CHAPTER - V
ROLE OF JUDICIARY AND POLLUTION CONTROL BOARDS IN WASTE MANAGEMENT

5.1 INTRODUCTION

Since time immemorial the man had made conscious and determined efforts to make use of the natural resources and to modify his surroundings so that the adverse impact caused by extreme of temperature, rainfall and predators may be reduced. Man always exploited the nature in greed of making his life more comfortable. Human activities create a large variety of wastes and by-products which accumulates over a period of time and may become toxic to the naturally growing plants, animals and mankind. India being a country having large population is facing some typical environmental problems because of population load and requires special attention on issues like town planning, waste management and vehicular pollution. It is high time to look into and examine the plans, schemes and projects having adverse effects on the environment so that a better, balanced and eco-friendly development ensuring pollution free air, potable water and other elements of environment.¹

The problem of environmental pollution has been recognized as a worldwide disaster. Development without regard to the ecological equilibrium has led to an environmental crisis during 19th and 20th century. Urbanization, modernization and the race for technological and industrial development has caused the ecological imbalance. So there must be some check on this exploitation of earth in the name of urbanization. Judiciary always plays a very important role in the growth and development of constitutional law. Besides the function of interpretation and application of the law, it can perform the educative functions of bringing an awareness of the major problems of pollution, through various decisions from time to time.² Public consciousness about environmental protection and preservation has contributed immensely

² Dr. Raj Pal Sharma, Environmental Pollution and Role of Judiciary, AIR 1997 Jour 35.
in furtherance of administration of environmental justice in India. The main responsibility of protection and preservation of environment and waste management lies on the State. This obligation of the State is carried on by the Government.

The Government of India is composed of three organs i.e. Executive, Legislature and Judiciary. Together they perform the functions of the Government, maintain law and order and look-after the welfare of the people. The Constitution ensures that they work, in co-ordination with each other and maintain a balance among themselves. In a Parliamentary system, executive and the legislature are interdependent: the legislature controls the executive and in turn, is controlled by the executive. Executive is the branch of government responsible for the implementation of laws and policies adopted by the legislature. The executive is often involved in framing the policy. Executive shall be answerable and controlled by the legislature or people’s representatives. So the Constitution adopted the parliamentary system of the executive for the government both at the national and State level.

India employs a range of regulatory instruments to preserve and protect its natural resources. Administrative agencies created under environmental statutes are required to implement legislative mandates. Pollution Control Boards at the central and state level and other agencies are the main examples of it. The judicial branch is one of three branches of the federal government. The judicial branch includes criminal and civil courts. The Judicial branch is able to solve the problems through a special power known as judicial review and as part of the process of checks and balances between the three branches of the Government. The main body of the judicial branch is the Supreme Court. The main job of the Supreme Court is to interpret the Constitution.

The development of environmental jurisprudence in India is largely the story of judiciary responding to complaints of its citizens against

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4 http://www.ncert.nic.in/ncerts/l/keps204.pdf

environmental degradation and administrative sloth. 6 For the proper management of waste and protection of the environment from pollution, the Supreme Court of India and also various High Courts have taken innumerable measures in a series of their landmark judgments. Over the years, the Apex Court has been paying special attention, for the protection of environment by giving effective directions to all the persons concerned with the matter by invoking in powers under the Article 32 of Indian Constitution. An analysis of the various decisions of the Supreme Court reveals that the Apex Court exercised its writ jurisdiction when there exist some leading cases which hamper the degradation of the environment.7

Judicial response to almost all environmental litigations has been very positive in India. Public Interest Litigation has become very popular in the field of environment. Contrary to the past practices, the position today is that a person acting bonafide and having a sufficient interest can move the courts for redressing public injury, enforcing public duty, protecting social and collective rights and vindicating public interests.8

Courts have widened the dimensions of substantive rights to health and a clean and unpolluted environment. Thus, in order to reap the benefits of substantive environmental rights courts opened a path of precision justice, without enslaving themselves to procedural compulsions. In Tarun Bharat Sangh Alwar v. Union of India9 a social group challenged the legality of granting a mining license in the protected area of a reserved forest, upholding the contention, the Supreme Court observed:

“This litigation should not be treated as the adversial litigation. Petitioners are acting in aid of a purpose high on national agenda. Petitioner’s concern for the environment, ecology and wildlife should be shared by the government”

This observation of the Court is significant as it emphasizes the rationale of public interest litigation in environmental issues. The State is directed by the Directive Principles to protect the environment. Any person

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6 Shayam Divans and Armin Rosencranz, Environmental Law and Policy in India, 1 (2001)
8 S.P. Gupta and others v. Union of India, AIR 1982 SC 149 at 192.
who raises an environment issue, whether individual, group or institution is equally concerned with the problem and such litigation can never be concerned as one of the adversial confrontation with the State.  

The evolution of environmental action as a right in public law has been facilitated by a number of provisions in the Constitution of India which gave scores of Judicial Review and Writ remedies to High Courts and the Supreme Court. Citizens have direct access to the Supreme Court to ventilate environmental grievances as they are now deemed to be fundamental rights violations. The Indian Courts have not only recognized a substantive fundamental right to environmental protection but also read an important procedural right of cleanliness and reasonableness as part of the right to life and liberty. This “Due Process” provision, in turn, has lead to the creation of a variety of other rights which makes the judiciary an activist agent in environmental protection and management. Thus, the courts have not only ordered municipalities to enforce public nuisance law against polluters, they have also ordered that local governments find the budgetary resources to build water supply and sanitation systems in reasonable time.

One big series of potential pollution of river water is the discharge of sewage into them by the municipalities. The municipal statues, therefore, contain provisions that sewage is not to be discharged into rivers unless it is so treated as not to affect prejudicially the purity and quality of the water into which it is discharged. If such a restriction can be imposed on the public authorities, there is no reason why factories and private persons should not also be similarly restricted. Whenever the municipal authorities are guilty of lapses in the compliance with these statutory provisions, everyone who is affected by pollution of the water would have a cause of action against the municipality. Since municipalities are public authorities relief against them can be had by way of writ petition filed under Article 226 of the Constitution. A mandamus can be issued to a municipality compelling it to do its duty in this respect.

5.2 ROLE OF JUDICIARY IN MANAGING THE WASTE

In the present days environment has been a serious agenda at national as well as international level. Environmental crimes i.e. the crimes manipulating our environment *inter alia* involves air pollution, water pollution, and the illegal transportation, storage and disposal of hazardous waste, which causes most serious threat to public health and natural resources.\(^\text{14}\) Greening the law of public nuisance, the Supreme Court in *Municipal Council Rallam v. Vardichand* \(^\text{15}\) identified the responsibilities of local bodies towards the protection of the law of public nuisance in the Code of Criminal Procedure as a potent instrument for enforcement of their duties.

The Andhra Pradesh High Court was more active than the Apex Court when in the monumental judgment of *T. Damodhar Rao v. S.O. Municipal Corporation* \(^\text{16}\), where Hyderabad urban development plan set apart an area as open space for recreational purposes. Though it had accorded its approval, the State government subsequently acquired part of this land for the purpose of building the residential quarters for Life Insurance Corporation (LIC). The Income Tax Department secured ownership over part of the land from LIC. The resident living in the vicinity challenged these attempts to convert an open space into a residential area. The Court observed:

“It would be reasonable to hold that the enjoyment of life and its attainment and fulfillment guaranteed by Article 21 of the Constitution embraces the protection and preservation of nature’s gifts without which, life cannot be enjoyed. There can be no reason why practice of violent extinguishment of life alone should be regarded as violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and exploitation should also be regarded as amounting to violation of Article 21 of the Constitution.”

The right of healthy environment has been incorporated, directly or


\(^{15}\) AIR 1980 SC 1622.

\(^{16}\) AIR 1987 AP 191.
indirectly, into the judgments of the Court. The link between environmental quality and the right to life was first addressed by a Constitutional Bench of the Supreme Court in *Charan Lal Sahu v. Union of India*\(^\text{17}\). In 1991, the Supreme Court interpreted the right to live guaranteed by Article 21 of the Constitution to include the right of wholesome environment. In *Subhash Kumar v. State of Bihar*\(^\text{18}\) the court observed that ‘right to life guaranteed by Article 21 includes the right to enjoyment of pollution-free water and air for full enjoyment of life.’ Through this case the Court recognized the right to wholesome environment as part of the fundamental right to life. This case also indicated that the municipalities and a large number of other concerned governmental agencies could no longer rest content with unimplemented measures for the abatement and prevention of pollution. They may be compelled to take positive measures to improve the environment. This was reaffirmed in *M.C. Mehta v. Union of India*\(^\text{19}\). This case was concerned with the deterioration of the environment land the duty of the state government, under articles 21 and 48-A, to ensure a better quality of the environment.\(^\text{20}\)

In terms of case law, the only judgment which attempted to break away from the general cases where public authorities are held responsible for causing pollution is *Municipal Council Ratlam v. Virdichand and others*.\(^\text{21}\) The residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink caused by open drains and public excretions by nearby slum dwellers moved the Sub Divisional Magistrate under Section 133 of Criminal Procedure Code to require the municipality to construct drain pipes with the flow of water to wash the filth and stop the stench towards the members of the public. The Magistrate gave directions to municipality to draft a plan within the six months for removing nuisance. Despite the Orders of the Court the municipality failed to do the prescribed things to remove the pollution caused by the waste. In appeal, the High Court approved the order of Magistrate. The municipality further appealed to the Supreme Court against the order of the

\(^{17}\) AIR 1991 SC 420.


\(^{19}\) AIR 1991 SC 813.


\(^{21}\) AIR 1980 SC 1622.
High Court.

The Apex Court identified the responsibilities of local bodies towards the protection of environment, and developed the law of public nuisance in the Criminal Procedure Code as a potent instrument for enforcement of their duties. Justice Krishna Iyer had made a thorough examination of two main issues:

1. The municipal legislation, which casts a duty on the municipality to maintain clean roads and clean drains; and
2. The provisions in the Indian Penal Code\(^\text{22}\), which prescribes punishment to a person contravening the directions of the magistrate.

The Supreme Court held that a responsible municipal council constituted for the precise purpose of preserving public health and providing better sanitation facilities, cannot run away from its principal duty by pleading financial inability. Wherever there is a public nuisance, the presence of Section 133 Criminal Procedure Code must be felt and any contrary opinion is contrary to law. It was held, “the officers in charge and even the elected representatives will have to face the penalty of the law if what the Constitution and follow up legislation direct them to do are defied or denied wrongfully. The wages of violation is punishment, corporate and personal.”\(^\text{23}\)

Here the municipality was held liable for permitting pollution and was directed to take the necessary steps for prevention. This judgment had the potentiality of invoking new legal principles such as the notion of promissory estoppels for environmental damages due to inaction or negligence of government agencies, or seeking compensations for the individuals in civil law. But it did not do so. It stopped the directions to the municipality and general exhortations for public bodies to be accountable.

In the case of \textit{L.K. Koolwal v. State of Rajasthan and others},\(^\text{24}\) a writ petition was filed by the petitioner asking the High Court to issue directions to the state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directive Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed, was hazardous to the life

\(^{22}\) Indian Penal Code 1860, Section 188.
\(^{24}\) AIR 1988 Raj 2.
of the citizens of Jaipur. The Rajasthan High Court, directing the municipal authorities of Jaipur to keep the city clean, laid emphasis on the Fundamental Duty of the citizens under Article 51-A (g) of the Constitution to protect and improve the environment. According to the Court, the provision renders the citizens the right to move the Court to see that the state performs its duties faithfully and strives to protect and improve the natural environment. In this case the Court directed the municipality to remove dirt, filth etc from the city within the period of six months and clear the entire Jaipur city and particularly the areas mentioned in the list submitted by the petitioner. Besides, the Court also appointed a team of five eminent advocates as commissioner in the case to inspect the city and submit a report about the implementation of the provisions. The Court held that “maintenance of health, preservation of sanitation and environment falls within the purview of Article 21 of the Constitution as it adversely affects the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created, if not checked.

Health hazards caused by public drainage was discussed in Abhilash Textile v. Rajkot Municipal Corporation,25 the petitioners were discharging dirty water from the factory on the public road and in public drainage without purifying the same, thereby causing damage to the public health. Here Notice was issued by the Municipal Commissioner to the petitioners to prevent discharge of dirty water on public road and in drainage within the certain time. It was also stated in the notice that in case of failure to comply with notice, the factories would be closed. It was challenged by the petitioners. Strict notice was taken by Gujrat High Court and the Court held that one cannot carry on trade or business in the manner by which the business activity becomes health hazard to the entire society. By discharge of effluent water on public road and or in public drainage system that entire environment of the locality gets polluted. The court further said that in a complex society in which we live today, no one can claim absolute freedom without incurring any obligation whatsoever for the general well being.

Strict action about discharging waste water was taken in Subhash

Kumar v. State of Bihar,\textsuperscript{26} in this case the petitioner filed a writ under Article 32 of the Constitution for a direction to West Bokaro Collieries and Tata Iron and Steel Co. in Bihar to stop discharging slurry from the washeries into Bokaro river. The Slurry is stated to make water unsafe for drinking. It affects the fertility of the adjoining lands The State Pollution Control Board said that the effluents were disposed off under the conditions of a valid consent, and under its continuous monitoring. After the case was filed, the Board inspected the premises. Bokaro River is dry for nine months in a year; there is no scope for polluting the river. The Slurry was collected in four separate ponds, and sold by the management. All directions of the Board were complied with. Later in the case the Supreme Court remarked: “Right to live is a Fundamental Right under Article 21 of the Constitution and includes the right of enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to the quality of life”.

Patna High Court in Rajiv Ranjan Singh v. State of Bihar,\textsuperscript{27} held that failure to protect the inhabitants of the locality from poisonous and highly injurious effects of the distillery’s waste discharge amounted to an infringement of the inhabitants right guaranteed under Article 14,21 read with Article 47 and 48-A of the Constitution of India. The Court further laid down that in case it comes to light that any person has contacted any ailment the cause of which can be directly related to the effluent discharged by the distillery, the company shall have to bear all expenses of his treatment and the question of awarding suitable compensation to the victim may also be considered.\textsuperscript{28}

Protection to health of people from sewage was discussed in M.C. Mehta v State of Orissa,\textsuperscript{29} here writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal

\textsuperscript{26} (1991) 1 SCC 613.
\textsuperscript{27} AIR 1992 Pat 86.
\textsuperscript{28} (1992)3 SCC 256.
\textsuperscript{29} AIR 1992 Orissa 225.
Committee Cuttack and the SCB Medical College Hospital, Cuttack. The river water has been polluted by the Cuttack Municipality and the S.C.B. Medical College and Hospital, the premier hospital of the State and other urban wastes making the situation horrible. Likewise the storm water drain which was constructed in the city for the purpose of discharge of excess water during the heavy rains into the river Kathajori to avoid water stagnation remains full throughout the year and the sewage water from various parts of the city goes into it and consequently into the river for further aggravating the problem. So also the Taladanda canal which passes through the city on which thousands of people depend for their daily needs was also highly polluted. In order to save the people from pollution hazards and to protect the health of thousands of innocent people living in and around Cuttack city, a writ petition under Article 226 of the Constitution was filed alleging the violations of not only the Article 21 of the Constitution of India but also the National Health Policy, the Environment (Protection) Act and the Water (Prevention and Control of Pollution) Act 1974. Equating the case with that of Ratlam the Court further observed that “the authorities should wake up before the matter slips out of their hands” since the health of large number of people are at stake and also directed to take immediate steps in constituting a committee and such other functionaries and authorities as the state may feel necessary to consider the report relating to pollution load and take necessary steps to prevent and control water pollution and to maintain wholesomeness of water which is supplied for human consumption. Court held that the authorities should wake up before the matter slips out of hand. Their approach should not smack of mercenaries.

Notice of daily burning of garbage at dumping site was taken in Shanti Park Sorento Co.op. Society Ltd. v. Municipal Corporation Greater Mumbai, where the residents of Shanti Park Complained against the daily burning of garbage at the municipal dumping site at Deonar as a result of which a thick fumes of smoke rose from Deonar and drifted over the suburbs of Chembur and Ghatakopar, the Bomaby High Court issued a series of orders requiring

31 Writ Petition No. 1138 of 1996, as reported in Divan and Rosencranz, Environmental Law and Policy in India, 375 (2005).
the municipal corporation to improve its solid waste dumping and to prevent the burning of garbage at Deonar.

Further, the issue relating to liability of hazardous industries came for discussion in *Indian Council for Enviro-Legal Action v. Union of India*[^32]. In this court while upholding the validity of the rule of absolute liability has laid down in oleum gas leakage case said that it is the most appropriate and binding principle in case of hazardous industries regardless of whether activities of such industries were being carried on carefully or not.

The court, while applying the polluter pays principle in the circumstances of the case, clearly said that the rule demands that the financial cost of prevention or remedying damage caused by pollution should lie with the undertaking that causes pollution. In this case, one Hindustan Agro Chemical Limited (operating in Bichhri, a small village if Udaipur district, Rajasthan) allowed its untreated toxic effluent in open areas. Consequently, water in the rivers and wells in that area become dark and unfit for human consumption and for agriculture irrigation also. The soil lost its fertility and the people living around the establishment suffered from skin and other diseases resulting in the death of several persons. The Court directed to pay compensation under two heads, viz (a) the cost of damage to be disbursed to the affected villagers estimated at Rs. 342.8 lakhs; and (b) cost of restoration of environment quality such as remediation of impacted well waters and soil at Rs. 3738.5 lakhs. This cost needs to be borne by the industry in keeping with the Polluter Pays principle and the doctrine of strict / absolute liability, as applied in the case of *Oleum leak*[^33] in the year 1987.

In *MC Mehta v. Union of India*,[^34] where tanneries were discharging effluents from their factories in the holy river Ganga resulting in water pollution and not setting up a primary treatment plant in spite of being asked to do for several years, nor even caring to express their willingness to take the appropriate steps to establish primary treatment plants, it was held that so far as they are concerned, an order directing them to stop working their tanneries should be passed as effluent discharged from the tanneries is ten times

[^32]: AIR 1996 SC 1446.
[^33]: M.C.Mehta v Union of India, AIR 1987 SC 1086.
[^34]: AIR, 1988 S.C. 1037.
noxious when compared with the domestic sewage water which flows into the river. Accordingly, the Court passed the following order:

“We are, therefore issuing the directions for the closure of those tanneries which have failed to take minimum steps required for the primary treatment of industrial effluent. We are conscious that closure of tanneries may bring unemployment, loss of revenue, but life, health and ecology have greater importance to the people”.35

The Supreme Court did not stop just after passing the order directing for installing the treatment plant by the tanneries. Subsequently, the Supreme Court appointed the Committee of Experts to visit Kanpur, where the tanneries were situated, and inspect the tanneries plants alleged to have been set up by the tanneries. The Committee reported that some of the tanneries had not set up primary treatment plants and they were continuing to discharge the industrial effluents without treating the same. The Court further directed that all the tanneries must have primary treatment plants within six weeks. And finally, they were required to obtain within a period of six weeks, a certificate from the Pollution Control Board failing which the District Magistrate was to ensure the closure of such tanneries.36

The concept of the “Principle of Precautions” has been very well defined by the Supreme Court in A.P. Pollution Control Board v. M.V. Nayadu,37 the respondent company was incorporated with the object of setting up an industry for the production of castor oil derivatives. The Government of India had granted the company a letter of intent subject to obtaining of NOC from A.P. Pollution Control Board, which rejected the application of the Company on the ground that unit was a polluting industry and directed the A.P. Pollution Control Board to give its consent for the establishment of the factory. The High Court upheld the order of the appellate authority. On Appeal by the A.P. Pollution Control Board, the Supreme Court held that State Government Could not grant exemption to a specified industry located within or attempting to locate within an area where there was total

35 Id, at 1047-1048.
36 Id., at 1045.
37 AIR 1999 SC 812.
prohibition against the establishment of Industries. The State can also not
direct the State Pollution Control Board to prescribe conditions for granting
NOC and even the Water Act does not permit the State Government to
exempt an industry from application of a prohibitory order under section 3 (2)
(V) of the Environment (Protection) Act, 1986.

Direction about disposal of waste was directed in *Dr. B.L. Wadhera v. Union of India*, the petitioner sought direction to the Municipal Corporation,
Delhi (MCD) and the New Delhi Municipal Council (NDMC) to perform their
statutory duties, in particular the collection, removal and disposal of garbage
and other wastes. The court held that the authorities entrusted with the work
of pollution control have been wholly remiss in discharge of their duties under
the law and that they cannot absolve themselves of their duties on the pretext
of financial and other such limitations. The court went on to issue detailed
directions to the MCD, NDMC, Government of India, AIIMS and other Private
hospitals / nursing homes, Central Pollution Control Board and Delhi Pollution
Control Committee, Doordarshan etc to clean up the city.

In *Almitra H. Patel and others v. Union of India*, A writ petition was
filed regarding the question of solid waste disposal and non-compliance of the
court’s earlier orders by some states. This case specifically looked at the
territory of Delhi in connection with the management and handling of solid
waste and the directions issued in the case of *Dr. BL Wadhera v. Union of
India*.

The Court after expressing unhappiness over the high levels of
pollution in Delhi and the lack of accountability at all levels of the municipal
authority concerned and over the inaction of respondent authorities in
connection with the directions issued in *Dr. B.L. Wadhera’s* case, issued the
following additional directions that the relevant provisions of the law relating to
sanitation and public health be followed so as to prohibit the rubbish, garbage
and filth. The disposal of waste must be carried out in the scientific manner so
as to prevent the health hazards from the waste. The landfill sites must be
located in such a manner so that it can accommodate the waste for the

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39 2000 (2) SCC 679.
coming 20 years. Further the Central Pollution Control Board was asked to file affidavit that the said directions by the Court about the disposal of the waste are being taken care of.40

The Supreme Court in this case also held that it is not for the Supreme Court to direct the municipal authorities as to how to carry out their functions and resolve difficulties. The Court should only direct such authorities to wake up and use the powers. They have to take action and ensure that the city remains clean. In other words, it is not for the courts to tell the executive how to do its various jobs. However, the Court can direct it to use its powers when it is not doing so.41

From Sept 1996 to Dec 1996, the ratio of Vellore case was applied in seven important cases by the Supreme Court. Out of these seven cases six judgments have been written/ delivered by Justice Kuldip Singh himself and there was no dissenting opinion by the other judges in such cases. Only in one case namely Bayer India Ltd, the judgment was delivered by Justice Hansaria on behalf of a division bench of which Justice Kuldip Singh was also a member. Through this exercise Vellore Case was virtually converted as the grundnorm by Justice Kuldip Singh without stating that it was he who created the grundnorm and establish the ratio of Vellore as settled precedent under Indian Environmental Jurisprudence. 42

The Jammu and Kashmir High Court addressed the questions of disposal of domestic waste, problem of drainage and availability of Potable water to the housing colonies in Masood Ahmed v. State43. The petitioners asserted that they are being denied the right to a meaningful and livable life with human dignity if these infrastructural facilities are not provided. Accepting this proposition and following the Ratlam case44, the court laid emphasis on the right to life, and directed the respondents to provide all reasonable amenities claimed by the petitioners within a period of six months. The right to

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40 Id., at 687-689.
41 Id., at 685-686.
43 AIR 1997 J &K 75.
44 Financial inability of statutory agencies will not be an alibi for not providing basic amenities.
have clean water means the right to have it supplied in sufficient quantities.

The case of *Shristi Digital Solution v. The Additional Commissioner of Customs*\(^{45}\) was decided by Madras High Court and discussed the issue that whether the provisions of Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008 are applicable on the imports or not. While answering the issue in affirmative, the Court held that though the term ‘waste’ is not defined in the Hazardous Waste (Management, Handling and Transboundary Movement) Rules, 2008, any good or substances specified in the Schedule are to be treated as hazardous waste.

In the case of *Parth Mahila Utkarsh (NGO) through Mahamantri v. Sraddha Developers*\(^{46}\), the Court held that health of the people at large is of paramount importance rather than the right of the respondent to develop land by putting up construction on the same. In this case respondent was a construction company and it was disposing off hazardous waste material by land filling within a radius of 500 meters from a human habitat. Court held that Government of Gujrat, Forest and Environment Department was duty bound to see that no permission can be granted to housing project (respondent) to dump hazardous waste material in the vicinity of residential area that could prove a potential health hazard for human.

Supreme Court In his Civil Original Jurisdiction Order, while answering the writ *petition M.C.Mehta v. Union of India*,\(^{47}\) issued certain directions, aimed at mitigating the hardship which the people living in Delhi undergo having regards to the pollution caused by burning of solid waste by local bodies like M.C.D., N.D.M.C. and institutions that generate such waste. It was submitted that burning of solid waste was impermissible under the relevant Rules and that lapses on the part of the concerned authorities in the matter of enforcing the said Rules is contributing to the deteriorating situation. It was, therefore, prayed that authorities including the local bodies and institutions within the National Capital Region be directed to refrain from disposing of


\(^{46}\) Decided on 07.02.2014 by Gujrat High Court available at indiakanoon.org/doc/110678625, visited on 9.3.2016.

\(^{47}\) Writ Petition (Civil) No. 728 of 2015 dated 9 October 2013, with Writ Petition (Civil) No. 817 of 2015 and Writ Petition (Civil) No. 116 of 2013 decided on 16 December 2015.
solid waste by burning such waste and to take steps for proper management/disposal of such waste in scientific manner following the norms and the requirements of the relevant rules in that regard. Supreme Court accordingly direct that the State Government and all other local bodies concerned including M.C.D. and N.D.M.C. and all other institutions that are generating solid waste shall take steps to ensure that no part of such waste is burnt and that proper arrangements are made for disposal of such waste in a scientific way without causing any hazard to environment.

Pollution caused by untreated industrial effluents was discussed in *Shree Veraval Samasa Kharva Gayati v. State of Gujrat*,\(^{48}\) in the case before the High Court of Gujrat, the petitioner is a charitable trust at Junagarh whose beneficiaries are fishermen engaged in the business of fishing in Arabian Sea near Veraval. The petitioners are affected by the pollution caused by the company as the company discharges untreated industrial effluent through open channel into the sea causing serious damage to the environment. The damage to the locals are also caused as the company emits huge quantity of fly ash in the air which is beyond permissible limit and thereby causing Air Pollution also. The High Court ordered the pollution Control Board to carry out surprise special visit and inspections thrice in a year with special concentration on potential of health hazards, the effect on potable water and soil. The factory inspector is also directed to make monthly visits and prepare Report as to whether statutory requirements are being fulfilled or not and whether the pollution Control equipments are being effectively run or not. If at any time the authorities found any defect or shortfall in compliance with or breach of prescribed parameter relating to effluent treatment plant, the concerned responsible authorities shall immediately take appropriate corrective and penal action as may be required which may also includes, cancellation of consent or authorization to run the factory.

*G. Sundarrajan v. Union of India*\(^{49}\) in the writ before the Supreme Court, it is pointed out that sufficient safeguards have not been taken for the safe disposal of the radioactive waste and no site has so far been identified

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\(^{48}\) Special Civil Application no. 13130 of 2009 decided on 26 July 2010.

\(^{49}\) Civil Appeal No. 4440 of 2013 arising out of S.L.P (C) no. 27335 of 2012 before the Supreme Court of India decided on 6 May 2013.
for the safe handling of radioactive waste, failing which it may cause serious health hazard. At the plant site, there is no proper facility for storage of spent fuel and high level of radioactive waste. Further no adequate measures have been taken to safeguard the life and property of the people in case of any potential disaster, in accordance with the Disaster Management Plan. The Supreme Court ordered that Solid Nuclear Fuel generated needs to be managed in safe manner to ensure protection of health and environment form the undue effects of ionizing radiations now and future, for which surveillance and monitory programme have to be evolved and implemented.

_Jagtae Raho Party v. Municipal Commissioner, Vadodara_, 50 in this case the Municipal Corporation has asked the residents to purchase of two compulsory dustbins at the rate of Rs. 85 each, from the Corporation, one dustbin for liquid waste and one dustbin for solid waste so that it may be collected from the respective residents of the Vadodara Municipal Corporation. The said dustbins are required to be kept by the residents so that the solid waste or the liquid waste may be kept in the dustbins and when the person of the contractor comes, he takes away the solid or liquid waste and in the absence of the dustbins, there would be bad smell coming out from the solid and liquid waste.

The petitioner prayed the Honorable Court to direct the Vadodara Municipal Corporation to cancel the decision taken for the purchase of dustbins for distribution to residents of Vadodara under the project of segregation of organic waste and to return the Householders the cost of dustbins if already collected. The petitioner has pleaded that it is the duty of the Municipal Corporation to make efforts for collection, storage and segregation, transportation, processing and disposal of municipal solid waste; as such it cannot ask the householders for paying the Rs. 85 for the cost of dustbins to be provided to the householders.

In its judgment High Court order said that “we are concerned that the residents should have a happy and joyous life for which the Municipal Corporation is making efforts to provide the same to the citizens and residents of Vadodara Municipal Corporation.” For the above said reasons the Court

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dismissed the Writ petition cum PIL to Return to householders cost of Rs. 85 as the dustbins provided for segregation of waste into liquid and Solid waste.

This is well known case of *M.C. Mehta and another v. Union of India and Others*. The Court in this case clearly laid down that an enterprise which is engaged in dealing with hazardous waste or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owes an absolute and non-delegable duty to the community to ensure that no such harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken.

The credit goes to this PIL era only, that Indian environmental NGO’s found the most rewarding moment when the Supreme Court on 12 February 1997 issued the direction to the Ministry of Environment and Forests, to take necessary steps by 1st April 1997, to implement the relevant laws, banning the use and dumping of hazardous and noxious substances, by industrial units throughout India. In its order of the PIL filed by an NGO-Research Foundation for Science, the Supreme Court warned the Ministry, that if the top officers concerned, did not measure up to their duties and enforce the provisions of the Environment (Protection) Act, 1986, the Court would be constrained to record a “judicial Finding of failure to perform their duties against them.” These days PIL has played a unique role by which people belonging to different walks of life, and especially the down trodden are getting social justice from the Supreme Court as well as the High Courts. The PIL is now recognized as an effective instrument of social change. It is because of this new strategic litigation that the poor and the down trodden have been able to seek justice from Courts. Public Interest Litigation has extended its helping hand to prevent the environmental damage.

However the pace of legislation today is very slow in comparison to speed of science and technology. This will create explosive problem if not today but at least tomorrow. As we increase in numbers, as we increase our capabilities, as we increase out powers and our exploitation of resources, we find that laws which we have created are not sufficient- national and

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51 AIR 1987 SC 1086.
international laws. They have not been designed to face this very fast explosive growth of science and technology and explosive growth of our powers and capabilities. We do not have the laws on the books and we don’t know how to treat the problems which would arise in future. There are various other factors for which legal aspects of environment and ecology cannot be applied, either due to inadequacy of the law or due to jurisdiction.\textsuperscript{52}

On March 11, 2016 National Green Tribunal imposed a fine of Rs. 5 Crore on Art of Living culture festival to be organized by Sri Sri Ravi Shankar on the flood plains of Yamuna as an interim compensation for the event’s impact on the environment. The Tribunal also levied fines of Rs. 5 Lakh and Rs. 11 Lakh respectively, on the Delhi Development Authority (DDA) and Delhi Pollution Control Committee (DPCC) for lapses while granting clearance for holding the festival on river Ganga floodplains.\textsuperscript{53}

\subsection*{5.3 ROLE OF POLLUTION CONTROL BOARDS IN WASTE MANAGEMENT}

India’s federal system divides responsibility for different Governmental functions between the centre and the states. Since the natural resource management has traditionally been a State subject, many aspects of environmental policy, including forestry and water pollution, are considered to be state matters. nevertheless, but now the impetus for Governmental regulation of environment pollution has come from the centre. In 1976, for example the Constitution was amended to include statutes that both the Government and citizens have the duty to protect and improve the environment.

The statutory attempts in India to control pollution can be traced to the legislation of the local bodies. Local bodies exercised all such powers as were necessary for the suitable disposal of waste. They exercised regulatory control to prevent and abate nuisance from water sources, which adversely affects the agriculture. Contaminated water supply, noxious vegetation, harmful dust and smoke or unsanitary conditions of buildings were


of much concern to the local bodies, and sanctions were imposed against persons who violated the regulations.\textsuperscript{54} The role of the Ministry of Urban Development, Government of India is largely limited to advising the urban local bodies, supporting research and development and providing technical assistance to the states and urban local bodies.\textsuperscript{55}

The institute in formulating National Pollution Control standards began about in 1984, when the Central Department of the Environment began to promulgate Minimum National Standards (MINAS). MINAS have been promulgated both for the water (ten industries) and for air (12 industries). The industries to be subjected to MINAS appear to have been selected because they were highly polluting or so large in volume that pollution is a problem, because they were located in or near population centers.\textsuperscript{56} The Central Pollution Control Board (formerly Central Board for Prevention and Control of Water Pollution) together with the State Pollution Control Boards completed a country wide rapid inventory of Pollution from large and medium industries.\textsuperscript{57} This was in execution of the “Control of Pollution at Source” programme. Minimal National Standards (MINAS) for polluting discharge from specific industries were formulated and control measures implemented in stringent manner. With the coming into effect of the Air Pollution Act, 1981, programmes, after the framing of the notifications and Rules under the Act were completed during the eighties which included strengthening of administrative support systems, inventory areas for declared air pollution control zones, evolution of ambient air quality standards as well as industry specific emission standards. The Central Pollution Boards and the State Boards are now made responsible for assessment, survey, monitoring and enforcement of standards of air and noise pollution.\textsuperscript{58}

Pollution Control Boards, Central Pollution Control Board and State Pollution Control Boards are principle statutory organs entrusted with the

\textsuperscript{54} P. Leelakrishnan, \textit{Environmental Law in India}, 159 (2010).
\textsuperscript{56} Susan G. Hadden, \textit{Economic and Political Weekly}, Vol.22 (16), 710 (April 1987).
\textsuperscript{57} Annual Report, 1988-89, Central Pollution Control Board, Delhi (1989) at 30.
\textsuperscript{58} Kailash Thakur, \textit{Environmental Protection Law and Policy in India}, 133 (2013).
responsibility to implement the environmental statutory provisions. The purpose of these Boards is to implement the principles of sustainable development forms the basis of environmental policies and economic policies. The State Pollution Control Boards and Central Pollution Control Boards are constituted to control the air pollution, water pollution and industrial pollution. Section 3 and 4 of the Water (Prevention and Control of Pollution) Act, 1974 establishes the Central and State Boards for the prevention and control of water pollution. Section 3 and Section 4, of Air (Prevention and Control of Pollution) Act, 1981, clarifies that the Central and State Pollution Control Boards established under the Water (Prevention and Control of Pollution) Act, 1974, shall be deemed to be constituted under the Air (Prevention and Control of Pollution) Act, 1981. The provisions of the Air (Prevention and Control of Pollution) Act, 1981, relating to powers and functions of Central and State Pollution Control Boards are similar to the powers and functions under the Water (Prevention and Control of Pollution) Act, 1974.59

5.4 THE FORMATION OF POLLUTION CONTROL BOARDS

The Central Pollution Control Board as well as the State Pollution Control Boards are the principal statutory organs entrusted with the responsibility of water and air pollution control. The enactment of the Environment (Protection) Act, 1986 which is an umbrella legislation for enforcement of measures for protection of environment, the Amendment introduced in the Air (Prevention and Control of Pollution) Act, 1981, and the Water (Prevention and Control of Pollution) Act in 1987 and 1988 respectively and the enactment of the Public Liability Insurance Act, 1991 have furthered widened the ambit of the Board’s functions.

The Central Pollution Control Board has established an operational mechanism for carrying out its functions. Key working areas have been identified for speedy implementation of pollution control programmes. The first step in the direction is that the pollution assessment. This task is being done through survey and monitoring. Survey includes (a) inventorisation of pollution

sources, and (b) assessment of pollution of river basins and sub-basins. The monitoring aspect includes, (a) monitoring of air, inland waters and coastal waters at national level, (b) monitoring of effluents and emissions from large and medium industries, and (c) data interpretation and quality assurance of data.

Pollution control is being done through planning and implementation of control programmes. Planning deals with the co-ordination of the activities of the various State board, ministries and government department. Implementation which is the main thrust includes: (a) setting / updating of standards, and (b) implementation of standards at the national and state levels through the state pollution control boards, and (c) enforcement through legal actions for achieving the various objectives the Boards functions through scientific support system including laboratories services.  

The State Boards are required to specifically lay down effluent standards for Government undertakings, municipalities, and other local bodies which comply with these predetermined standards. The Water (Prevention and Control of Pollution) Act, 1974 provides for a permit system or consent order to prevent the pollution of water. The Water (Prevention and Control of Pollution) Act 1974 generally prohibits disposal of polluting matter in streams, wells and sewers or on land in excess of standards established by the State Boards. The State Boards are authorized to give its consent after making inquiry in the prescribed manner. The preamble of the Water Act refers to restoring the wholesomeness of the water resources.

Water bodies and streams are useful for several purposes they are habitat for many aquatic organisms, Prohibition of disposal of polluting matter to a stream or well or sewer or on land, 61 is the key to the regulation under the Water (Prevention and Control of Pollution) Act 1947. According to this system, no person shall knowingly cause or permit poisonous, noxious, or polluting matter to enter into a stream or well or sewer or on land. The prohibition extends to a case, where the entry of any other matter impedes the proper flow of water in a manner leading, or likely to lead, to a substantial

60 Kailash Thakur, Environmental Protection Law and Policy in India, 379 (2013).
61 Water (Prevention and Control of Pollution) Act 1974, Section 24.
aggravation of pollution. Although, violation of these provision is against the public interest and leads to penal consequences, this offence stands different from public welfare offences in a modern Welfare State, as the knowledge about the harm and mens rea are the most important elements to constitute an offence under the Water (Prevention and Control of Pollution) Act, 1947. No person without obtaining the consent of the State Pollution Control Board established under the Water (Prevention and Control of Pollution) Act, 1947, can establish or take any steps to establish any industry, which is likely to discharge sewage or trade effluents.\textsuperscript{62} An application for consent has to be made by the person who intends to establish any industry or carry out an operation or process or treatment or disposal system. The consent can be given with or without conditions. Violation of conditions may lead to withdrawal of consent and to prosecution.

Thus the Pollution Control Boards are set up by the special enactments with the duty to prosecute environmental offenders have been able to achieve very little by way of their prosecution. Procedural delays, lack of expertise in the structure of the boards and too much institutional commitments to the executive are some of the reasons for this failure. Also, unlike the Executive Magistrate, who is available in every district, the Board is usually located in State Capitals, which is too far from the site of commission of the offence. The amendment to the Water (Prevention and Control of Pollution Act) 1974 and Air (Prevention and Control of Pollution) Act 1981, in the eighties conferred on every person the \textit{locus standi} to approach the Courts to prosecute environmental offenders after a sixty day notice period. When, however, a provision in an existing law has failed to address a prevailing situation, courts have tried to fill in the lacunae. \textit{Ratlam}\textsuperscript{63} and \textit{Krishan Gopal}\textsuperscript{64} settled, among other things, the problems of effluents and air pollution under s 133 of the Code of Criminal Procedure despite the existence of special laws dealing with those questions.\textsuperscript{65}

\begin{footnotesize}
\begin{enumerate}
\item Id., Section 25.
\item AIR 1980 SC 1622.
\item (1986) Cr Lj 396.
\item P. Leelakrishnan, \textit{Environmental Law in India}, 31 (2010).
\end{enumerate}
\end{footnotesize}
5.5 CENTRAL BOARDS AND STATE POLLUTION CONTROL BOARDS

For implementation of pollution laws, Central Pollution Control Board and the State Pollution Control Boards are constituted. It became mandatory on the part of all industries installed after the Water (Prevention and Control of Pollution) Act 1974 is passed to take clearance from the Pollution Control Boards. The Water (Prevention and Control of Pollution) Act, 1974, provides stringent measures against those who violate the provision of the Act. It provides for a sentence which may run from six months to six years. Similarly, the Air (Prevention and Control of Pollution) Act 1981 provides for imposition of fine and also imprisonment for a term depending on the gravity of the situation.\(^{66}\)

5.5.1 CENTRAL POLLUTION CONTROL BOARD (CPCB)

The Central Pollution Control Board, a statutory organization was constituted in September, 1974 under the Water (Prevention and Control of Pollution) Act, 1974. Further, CPCB was entrusted with the powers and functions under the Air (Prevention and Control of Pollution) Act, 1981. It serves as a field formation and also provides technical services to the Ministry of Environment and Forests under the provisions of the Environment (Protection) Act, 1986. Principal functions of the CPCB, as spelt out in the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act 1981, are to promote the quality of air and control and abate the pollution in the country. The other function is to control and abate the water pollution through the cleanliness of wells and streams.

The Parliament of India in its wisdom enacted the Water (Prevention and Control of Pollution) Act, 1974 with a view to maintaining and restoring wholesomeness of our water bodies. One of the mandates of Central Pollution Control Board is to collect, consolidate and disseminate technical and statistical data relating to water pollution. Hence Water Quality Monitoring (WQM) and surveillance are of utmost importance.\(^{67}\)

5.5.2 CONSTITUTION OF CENTRAL BOARD

Section 3 of the Water (Prevention and Control of Pollution) Act, 1974, deals with the constitution of the Central Board by the Central Government, to be called the Central Pollution Control Board to exercise the powers conferred on and performs the functions assigned to the Board under the Act. As provided under the Water (Prevention and Control of Pollution) Act, 1974, the Central Board shall consists of the following members, namely, a Chairman who is having experience and knowledge and experience in matters relating to environmental protection or having the experience in the institutions for administrating institutions related to preventing the environment pollution. Five other members which are to be nominated by the Central Government to represent the matters related with Central Government. Five members are to be nominated by the Central Government from the members representing the local authorities within the state. Central Government may elect two persons to represent the companies owned by the Central Government. To represent the interest of the agriculture, fishery or industry or trade, five members are to be nominated by the Central Government. A person having the qualifications in the field of management, scientific and engineering may be selected as full time member-secretary.

The Board so constituted shall be a body corporate—meaning a “legal person”, having perpetual succession. Therefore, it can also acquire, hold and dispose of and enter into a contract. As Such Central Pollution Control Board can also sue and be sued in this name. 68

5.5.3 FUNCTIONS OF THE CENTRAL BOARDS AT THE NATIONAL LEVEL

The main function of the Central Board are to promote cleanliness of in different areas of the State 69 The central board advice the Central Government on any matter concerning improvement of the matters related with air quality and also give advise with the prevention and control of water and air pollution. It may Plan and execute a nationwide programme for the prevention, control

69 Supra note 61 at Section 16 (1).
or abatement of water and air pollution. Sometimes disputes may arise among the two State Pollution Control Boards it may work out to solve the disputes among two State Boards. It may encourage the research related activities being performed by the State Pollution Control Boards in the preventing, controlling and abating the pollution. To prevent the air and water pollution it may organize the training sessions and mass awareness programmes for the persons engaged in the prevention of pollution programmes. Statistical data and technical data of the matters related to water and air pollution are published by the Central Pollution Control Board as a measure devised for the effective knowledge about the prevention and control and abatement of the pollution. It may also compile the data so collected earlier to see whether the pollution of the source has increased or decreased. It also disseminates information in respect to matters relating to water and air pollution and their prevention and control. In Consultation with the State Government it may modify or annul the standards for streams or wells. The Central Pollution Control Board may also such other functions as may be prescribed to it by the Government of India.  

5.5.4 POWERS OF THE CENTRAL POLLUTION CONTROL BOARD

The Central Pollution Control Boards are empowered by Section 18 of the Water Act to give directions to the State Pollution Control Boards relating to the matters with water and air pollution. In case of non compliance of the functions by the State Pollution Control Boards the Central Pollution Control can perform that function that is directed to the State Pollution Control Board. The Central Pollution Control is also empowered to issue directions for the stopping of the supply of electricity, water or any other service to any defaulting industry. It can also issue directions for the closure, prohibition or regulation of any defaulting industry engaged in the water or air pollution.

5.6 STATE POLLUTION CONTROL BOARD

The State Boards are required to specifically lay down effluent standards for government undertakings, municipalities, and other local bodies

70 Supra note 67.
which comply with these predetermined standards. Pollution Control Board has the power under the Environment (Protection) Act, 1986 and Rules to lay down standards for emissions or discharge of environmental pollutants. Rule 3 (2) of the Act even permits the Boards to specify more stringent standards from those provided under the Rules. The Act provides for a permit system or consent order to prevent the pollution of water. The Act generally prohibits disposal of polluting matter in streams, wells and sewers or on land in excess of standards established by the State Boards. The State Boards are authorized to give its consent after making inquiry in the prescribed manner. The functions of State Boards specified by the Water (Prevention and Control of Pollution) Act, 1974, not only include the planning a comprehensive programme for prevention, control and abatement of water pollution and encouraging, conducting and participating in investigation and research of water pollution problems in the State. But also include inspection of the facilities for sewage and trade effluent treatment as well as developing economical and reliable methods of treatment of sewage and trade effluents.\footnote{G.C. Pande and D.C. Pande, Environmental Development and Management (Strategies and Policies) 37 (1999).}

**CONSTITUTION OF THE STATE POLLUTION CONTROL BOARD**

Section 4 of the Act empowers the State Government to constitute a State Pollution Control Board (SPCB) in their respective States. Such Boards shall consist of the members, who shall be nominated by the State Government, a One person is elected as Chairman who is having knowledge or practical experience in the matters related with environmental protection or Person having knowledge in administering institutions dealing with the matters related with environmental protection. Five persons are selected who shall represent the Government in the State. Five members are appointed among the members representing the local authorities functioning within the state. A person having the knowledge, possessing the qualifications or experience of scientific engineering in the field of controlling pollution shall be appointed as the full time member-secretary of the State Pollution Control Board. Three
persons are appointed having the interest of agriculture, fishery or industry or trade which must in the opinion of the State Government ought to be represented. Two persons are elected who may represent the companies or corporations managed by the State Government.

It has also been provided that every SPCB so constituted shall be a legal person and a body corporate having perpetual succession who can acquire, hold, and dispose of property and also enter into a contract. A board so constituted can also sue or be sued.\textsuperscript{72}

\section*{5.6.2 FUNCTIONS OF THE STATE POLLUTION CONTROL BOARD}

The Water (Prevention and Control of Pollution) Act, 1974, has mentioned many functions of the State Pollution Control Board,\textsuperscript{73} the main functions that are performed by the Pollution Control are to control and abate the pollution caused by the water and to advise the State Government on the matters relating to the water pollution and to secure the execution of the orders related with the comprehensive programmes for the prevention of control of pollution in the State. The Board may organize and train the persons engaged in the prevention and control of pollution of water. It can also organise mass awareness programmes in the general public relating to the matters of pollution in collaboration with the Central Pollution Control Boards. For the inspection of the purification of the water that is being disposed in the sewage by the industries through the sewage treatment plant, it can inspect the sewage or trade effluents being discharged by the industries and in case of any discrepancy orders the consent as required by the act. It may participate, conduct and encourage in the investigations relating to the problems related to water pollution and to enforce the law for the prevention, control and abatement of the water pollution. It may lay down, modify or annul effluent standards for sewage and trade effluents and the quality of the receiving waters that may be the result of the discharge of effluents and it may also classify waters of the state.

For the utilization of the sewage and trade effluents after treatment to

\textsuperscript{72} Supra note 68.

\textsuperscript{73} The Water (Prevention and Control of Pollution) Act, 1974, Section 17.
be used in the agriculture it may encourage to evolve new methods so as to abate the pollution caused by the sewage and trade effluents. The trade effluents and sewage must be disposed in the streams in such a way that it may decrease the degree of dilution as are necessary on account of the predominant conditions of disposal. It may lay down the standards for treatment of sewage and trade effluents to be discharged in any stream so that the sewage and trade effluent may not cross the tolerance limits of pollution as permissible in the water of the stream. The State Pollution Control Board may order any person to stop the use of any such system and may switch on to other remedial measures as required necessary to prevent and control or abate water pollution. It may lay down effluent standards for preventing, controlling and abating the water pollution. It may also order to modify the effluent standard by a person who is causing discharge of sewage or sludge. It may advise the State Government about the industries that are causing the pollution of air and water. It may also perform the functions of the State Government and also the functions prescribed by the Central Pollution Control Board. To analyse the samples of water, the laboratories must also be established and recognised to be set up in the State by the State Pollution Control Boards.74

5.6.3 POWERS OF THE STATE POLLUTION CONTROL BOARD

The State Pollution Control Boards have given the powers to obtain information, to take samples of the effluents produced from the factories for the effluent analysis, Power of entry and inspection. The State Pollution Control Boards have powers to refuse consent or withdraw any consent for the establishment of the Industry. If it seems to the Pollution Board that the new outlet is causing pollution of water it may impose restriction on that new outlet. It may have powers to make applications to the Courts for stopping the pollution or to stop the apprehended pollution to be caused to the water in streams or in wells.

The State Board is bound by the directions given by the Central Board 74 Supra note 67 at 257.
or the State Government.\textsuperscript{75} The State Boards are required to specifically lay down effluent standards for Government undertakings, municipalities, and other local bodies which comply with these predetermined standards. The Act provides for a permit system or consent order to prevent the pollution of water. The Act generally prohibits disposal of polluting matter in streams, wells and sewers or on land in excess of standards established by the State Boards. The State Boards are authorized to give its consent after making inquiry in the prescribed manner. The preamble of the Water Act refers to restoring the wholesomeness of the water resources. The functions of State Boards specified by the Water Act not only include the planning a comprehensive programme for prevention, control and abatement of water pollution and encouraging, conducting and participating in investigation and research of water pollution problems in the State. But also include inspection of the facilities\textsuperscript{76} for sewage and trade effluent treatment as well as developing economical and reliable methods of treatment of sewage and trade effluents.\textsuperscript{77}

5.6.4 POLLUTION CONTROL BOARD FOR UNION TERRITORIES

No State Board is to be constituted 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 the 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 may specify.\textsuperscript{78}

5.7 JOINT BOARDS

Chapter III of the Water (Prevention and Control of Pollution) Act, 1974, deals with the Constitution of Joint Board and its composition.

5.7.1 CONSTITUTION OF THE JOINT BOARD

Section 13 provides that Joint Board for a specified period, which can be further renewed, can be constituted by an agreement. The agreement may

\textsuperscript{75} The Water (Prevention and Control of Pollution) Act, 1974, Section 18 (i) (b).
\textsuperscript{76} The Water (Prevention and Control of Pollution) Act 1974, Section 17.
\textsuperscript{77} Supra note 71.
\textsuperscript{78} The Water (Prevention and Control of Pollution) Act, 1974, Section 4 (4).
be entered into:

(i) by two or more Governments of adjoining States; or
(ii) by the Central Government (in respect of one or more Union Territories) and one or more Government of States adjoining to such union territories.

An agreement under this section may-

(i) provide for apportionment of the expenditure in connection with the Joint Board;
(ii) determine that which of the participating Governments shall exercise and perform the several powers and functions under this Act;
(iii) provide for consultation with reference to particular matters arising under this Act; and
(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.

5.7.2 COMPOSITION OF THE JOINT BOARD

The Water (Prevention and Control of Pollution) Act, 1974, provides that a Joint Board be constituted by agreement between two or more Governments of adjoining States shall consist of the following members, one full time chairman to be nominated by Central Government having a special knowledge or practical experience relating to environmental protection. A person having knowledge and experience in administering institutions dealing with environment protection is also eligible. Two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by participating State Governments. Two officials from each of the participating States to nominated the concerned participating State Government to represent that Government. To represent local authorities functioning within the State concerned, one person is nominated by each of the participating State Governments. To represent the interests of agriculture, fishery or industry or trade in the concerned State, one non-official member to be nominated by each of the participating State Governments.

79 Id at Section 14 (1).
One full time Member Secretary to be appointed by the Central Government. He should possess qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

The Joint Board\textsuperscript{80} 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 adjoining to such Union Territories, shall consist of following members. One full time chairman is to be nominated by the Central Government. Two officials to be nominated by the Central Government from the participating U.T.’s and two officials to be nominated from the participating States. To representing the local authorities functioning within the participating U.T., one person to be nominated by the Central Government and one person to be nominated by the State Government representing the local authorities functioning within that participating state. To represent the interest of agriculture, fishery or industry or trade in the Union Territory or the State, as the case may be, one non-official member to be nominated by the Central Government and one person to be nominated by the participating State Government. Two persons to be nominated by the Central Government to represent the companies or corporations managed by the Central Govt. One full time Member Secretary to be nominated by the Central Government.

When Joint Board is constituted by entering in an agreement by the Central Government in respect of one or more U.Ts and one or more Governments of the adjoining States, then the Central Board shall not exercise the powers and perform the functions of the State Board for that Union Territory.\textsuperscript{81}

The Central Government alone shall be competent to give any direction under the Water(Prevention and Control of Pollution) Act, 1974, where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a U.T.\textsuperscript{82}

\textsuperscript{80} Id at Section 14 (2).
\textsuperscript{81} Id at , Section 14(3).
5.8 ROLE OF THE POLLUTION CONTROL BOARDS REGARDING DISPOSAL OF WASTES

Pollution caused by the waste is one of the major problems that humanity is facing today. Industrialization, urbanization, increase in human population are responsible for the production of the waste. Pollution Control Boards act as barricades in controlling the production of waste in many ways which are as under:

5.8.1 ROLE OF POLLUTION CONTROL BOARDS IN MANAGEMENT OF MUNICIPAL SOLID WASTE

The Central Government in exercise of the powers conferred by the Act\textsuperscript{83} has enacted the Municipal Solid Waste (Management and Handling) Rules 2000, the Ministry of Environment and Forests, Government of India in the extraordinary official gazette [part II]. There are various Rules and Schedule. These Rules apply to every municipal authority responsible for collection, segregation, storage, transportation, disposal and processing of solid wastes.\textsuperscript{84} Every municipal authority, within the territorial area of the municipality, is responsible for the implementation of the provisions of the Rules, and for any infrastructure development for collection, storage, segregation, transportation, processing and disposal of municipal solid wastes.\textsuperscript{85}

Municipal authorities shall establish and maintain storage facilities in such a manner as they do not create unhygienic and insanitary conditions around it.\textsuperscript{86} Before establishing any landfill site, baseline data of the ground water quality in the area shall be collected and kept for record for future reference. The groundwater quality within 50 meters of periphery of landfill site shall be periodically monitored to ensure groundwater is not contaminated beyond acceptable limit as decided by Ground Water Board. Such monitoring shall be carried out to cover different seasons in a year that is, summer,

\textsuperscript{83} The Environment (Protection) Act, 1986, Sections 3, 6 and 25.
\textsuperscript{84} The Municipal Solid Waste (Management and Handling) Rules, 2000, Rule 2.
\textsuperscript{85} Id. Rule 4.
\textsuperscript{86} Id., Schedule II (3).
monsoon and post-monsoon period.\textsuperscript{87}

The State Board or the Committee shall monitor the compliance of the standards regarding groundwater, ambient air, leachate quality and the compost quality including incineration standards as specified under the Schedules II\textsuperscript{88}, III \textsuperscript{89} and IV \textsuperscript{90}

The State Board or the Committee, after the receipt of application from the municipal authority or the operator of a facility in form I\textsuperscript{91}, for the grant of authorization for setting up waste processing and disposal facility including landfills, shall examine the proposal taking into consideration the views of other agencies like the State Urban Development Department, the Town Council Planning Department, Air Port or Air Base Authority, the Ground Water Board or any such other agency prior to issuing the authorization.

The Central Pollution Control Board shall co-ordinate with the Stare Boards and the Committees with particular reference to implementation and review of standards and guidelines and compilation of monitoring data.

**Annual Reports:**

The State Boards and the Committees shall prepare and submit to the Central Pollution Control Board an Annual Report\textsuperscript{92} with regard to the implementation of these Rules by the 15\textsuperscript{th} of September every year in Form IV.\textsuperscript{93}

The Central Pollution Control Board shall prepare the consolidated Annual Review Report on the management of municipal solid wastes and forward it to the Central Government along with its recommendations before the 15\textsuperscript{th} December every year.

\textsuperscript{87} Id., Schedule III (23).
\textsuperscript{88} Management of Municipal Solid Wastes.
\textsuperscript{89} Specifications for Landfill Sites.
\textsuperscript{90} Standards for Composting, treated leachates and incineration.
\textsuperscript{91} Application for obtaining authorization.
\textsuperscript{92} Municipal Solid Wastes (Management and Handling) Rules, 2000, Sec. 8.
\textsuperscript{93} Format of Annual Review Report to be submitted by the State Pollution Control Board to the Central Pollution Control Board.
5.8.2 ROLE OF POLLUTION CONTROL BOARDS IN DISPOSING BIO-MEDICAL WASTE

Bio-Medical waste means any solid or liquid waste which is generated during the diagnosis, treatment, or immunization of human beings or animals or in research activities pertaining there-to or in the production or testing of biological waste. This waste is highly infectious can be risk to human health if not managed in scientific manner. Non-liquid biomedical waste includes human and animal tissues, organs and body fluids, discarded medical accessories like tubes, intravenous sets, soiled bandages, plastics etc. Liquid waste includes waste generated from laboratory washings, cleaning, and housekeeping and disinfection activities.

With increase in medical facilities there has been an increase in concern about the harmful effects of biomedical wastes generated by them. The healthcare establishments in the India are not giving due attention to the waste management. For this purpose notification of the Biomedical Waste (Handling and Management) Rules, 1998 was issued, through these Rule, hospitals are slowly streamlining the process of waste, segregation, collection, treatment, and disposal. Waste management in the hospitals and health care establishments is being monitored by agencies like State Pollution Control Boards and licensing authorities of health care establishments. The duty of every occupier of an institution generating, bio-medical waste which includes a hospital, nursing home, clinic, dispensary, pathological laboratory, and blood bank by whatever name called to take all steps to ensure that such waste is handled without any adverse effect to human health and environment. Every occupier, where required, shall set up requisite biomedical treatment facilities like incinerator, autoclave, microwave system for treatment of waste, or, ensure requisite treatment of a waste at a common waste treatment or any other waste treatment facilities.

Prescribed Authority for Enforcement of Bio-Medical Waste Rules, 1998:

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96 Supra note 95, Rule 4.
97 Id, Rule 5(2).
The Prescribed authority for the provisions of these Rules shall be the State Pollution Control Boards in respect of States and the Pollution Control Committees in respect of the Union Territories and all pending cases with a prescribed authority appointed earlier shall stand transferred to the concerned State Pollution Control Board, or as the case may be, the Pollution Control Committees.98

Authorization for Handling the Bio-Medical Waste:

Every occupier of an institution generating, collecting, receiving, storing, transporting, treating, disposing and/ or handling biomedical waste in any other manner, except such occupier of clinics, dispensaries, pathological laboratories, blood banks providing treatment / service to less than 1000 patients per month, shall make an application in Form I to the prescribed authority for grant of authorization.99 The prescribed authority shall on receipt of Form I make such enquiry as it deems fit and it is satisfied that the applicant possesses the necessary capacity to handle the bio-medical waste in accordance with these Rules, grant or renew an authorization as the case may be.100

An authorization shall be granted for a period of three years, including an initial trial of one year from the date of issue. Thereafter, an application shall be made by the occupier/ operator for renewal. All such subsequent authorization shall be for a period of three years. A provisional authorization will be granted for the trial period, to enable the occupier/ operator to demonstrate the capacity of the facility.101

Annual Report:

Every occupier/ operator shall submit an Annual Report to the prescribed authority in Form II by 31st of January every year, to include information about the categories and quantities bio-medical wastes handled during the preceding year. The prescribed authority shall send this information

98 Id., Rule 7.
99 Id., Rule 8 (1).
100 Id., Rule 7 (4).
101 Id., Rule 7 (5).
in a complied form to the Central Pollution Control Board by 31st March every year.¹⁰²

5.8.3 ROLE OF POLLUTION CONTROL BOARDS IN MANAGING HAZARDOUS WASTE

These Rules aim to deal with the problem of hazardous wastes comprehensively. Although, the term “hazardous wastes” has not been defined separately in the Rules, but Rule 3(1) provides that “hazardous waste” means waste substances, which are generated in the processes as indicated in the schedule.

The responsibility for proper collection, reception, treatment, storage and disposal of hazardous wastes without any adverse effect on the environment.¹⁰³

Rule 4A describes the responsibility of the occupier and operator of the facility as follows:

(a) Contain contaminants and prevent accidents and limit their consequences on humans and the environment; and

(b) Provide persons working on the site with information, training and equipment necessary to ensure their safety.

“Proper authorization” by the State Pollution Control Board is really the control mechanism. As per Rule 5, this authorization letter or permit is issued to a man who is well versed in this technique and possesses proper and adequate facilities, technical capabilities and equipment to handle hazardous wastes safely.

Grant of Authorization for Handling Hazardous Wastes:

Under Rule 5 every person who is engaged in generation, processing, treatment, package, storage, transportation, use etc. Of the hazardous waste shall be required to obtain an authorization from the State Pollution Control Board. The hazardous waste shall be collected, treated, re-cycled, re-processed, stored or disposal of only in the facilities authorized by the State Pollution Control Board. Every Person engaged in the generation, treatment,

¹⁰² Id., Rule 10.
¹⁰³ Id., Rule 4.
package, storage, transportation, use collection, destruction, conversion, offering for sale, transfer or the like of the hazardous waste or occupier of the facility should seek authorization from the State Pollution Control Board.

If the State Board is satisfied that the applicant possesses appropriate facilities, technical capabilities and equipment to handle hazardous waste safely, it may grant authorization within 120 days and it shall be valid for a period of five years and shall be subject to such conditions as may be laid down.

There shall be not import and export of hazardous wastes for dumping and disposal\(^{104}\). However, as an exception, such wastes may be permitted to be imported only as raw material for recycling or reuse. Such wastes can be used for processing and reuse as raw material only after procuring a proper permit from the State Pollution Control Board. In such a case, the exporting country should also inform and seek permission from the Central Government, which may be granted or refused. The occupier exporting or importing hazardous wastes from or to India shall comply with the Articles of Basel Convention to which India is a signatory. Further, the Ministry of Environment and Forests shall be the nodal agency to deal with trans-boundary movements of hazardous wastes.\(^{105}\)

The Central Government in exercise of the powers conferred on it by Sections 6\(^{106}\), 8\(^{107}\) and 25\(^{108}\) of the Environment (Protection) Act, 1986 enacted these rules. These Rules lists various items of hazardous nature under the given Schedule and prescribes their quality beyond which an occupier generating hazardous wastes is not only liable to take all practical steps to ensure that such wastes are properly handled and disposed of without any adverse effects but also responsible for proper collection, reception, treatment, storage and disposal of these wastes either himself or

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\(^{106}\) This Section deals with the power of Central Government to enact Rules to regulate environmental pollution.

\(^{107}\) This Section requires the persons dealing with hazardous substance to follow the prescribed procedure.

\(^{108}\) This Section empowers the Central Government to enact Rules for carrying out the purposes of the Act.
through the operator of facility. Occupier is required that before the delivery of the hazardous waste, it should be packed in a manner suitable for storage and transport with the visibility of leveling and packing made in accordance with climate conditions.\footnote{109}

The Question relating to the liability of hazardous industries came for discussion before the Supreme Court in \textit{Vellore Citizen Welfare Forum v. Union of India}.\footnote{110} In this case a citizen group from Vellore district (Tamil Nadu) Known as Citizen Welfare Forum moved a writ petition (PIL) under the Article 32 against several industries and tanneries for leaving their untreated toxic effluent in open area which ultimately polluted Polar River, the only source of potable water in the area. The Court while upholding rule of 'Polluter Pays Principle' and that of 'Precautionary Principle' as part of land, asked the central government to appoint an authority to assess the loss caused to the environment/ecology and the compensation to be recovered from the polluter as the cost of reversing the damaged environment from the polluters.

\subsection*{5.8.4 ROLE OF THE POLLUTION CONTROL BOARDS IN THE MANAGEMENT AND HANDLING OF TRANS BOUNDARY MOVEMENTS OF HAZARDOUS WASTE}

Hazardous waste means any waste which by reason of any of it physical, chemical, reactive, toxic, inflammable, explosive or corrosive characteristics causes danger or is likely to cause danger to health or environment, whether alone or in contact with other wastes and substances. Sources of hazardous waste include those from industrial processes, mining extraction, pesticide based agricultural practices etc.

Hazardous waste, if not treated and disposed off properly can adversely affect the soil and water, especially ground water, in the area. Most hazardous wastes contain heavy metals which are toxic. They enter the human, animal body through food, water, air or absorption through the skin when they come in contact with humans in agriculture or industrial settings. They are not metabolized by the body are accumulated in the soft tissues.\footnote{111}

\footnotesize\textsuperscript{109} The Hazardous Waste (Management and Handling) Rules, 1989, Rule 7.  
\textsuperscript{110} AIR 1986 SC 2715.  
\textsuperscript{111} Vikas Vishisth, \textit{Law and Practice of Environmental Laws in India} 281 (2002).
Grant of the Authorization, Registration for Re-cycling, Reprocessing or Reuse of Hazardous Wastes:

Every person who is engaged in generation, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of hazardous waste shall require to obtain an authorization from the State Pollution Control Board.\textsuperscript{112} The occupier, recyclers, re-processors, re-users and operators of facilities may store the hazardous wastes for a period not exceeding ninety days and shall maintain a record of sale, transfer, storage, recycling and re-processing of such wastes and make these records available for inspection.\textsuperscript{113} Finally the Ministry of Environment and Forests is the nodal Ministry to deal with the transboundary movement of the hazardous wastes and to grant permission for transit of the hazardous wastes through any part of India.\textsuperscript{114}

Every person desirous of recycling or reprocessing the hazardous waste specified in Schedule IV may make an application in Form 5 accompanied with a copy of consent to establish granted by the State Pollution Control Board under the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution Act, 1981. The State Pollution Control Board or the Pollution Control Committee on being satisfied that the applicant is utilizing environmentally sound technologies and possesses adequate technical capabilities requisite facilities, and equipment to recycle, reprocess or reuse hazardous wastes, may grant registration to such applicants stipulation therein necessary conditions for carrying out safe operations in the authorised place only.\textsuperscript{115}

The State Pollution Control Board or the Pollution Control Committee will have to dispose of the application for registration within a period of one hundred twenty days from the date of the receipt of such application complete in all respects.\textsuperscript{116}

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\textsuperscript{112} The Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, Rule 5(1).
\textsuperscript{113} \textit{id}, Rule 7.
\textsuperscript{114} \textit{id}, Rule 12.
\textsuperscript{115} \textit{id}, Rule 8 (2).
\textsuperscript{116} \textit{id}, Rule 8 (3).
\end{flushleft}
The registration issued shall be valid for a period of five years from the
date of its issue, unless the operation is discontinued by the unit or the
registration is suspended or cancelled by the State Pollution Control Board or
the Pollution Control Committee. 117

The State Pollution Control Board or the Pollution Control Committee
may cancel or suspend the registration granted under these rules, if it has
reasons to believe that the recycler or re-processor has failed to comply with
any of the conditions of the registration, or with any provisions of the Act or
the rules made there under.118 The recycler or the reprocessor shall maintain
records of hazardous wastes purchased and processed and shall file an
annual return of its activities of previous year in Form 6 to the State Pollution
Control Board, on or before the 30th day of June of every year. 119 The
registered trader shall be required to submit details of such import and
particulars of the actual users along with quantities to the concerned state
pollution Control Board or Pollution Control Committee on a quarterly basis
and registration would be liable for cancellation on failure to furnish these
details to the State Pollution Control Boards or Pollution Control Committees:

Provided that the registration granted to the trader shall not be cancelled
unless he has been given a reasonable opportunity of hearing. 120

Import of the Hazardous Waste:

Any person intending to import or transit for transboundary movement of
hazardous wastes specified in Schedule III shall apply 121 to the Central
Government of the proposed import wherever applicable, together with the
prior informed consent, which ever applicable and shall send a copy of the
application, simultaneously, to the concerned State Board to enable them to
send their comments and observations, if any, to Ministry of Environment and
Forests within a period of thirty days. 122

On receipt of the application in complete, the Ministry of Environment

117 Id, Rule 8 (4).
118 Id, Rule 8 (5).
119 Id, Rule 8 (7).
120 Id, Rule 8 (10).
121 Id Form 7 and Form 8.
122 Id., Rule 16 (1).
and Forests shall examine the application considering the comments and observations, if any, received from the State Boards, and may grant the permission for import within a period of sixty days subject to the condition that the importer has-

1. The environmentally sound recycling, recovery or reuse facilities.
2. Adequate facilities and arrangements for treatment and disposal of wastes generated, and
3. A valid registration from the Central Pollution Control Boards and a proof of being an actual user, if required under these Rules.

The Ministry of Environments and Forests shall forward a copy of the permission granted under sub rule (2) to the Central Pollution Control Board, the concerned State Pollution Control Board and the concerned port and Customs authorities for ensuring compliance of the conditions of imports and safe handling of the hazardous waste.\(^{123}\)

The importer of the hazardous waste shall maintain records of the hazardous waste imported by him in Form 10 and the record so maintained shall be available for inspection.\(^{124}\)

The importer shall also inform the concerned State Pollution Control Board and the Central Pollution Control Board, the date and time of the arrival of the consignment of the hazardous waste ten days in advance.\(^{125}\)

**Transport of the Hazardous Waste:**

In case of the transport of the hazardous wastes for final disposal to a facility for treatment, storage and disposal existing in a state other than the state where the hazardous waste is generated, the occupier shall obtain ‘No Objection Certificate’ from the State Pollution Control Board of both the states.\(^{126}\)

In case of the transportation of hazardous wastes through a State other than the State of origin or destination, the occupier shall intimate the concerned State Pollution Control Boards before he hands over the

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\(^{123}\) *Id*, Rule 16 (2).
\(^{124}\) *Id*, Rule 16 (7).
\(^{125}\) *Id*, Rule 16 (8).
\(^{126}\) *Id*, Rule 19 (3).
hazardous wastes to the transporter.\textsuperscript{127}

**Accident Reporting:**

Where an accident occurs at the facility or on a hazardous waste site or during transportation of the hazardous waste, the occupier or operator of the facility or the transporter, as the case may be, shall report immediately to the State Pollution Control Board about the accident in the Form 14.\textsuperscript{128}

**5.8.5 ROLE OF THE POLLUTION CONTROL BOARDS IN MANAGING THE E-WASTE**

The revolution in information technology has resulted in a significant increase in the mass production, consumption and disposal of electronic products particularly those that have short life spans such as notebook computers and mobile phones. The legislative lacuna and consumerism set the background for the union governments recent draft guidelines on the disposal of e-waste, which was later termed as the e-Waste (Management and Handling) Rules 2010, these Rules apply across section of society directly involved with products that generate e-waste as producers, dealers, collection centre, purchase and processing of electrical and electronic equipments.

In case of transportation of e-waste either for dismantling or for recycling or for final disposal to a facility existing in a state other than the state where the waste is generated, the transporter shall obtain no objection certificate from the State Board of the State of transit.\textsuperscript{129} Transportation of e-waste through a State other than the state of origin, transporter shall intimate the concerned State Board beforehand.\textsuperscript{130}

**5.8.6 ROLE OF THE POLLUTION CONTROL BOARDS IN MANAGING THE WASTE BATTERIES.**

The Batteries (Management and Handling) Rules, 2001\textsuperscript{131} apply to

\textsuperscript{127} Id, Rule 19 (4).  
\textsuperscript{128} Id, Rule 24.  
\textsuperscript{129} The E-waste (Management and Handling) Rules, 2010, Rule 19 (2).  
\textsuperscript{130} Id, Rule 19(3).  
\textsuperscript{131} Vide S.O. 432(E) dated 16 May 2001.
every manufacturer, importer, assembler, dealer, recycler, auctioneer, consumer and bulk consumer involved in manufacture, processing, sale, purchase and use of batteries or components thereof. Through these Rules it is the responsibility of a manufacturer, importer, assembler and re-conditioner to ensure that the used batteries are collected back as per the schedule against new batteries sold excluding those sold to original equipment manufacturer and bulk consumers.\textsuperscript{132} The responsibility of the dealer is to ensure that the used batteries are collected back as per the schedule against new batteries sold, give appropriate discount for every used battery returned by the consumer, and ensure that used batteries collected back are of similar type and specifications as that of the new batteries.

**Registration of Importers:**

The importers shall get registered as per Form I with the Central Pollution Control Board for a period of five years and a provision of cancellation for failure in collection of the required number of used batteries as per the said rules, non-submission of timely half yearly returns to the State Pollution Control Boards.

**Responsibilities of Recycler:**

Each recycler shall submit annual returns as per Form VII\textsuperscript{133} to the State Board\textsuperscript{134}, make available all records relating to receipt of used batteries, sources, quantities and metal yield to be submitted to the State Pollution Control Board for inspection.\textsuperscript{135}

\textsuperscript{132} The Batteries (Management and Handling) Rules, 2001, Rule 4 (1).
\textsuperscript{133} Form for filing Returns by recyclers of used Batteries.
\textsuperscript{134} The Batteries (Management and Handling) Rules, 2001, Rule 8(iii).
\textsuperscript{135} Id., Rule 8 (iv).
Duties of the Central Pollution Control Board:
The Central Pollution Control Board shall compile and publish the data received every year from the State Boards. It shall review the compliance of the rules periodically to improve the collection and recycling of used lead batteries and appraise the Ministry of Environment and Forests, Government of India.  

5.9 CONCLUSION

The Principle of Precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environment protection should not only aim at protecting health property and economic interest but also protect the environment for its own sake. The precautionary duties must not only be triggered by the suspicion of concrete danger but also by way of (justified) concern or risk potential. The principle suggests that where there is identifiable risk or serious irreversible harm, it may be appropriate to place the burden of proof on the person or entity proposing the activity that is potentially harmful to the environment.

To sum up the Pollution Control Boards have introduced a sense of discipline among the industries. Though the law envisages most stringent enforcement machinery with heavy hurdles in the way of administration of environmental laws. So, for preserving the environment and providing fresh air and pure water, administrative urgency is also needed along with legislative militancy.

After the detailed study of the corporations it is analyzed that most of the towns/ cities are not having proper action plan for implementation of the MSW Rules. Waste collection is observed as only 70% of the total waste generation and the remaining 30% is lost in the urban environment by burning of waste and remaining consumed by the animals. House-to-house collection and segregation is not fully covered in any city. There is a large gap in between waste collection and processing in fact waste processing facility is set up only in the Bathinda Corporation for 25 years. Most of the

municipalities have no sanitary landfill facility and follow dumping for disposal of Municipal Solid Waste. Regarding the insanitary conditions of the waste pickers. Biomedical waste is the waste generated during diagnosis, treatment or immunization of human beings or animals or in research activities. The Government of India enacted the Biomedical Waste (Management and Handling) Rules in 1998 under section 6, 8, 25 of the Environment (Protection) Act. 1986. These Rule provide detail provisions of categories of biomedical waste along with its treatment and management alternatives.

To know the exact time from the hospital staff about the storing of hospital waste beyond certain period of time, it is found that the 77% of the civil hospital employees and 82% of the private answered correctly that untreated biomedical waste cannot be stored beyond 48 hours. 2% of the civil hospital employees answered that it can be stored beyond 36 hours and 17% answer storing for 24 hours while 7% of the private hospital employees answered that it can be stored up to 36 hours while 11% answered that it can be stored for 24 hours.

When questions were asked about the general awareness of the waste management. A question was put to posh area localities householders that whether they know the 3R principle of the waste management. 89% of them answered that they know about the waste management principle of 3 Rs., while 24% of the slum area residents answered with great difficulty the concept of the waste management. While 11% of the posh area residents express their inability to answer the question about the waste management. 76% of slum dwellers said that they do not know about the concept of the Waste management. About the knowledge that energy can be produced from the solid waste, 83% of the respondents questioned from the posh area answered that they know that energy can be produced from the solid waste by waste to energy plants. 98% of the slum, dwellers expresses their inability that they know that energy can be produced from the solid waste which they generate daily from their houses. Only 2% of the slum dwellers know that energy can be produced from the solid waste.