by the Apex Court in *A.P. Pollution Control Board (III) v. M.V. Nayudu*.\(^5\) In this case the Supreme Court held that section 25 of the Water Act, extends not only to an established industry, but also to the establishment of new industry for taking of steps for that process.

\(^4\) AIR 1995 Guj. 185.
The Court further held that, before the consent of Pollution Control Board is obtained, neither the industry can be established nor any steps can be taken to establish it. It was further held that an industry cannot be established only by taking consent from Gram Panchyat for its plans nor the collector’s approval for the conversion of land use because for the establishment of industry only consent of the Water Act, is necessary.

In *S. Jagan Nath v. Union of India*\(^49\), it was held by the Court, before establishing any new industry, it is mandatory for the person who wants to establish the industry to take prior permission from the Board for it’s establishment, without obtaining permission from the Board no industry can be set up.

If Board after receiving the application from a person who wants to discharge trade effluents in some water resource, comes to know regarding its harmful effect on the water body, While applicant’s application is pending before the Court, Board can reject his application. The similar view was expressed by the Court in *Vijaynagar Educational Trust v. K.S.P.C. Board Bangalore*.\(^50\) The brief facts of this case were that the petitioners wanted to construct medical college and hospital, they moved application to the State Board for it’s prior consent but the Board neither granted nor refused the consent. A news item was published in a newspaper that this proposed hospital is on the bank of a river therefore, it would pollute the river. Then public interest litigation was filed, when the Board refused the consent to the petitioner. It was challenged in present case on the ground that denial of consent by Board was improper, the Court held, that the Board should invoke the proviso 25 (5) of the Act and

\(^{49}\) AIR 1997 SC 811.  
\(^{50}\) AIR 2002 Kant. 123.
after serving notice to such industry, the Board can put conditions on such industry, plant etc.

Section 27 of the Act provides, that the State Board can refuse its consent for establishment of any new industry, operation or process, if the industry etc. is already established, but does not comply with the conditions imposed by the Board, then the Board can withdraw consent from such industry. Where the consent to any industry etc. is either refused or withdrawn by the State Board, the aggrieved party can prefer an appeal within thirty days from such order to such authority as prescribed by the State Government. However, thirty days period can be relaxed, if the party shows some sufficient cause which restrained it from filling the appeal. But if authority finds that conditions are unreasonable, it can either annul or vary such conditions.\(^{51}\)

In *A.P. Pollution Control Board v. Parmar Devusinh Shersinh*,\(^{52}\) the Apex Court opined, that in all the States and Union-Territories, the Appellate Authority should be established and it should consist of a sitting or retired judge of the High Court and a scientist of high ranking, with an experience to handle environment related matters.

The State has also right to file revision, if it is not satisfied with the order of the State Board or the Appellate Authority. The State Government can call for the records of the cases decided by the State Boards under sections 25, 26 and 27 of the Act, either of it’s own motion or on application made to it, by any person after going through it, the Court can alter the decisions of Board. But before disposing of the application, it gives reasonable

\(^{51}\) Section 28.  
\(^{52}\) (1999) 2 SCC 738.
opportunity of being heard to the concerned parties. This is known as revision.53

The Act imposes a duty on the owners of such industries, from where due to some accident etc some waste is being discharged into some river etc., then it is duty of the owner of such premises to inform the State Board regarding such discharge.54 However, if the State Board comes to know from any source that any river or other water source is getting polluted due to presence of some poisonous, noxious or other substance, which is entered into such water source due to accident or other wise in that eventuality, the Board has responsibility to clean such water source immediately. If pollution is caused by some particular person, then it can issue instructions to such person to immediately stop all the activities which are causing pollution to water resources.55

Therefore, for the control of water pollution it is necessary to clean the water resources immediately, after it gets polluted, so that it may not take into its grip other water resources, because water pollution cannot be localised. The Board has power to make application to a Court not inferior to the Magistrate 1st class to restrain a person, who is likely to cause pollution to the water sources. If Court passes order to restrain any person from contaminating water resources or to discontinue his practice of contaminating water resources the Court can also issue instructions to such person regarding not to cause pollution to any water source. If the accused fails to comply with the directions of the court then the court can authorize the State Board to remove these pollutants, and the Board can get

53 Section 29.
54 Section 31.
55 Section 32.
reimbursed its expenses of removal of pollutants from the defaulter.\textsuperscript{56} In \textit{Indore Malwa United Mills v. Madhya Pradesh Niwaran Mandal},\textsuperscript{57} the court held that when complaint is filed against any industry under section 33 of the Water (Prevention and Control of Pollution) Act, 1974 on the allegation that it is discharging effluents into some water of the resources, due to which water of that resource is getting polluted, on that complaint if the CJM has enough evidence, which shows that, the industry is responsible for polluting water, then it does not make any difference whether the name of that industry which was polluting the river is listed in the category of polluted industry or not. The Court can give directions to the accused in its interlocutory order regarding stoppage of pollution into the river.

In \textit{Maharaja Shri Umaid Mills Limited Pali v. State of Rajasthan},\textsuperscript{58} the Court took very strong action against the mill which failed to appear before the Court for violation of the provision of section 23 of the Water Act, 1974. The Court held that when application under Water (Prevention and Control of Pollution) Act, 1974 is dismissed for non-appearance of the party, then the Magistrate can not review his order, because proceedings under section 33 of the Water Act are criminal in nature, and there is no provision of review under Criminal Procedure Code.

The Central Government has authority to confer certain powers on Boards, which Boards can exercise against any industry which causes pollution to the water sources. These powers include order for the closure, regulation or prohibition on the operation of industry which poses threat to water resources.

\begin{footnotesize}
\begin{enumerate}
\item Section 33.
\item Cr. L.R. (1986) at 150.
\item AIR 1998 Raj. 9.
\end{enumerate}
\end{footnotesize}
The Board can take more stringent action against the erring industrial units by stopping supply of electricity and water.59

If any industry fails to comply with the directions issued by the Board to it for contaminating any water resource, than Board has power to stop work of that industry. The Apex Court also expressed the similar opinion, in *Re: Bhavani River Sakthi Sugars Ltd.*60 The brief facts of this case were that the complaint was regarding the seepage of effluents from the unlined lagoons. Where these effluents were stored, it joined the drain and ultimately reached river Bhavani, and polluted the river. Despite complaints against the seepage of trade effluents into river the respondents failed to arrest the pollutants and in this way pollution of river continued. It posed great threat to the health of people. The Court gave enough time to the industry to take the remedial steps. When the industry failed to comply with the directions of the court. The Court directed closure of the industry.

However, it is submitted, that when the Water Act, 1974 was enacted, it was for the control of pollution of water and to maintain the quality of water. However, before the enactment of Environment (Protection) Act, 1986, there was no stringent punishment for the contravention of provisions of the Water Act. Section 25 was inserted in Act only in 1986. For the control of water pollution it is necessary to make the punishment stringent for the contravention of the provisions of the Water Act and make it at per with the Environment (Protection) Act.

(o) Penalties and Procedures

Chapter VII of the Act, prescribes different penalties for those persons who violate the provisions of the Water Act.

59 Section 33-A.
60 AIR 1998 SC 2059.
When any person or industry etc. fails to comply with the directions mentioned under section 20 of the Act, then the defaulter would be punished with fine upto Rs. 10,000/-, however, if the breach continues, then extra fine of Rs. 5000/- would also be slapped on the defaulter which he will have to pay daily. Section 42 of the Act, provides, that if any person intentionally destroys or defaces property belonging to the Board or restrains any person from carrying on directions given by the Board to him, or does not provide information to any of the member of the Board, which he is duty bound to give and gives some false information then he would be punished either with imprisonment for 3 months or fine which may extend upto Rs. 10,000/- or both. It further provides that where consent is provided in pursuance of the provisions of sections 25 or 26 of the Act, regarding the use of a meter or gauge, if any person knowingly or willfully alters such device he shall be punished with imprisonment for a term which may extend to three months or with fine which may extend to Rs. 10,000/- or both.

Section 45 of the Act, provides for taking into account, the previous conviction of the offender for the contravention of sections 24 to 26 of the Act. If the previous offender commits the same offence second time, then his punishment would be enhanced. But for the application of this principle, it is necessary that the previous conviction should not be more than 2 years, before the commission of the offence, which is subject to punishment.

When a person is convicted under this Act, for the contravention of it’s provisions, if he commits the same offence, second time, then the Court before, which the case is listed, has

61 Section 41.
power to publish his name and address in such newspaper at the expense of the offender which is leading one in the area, at the expenses of the offender.62

Once defaulter's name is published in the newspaper, he would not be able to commit the same offence again because the defaulter himself will have to bear all the expenses of such publication and will have also to pay fine. He will also face problem in future if he wants to establish any new industry, because then he would not be able to obtain consent of the Pollution Control Board easily, due to his previous conduct.

According to section 47 of the Act, when the offence under the Water Act, is committed by a company, then the members who at the time when the offence was being committed incharge of the company, would be liable. It will not make any difference whether he actually committed the offence himself or it was committed by some other employee. If person succeeds in proving that the offence was committed without his consent, then such member would not be liable. However, if it is proved, that offence was committed with the connivance of some director etc. of that company then he would also be liable. Hence, this section has incorporated the principle of vicarious liability.

_U.P. Pollution Control Board v. Mohan Meakins Ltd,_63 the brief facts of this case were that the complaint was filed against the respondent a liquor company for discharging pollutants into river Gomati. It was alleged that the Directors and Managers of the company were also responsible for the contamination of water of river. The Supreme Court accepted the plea and held that all the

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62 Section 46.
Directors and Managers of the company liable under section 47 of the Water Act.

However, it is necessary to protect the Head of the Department from any liability under the Act, if he had been acting with due diligence and there has not been any negligence on his part when offence was committed. Accordingly, it is specifically provided under the Act, that if the Head of the department, proves that the offence was committed without his knowledge and when he came to know about the offence which was committed in his department in contravention of provisions of the Water Act, he tried his best to stop it but due to unavoidable circumstances he failed to do so.

Section 48 of the Act provides, that the head of the Department of the Government cannot be held guilty of the offence if the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. If the complaint is filed by the Board and there is transgression of the provisions of the Water Act, the court will take the cognizance of the offence, in case it is filed by some private person, then it is mandatory on the private party to give two months prior notice to the offender before filling the complaint. The Board is bound to provide all the reports which are in its custody, available to the complainant however, there is one exception to this rule, if the Board feels that, it would be against the public interest to make a particular report available to complainant, then it can refuse to make the report available to him.64

64 Section 49.
Two months time is given to the offender before filling the complaint against the erring industry so that it gets opportunity to refrain itself from committing the same offence in future, which poses threat to any water resource. However, if the offender stops causing pollution, then there will be no need to go to the Court, and it would be beneficial both to the complainant as well as the offender as it will save their time and money.

(p) Establishment of Water Laboratories

Under chapter VIII of the Act, there are provisions for the establishment of the Central and the State laboratories for the testing of quantity and type of pollutants present in the water. The constitution of the Central Water Laboratory is mentioned under section 51 and of the State Water Laboratory under section 52 of the Act.

Section 54 of the Act, provides that the Central and the State Government can respectively appoint analysts for the testing of samples of water or sewage collected by the Central or the State laboratory, as the case may be. The civil courts do not have jurisdiction to hear any case, for which Appellate Authority is established under the Act.65

No doubt the Civil Court can not transgress the jurisdiction of the Appellate Authority however, it has power to restrain any polluter from polluting water resources. The similar view was expressed in *Sreenivasa Distilleries v. Thyagarajan*.66 The brief facts of this case were that a suit for the permanent injunction was filed against the defendant, to restrain him from discharging noxious effluents into the river. The defendant took the plea that this is transgression of section 58 of the Act. The Court rejected

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65 Section 58.
66 AIR 1986 A.P 328.
his objection and held that the basic object of section 58 of the Act is to protect the statutory protection given to the Boards, which can not be interfered by civil courts. But in the present case, injunction was sought only to prevent the defendant from polluting water of the river and not to annul any order passed by any authority under the Water Act. Therefore, there is no contravention of the provisions of section 58 of the Water Act, 1974.

The Central Government has power to take away powers of the Central and the Joint Boards, if it gets report that Boards are not discharging their functions efficiently and due to that act of the Board public interest is injured. But such supersession by the Central Government would be only for the one and a half year.67 The similar powers are conferred on the State Government under section 62 of the Act.

From the above discussion of the Water (Prevention and Control of Pollution) Act, 1974 it is clear that it has proved itself colossus in preventing, preserving and maintaining purity of water.

B. The Water (Prevention and Control of Pollution) Cess Act, 1977 : An Analysis

This Act, has been passed by the Parliament under article 252 (1) of the Constitution. The Act, has been passed with the object to levy and collect cess on water consumed by persons carrying on industries with a view to aid the Central and the State Boards established under the Water (Prevention and Control of Pollution) Act, 1974. It consists of 17 sections and 2 schedules.

67 Section 61.
It is the first tangible step towards conservation of water. The industry is now becoming cautious about water, because every drop is levied. Obviously less use of water means less volume of waste water to treat, which makes it an economic proposition.\(^6\) In *Member Secretary, Andhra Pradesh, State Board For Prevention and Control of Water Pollution v. Andhra Pradesh Rayons Ltd.*,\(^6\) the Apex Court held, that the Water (Prevention and Control of Pollution) Cess Act, 1977 was passed only for the purpose of providing for levy and collection of cess on water consumed by persons carrying on certain industries with a view to augment the resources of the Central Board and the State Boards.

Section 3 of the Act, emphasises to put cess on every person, who carries on any industry and every local authority for any of the purpose mentioned in column I of the second schedule.\(^7\) If the industry or local authority uses water for domestic purposes and fails to pay the cess, then the cess, shall be charged at the rate mentioned in column 3 of second schedule.\(^8\) Under this Act, tax is collected for the benefit of general masses. The tax which is collected under this Act, is spent on the purification of water which is polluted due to various activities of human beings. In *Tata Iron and Steel Co. Ltd. v. State of Bihar*,\(^7\) the Court held, that the cess imposed under the Cess Act, is imposed by way of compulsory extraction of money under the statute by the public authority for public purpose and is a tax.

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7. Schedule II Column III Provides: Processing whereby water gets polluted and the pollutants are easily bio degradable and are toxic.

7. AIR 1991 Pat. 75.
To measure the quantity of water consumed, every person, who is carrying on specified industry and the local authority department shall affix meters at such places as may be prescribed and it shall be presumed that the quantity indicated by the meter has been consumed by such consumer. If any person or authority fails to affix meter, the Central Government will serve a notice upon such person or authority, and affix the meter, and charge the cost from the defaulter.73

It is mandatory for the consumers of water to file such returns, containing all the particulars, which are prescribed, however, if such person fails to file the return, then he would be served with a notice regarding such default.74

The authority to whom return under section 5 of the Act is filed will inquire about the particulars of the return and after that he would assess the amount of cess which would be paid by the consumer. It is done to check, whether, the cess was assessed correctly or there is any deficiency.75

However, the industry can get rebate of 25% in the payment of cess, if it sub serves the purposes of the Water Act, e.g. controlling the deterioration of the quality of water. If the plant installed is one which gives a satisfactory treatment of the trade effluent, rebate could be given to such unit as long as treatment of the trade effluent is effective in accordance with the provisions of the Water (Prevention and Control of Pollution) Act, 1974. However, there is one exception to this rule, if the industry consumes water in excess quantity than prescribed by the Cess

74 Section 5.
75 Section 6.
Act, 1977, then it can not enjoy relaxation in the payment of cess, despite installing treatment plant.\textsuperscript{76}

When rebate in tax is provided to an industry, which is pro-environmental than it would set an example for other industries also to take steps for the control of water pollution by setting up water treatment plant in their industry, because rebate would be beneficial for all the industries. However it is mandatory for the industry, which wants to enjoy the rebate under this Act, to comply all the provisions of the Water Act, 1974 strictly.

In \textit{Member Secretary Kerala State Board For the Prevention and Control of Water Pollution Kawadiri-Trivandrum v. Gwalior Rayon Manufacturing Weaving Co.Ltd. Kozhikode}\textsuperscript{77}, the Court held, that the rebate can not be earned by the mere installation of some water treatment plant, it will be given only if the plant is able to achieve the desired results.

Section 10 of the Act, fixes the rate of interest as twelve percent per annum on the amount, which falls due towards the amount of cess payable under section 3 of the Act. It is mandatory on the consumer under the Cess Act, to pay cess to the State Government, within the prescribed time, if he fails to do so, then authority may impose penalty on him, which would not exceed amount of cess in arrears. However, there is also one exception to this rule, that penalty would not be imposed for non payment of cess, if the defaulter satisfy the authority that it was due to some sufficient reasons.\textsuperscript{78}

Section 13, confers right of appeal on the party, who is aggrieved by the order of assessment under sections 6 or 11 of the

\begin{footnotesize}
76 Section 7.
77 AIR 1986 Ker. 256.
78 Section 11.
\end{footnotesize}
Act. Such party can file appeal against such order. The order passed by the Appellate Authority would be final and cannot be challenged before any Court. When any person knowingly furnish false return or evade payment of cess he would be punished with imprisonment for six months or fine up to rupees one thousand or both. There is a condition that the Court shall take cognizance of the offence only, if the complaint is made by the Central Government.79

When the offence of evasion of payment of cess is committed by some company then the director, the manager or the secretary of the company shall be punished, if it is proved that the offence has been committed with their connivance.80

From the above discussion, it is clear that this Act is aimed at conservation of water and indirectly preserving it from further contamination.

79 Section 14.
80 Section 15.