

ENVIRONMENTAL

LAW

WATER ACT 1974

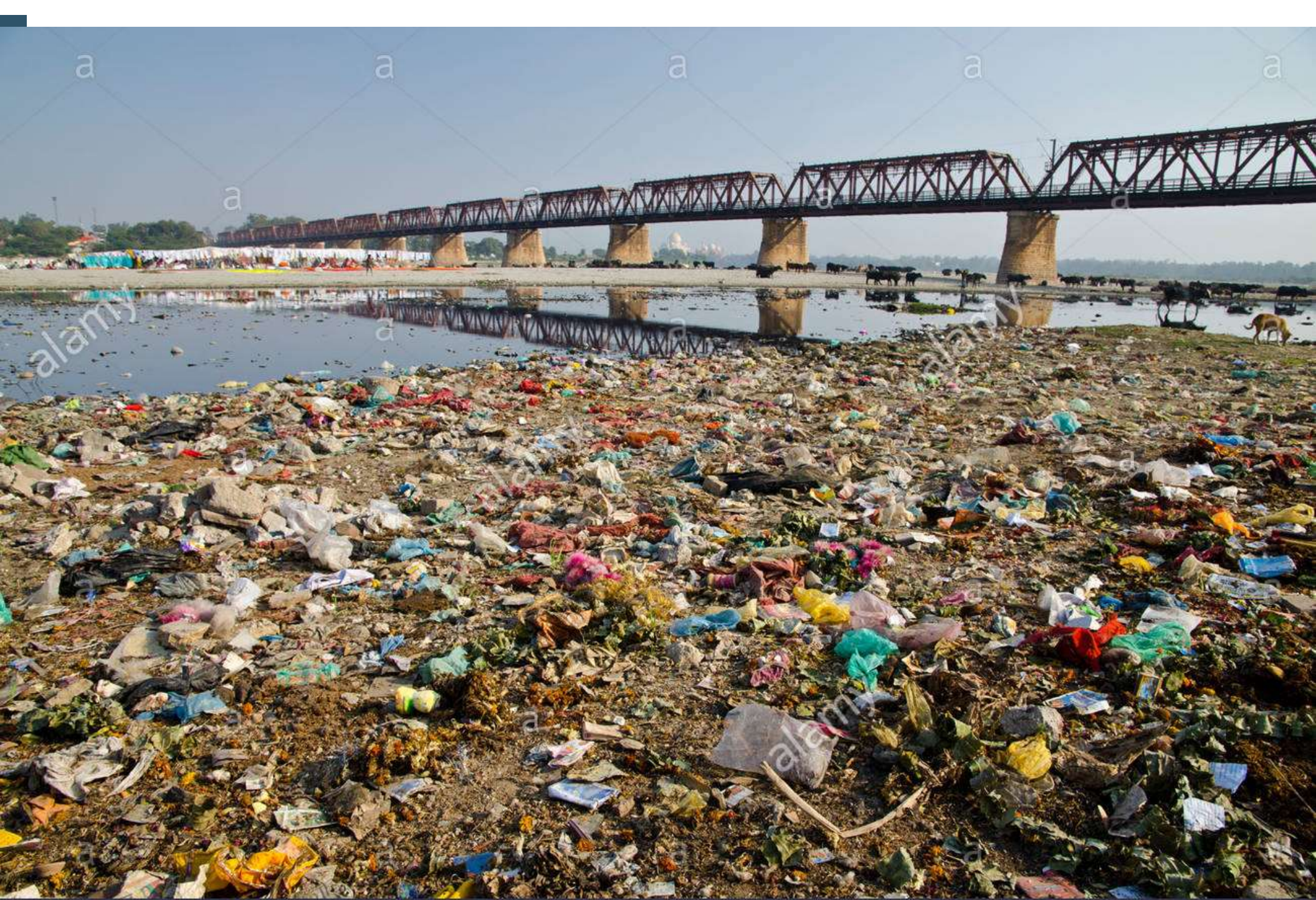
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Water Pollution: Sources and Effects

- ▶ The problem of Water Pollution: Sources and Effects
- ▶ [Water Pollution.mp4](#)



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River Pollution in India





Pollution due to oil spills

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Dr. Shubhangi Panchal, DCLL.

Water Act 1974

An Act to provide for :



The prevention and control of water pollution and



The maintaining or restoring of wholesomeness of water,

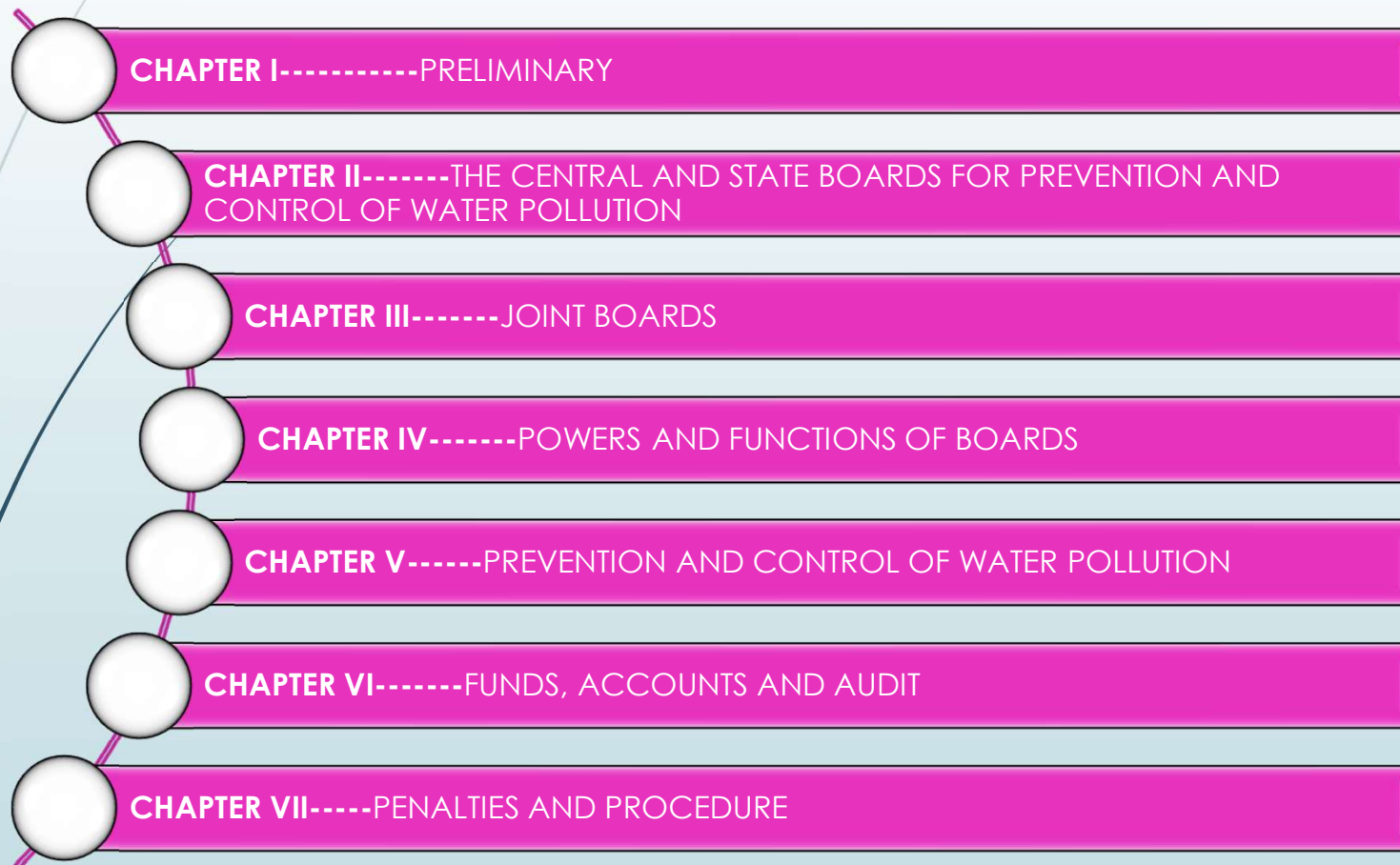


For the establishment, with a view to carrying out the purposes aforesaid, of boards for the prevention and control of water pollution,



For conferring on and assigning to Such Boards Powers And Functions Relating Thereto And For Matters Connected Therewith

Chapters

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- CHAPTER I-----PRELIMINARY
 - CHAPTER II-----THE CENTRAL AND STATE BOARDS FOR PREVENTION AND CONTROL OF WATER POLLUTION
 - CHAPTER III-----JOINT BOARDS
 - CHAPTER IV-----POWERS AND FUNCTIONS OF BOARDS
 - CHAPTER V-----PREVENTION AND CONTROL OF WATER POLLUTION
 - CHAPTER VI-----FUNDS, ACCOUNTS AND AUDIT
 - CHAPTER VII-----PENALTIES AND PROCEDURE

13 Definitions : Sec 2 (e)

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

Sec 2 (k)

- ▶ "trade effluent" includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any 3 [industry, operation or process, or treatment and disposal system], other than domestic sewage.

Composition CPCB Central Pollution Control Board



- 1--Charman
- Not more than 5 ---nominated by CG -- representing Central govt
- Not more than 5 ----nominated by CG from State Boards (2 from local authorities)
- Not more than 3 Non officials from Fisheries, agriculture etc
- 2 from corporations of CG
- 1 –Member sec

Composition CPCB-- Central Pollution Control Board



- [CPCB | Central Pollution Control Board](#)
- CPCB –body corporate
- Term 3yrs (for ex officio mem _till vacating office)
- Akhil Bharat Goseva Sangh v State of Andhra Pradesh 2006 SCC
- ***Sec 6 –Disqualifications***
- Unsoundness
- Insolvency
- Conviction for offence of moral turpitude
- Conviction for offence under water act
- Partnership, interest or share in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents,

Composition CPCB-- Central Pollution Control Board

- Working as **director or a secretary, manager** or other salaried officer or employee of any company or firm having **any contract** with the Board, or with the Government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the Government, for the carrying out of **sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or**
- Has so **abused**, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his continuance on the Board **detrimental to the interest of the general public.**

Functions of Central Board Sec 16

- (1) Subject to the provisions of this Act, the main function of the Central Board shall **be to promote cleanliness of streams and wells** in different areas of the States.
- (2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely:--
 - (a) **advise the Central Government** on any matter concerning the prevention and control of water pollution;
 - (b) **co-ordinate** the activities of the State Boards and **resolve disputes** among them;

Sec 16 :Functions of the Central Board

- (c) **provide technical assistance and guidance** to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (d) **plan and organise the training** of persons engaged for the prevention, control or abatement of water pollution
- (e) **organise comprehensive programme** through mass media regarding the prevention and control of water pollution.

Sec 16 : Functions of the Central

Board

[(ee) perform such of the functions of any State Board as may be specified in an order made under **sub-section (2) of section 18**];

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

(g) **lay down, modify or annul**, in consultation with the State

Sec 16 :Functions of the Central Board

- (h) plan and cause to be executed a **nation-wide programme** for the prevention, control or abatement of water pollution;
 - (i) perform such other functions as may be prescribed.
- (3) The Board may **establish or recognise a laboratory or laboratories** to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

17. FUNCTIONS OF STATE BOARD.

- (1) Subject to the provisions of this Act, the functions of a State Board shall be --
- (a) **to plan a comprehensive programme** for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
 - (b) **to advise the State Government** on any matter concerning the prevention, control or abatement of water pollution;

FUNCTIONS OF STATE BOARD.

- (c) **to collect and disseminate information** relating to water pollution and the prevention, control or abatement thereof;
- (d) **to encourage, conduct and participate in investigations and research** relating to problems of water pollution and prevention, control or abatement of water pollution;
- (e) **to collaborate with the Central Board** in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;

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

- (g) lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-State stream) resulting from the discharge of effluents and to classify waters of the State;
- (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

- (i) to evolve methods of **utilization of sewage and suitable trade effluents in agriculture;**
- ▶ (j) **to evolve efficient methods of disposal of sewage and trade effluents** on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
 - ▶ (k) **to lay down standards of treatment of sewage and trade effluents** to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

FUNCTIONS OF STATE BOARD.

- ▶ (I) to make, vary or revoke any order --
 - (i) for the prevention, control or abatement of discharge of waste into streams or wells;
 - (ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent control or abate water pollution;

17. FUNCTIONS OF STATE BOARD.

- (m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
 - (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
 - (o) to perform such other functions as may be prescribed or as may, from time to time be entrusted to it by the Central Board or the State Government.
- (2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

Sec 18: Power to give directions

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- (1) In performance of its duty :
 - (a) the Central board is bound by directions given to it by Central Govt. in writing
 - (b) the State board is bound by directions given to it by Central Board or the State Govt. in writing
- (2) Where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

Sec 18: Power to give directions

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- (3) Central Govt. is of the opinion that --any state Board has defaulted in complying with direction By Central board; ---and grave emergency has arisen---in public interest—direct Central board to do that function--.
- (4) Central Board to recover expenses from any person .

Prevention and Control of Water Pollution.

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➤ Sec 19: Powers of State Government to restrict the application of the Act in certain areas

- No power to exempt any polluting industry in prohibited area.
(A P Pollution Board v M V Naydu.(2001) SCC)

➤ Sec 20: Power to obtain information

- Make surveys, keep records of flow or volume of water
- Direction to any person to give information-abstraction, or discharge
- Direction to person in charge of industry to give information regarding disposal ,treatment any extension or alteration.etc

Prevention and Control of Water Pollution.

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Sec 21 : Power to take Samples and procedure

- Results admissible only if procedure is followed
- Notice regarding collection of sample
- Sample collected divided in 2 parts
- Separate container signed and sealed
- Occupier if willfully absent, inform to govt. analyst
- Cost of analysis at request of occupier to another lab to be borne by occupier.

Sec 22: Results

- ▶ Analyst to Submit the report in triplicate—1)Board , 2)occupier 3)the Court, in legal proceedings .
- ▶ In discrepancy, report of lab established by Central Govt will prevail.
- ▶ Occupier can get sample analysed at his own expense.

23. POWER OF ENTRY AND INSPECTION

- ▶ Board member or authorized person shall have right to enter any place for:
- ▶ Performing functions
- ▶ Determining conditions are being complied with or not
- ▶ Examining plant, record register document
- ▶ Conducting search—if offence committed
- ▶ Seizing plant, record document etc.
- ▶ Inspection of well in reasonable hrs if situated in residential places

Sec 24: Prohibition on use of well or stream for disposal of polluting matter.

- No person :
- Shall cause or permit poisonous, noxious matter
- Shall cause or permit any other matter....tend to impede the proper flow of water aggravating pollution
- Except:
 - Right to construct
 - Reclaiming land
 - Natural deposit
 - Consent of Board.

Sec 25 : Restrictions on new outlets

- ▶ No person without previous consent:
- ▶ Establish or take any steps to establish any
- ▶ industry....

- ▶ Bring into use new or altered outlet for discharge of sewage.
- ▶ Begin to make any new discharge of sewage.

36 Consent of the Board for outlet

Application in prescribed format and with fee.

Inquiry by Board

Grant of Consent for specified period

Or refusal on recording reasons.

Where industry or process or any disposal plant established without consent---Board can issue notice and impose conditions on it.

- ▶ Every Board shall maintain a register of particulars of conditions imposed under this section.
- ▶ The board must decide upon the application for the consent within four months, otherwise consent shall be deemed to have been granted.
- ▶ Mahabir Soap v Union of India.---refusal is discretion of Board.
- ▶ M C Mehta V Union of India (Tanneries Case)
- ▶ A P Pollution Board v Prof M V Naydu.(2001)—taking steps for establishment prohibited u/sec 25

• Sec 29 :Revision :

Sec 29 :

- State Government on application or suo moto can call for records of order u /sec25,26,27
- Reasonable opportunity to State Board and affected person.
- No limitation
- No revision u/ sec 25,26,27 where
 - Appeal lies but not preferred
 - Appeal preferred but pending
- Revision is not a right but power on State Govt. to check functioning of Board.

Prevention and Control of Water Pollution.

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► **Sec 30: Power to carry out certain works**

- Consent conditions requiring certain works to be done and person defaults---then Board itself will execute the work after notice to such person –recover expenses.

Prevention and Control of Water Pollution.

► **Sec 31 :Furnishing of information or State Board in certain cases.**

- If due accident or unseen event poisonous or noxious matter is discharged in stream sewer or land causing pollution---in charge of such place shall give information to Board and other agencies---
- Mandatory duty –non compliance punishable u/ sec42.

41 Prevention and Control of Water Pollution.

- ▶ **Sec32:**
- ▶ **Power to take emergency measures in case of pollution of stream**

- Board carry out operation
- ▶ Removal and disposal
- ▶ Remedying pollution
- ▶ Orders to restrain or prohibit person from discharging.

42 Prevention and Control of Water Pollution.

- **Sec 33**
- **Power of Board to make application to Court restraining apprehended pollution**
- Board application to court not inferior to JMFC
- Court may direct the person polluting to desist from such action and remove such pollution caused.
- If fails –Court may direct to Board to remove and dispose . Expenses recovered from polluter.

Prevention and Control of Water Pollution.

- ▶ **Sec 33 A .(1988):**
- ▶ **Board Power to give directions**

- ▶ Board can issue direction to any person, officer or authority –bound to comply
- ▶ Direction :
- ▶ **Closure, prohibition or regulation** of any industry, operation etc
- ▶ **Stoppage or regulation** of supply of electricity, water or any other service.
- ▶ *Re Bhavani River Sakti Sugar Mills.1998*
- ▶ *M C Mehta v union of India Tanneries Case 1997 SCC*

Prevention and Control of Water Pollution.

- **Sec 33B:**
 - **Appeal to National Green Tribunal**
 - **(established by National Green Tribunal Act 2010.)**
- Any person aggrieved by
- Order of appellate authority (sec 28)
- Order by State Govt.(sec 29)
- Directions under Sec 33A by the Board.
- May appeal to NGT
- Direction or orders issued only after 18/10/2010 subject to appeal to NGT

Sec 41: Failure to give information.

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Offences

- ▶ **Violation of Sec 20:**
 - i) Failure to give information u /Sec 20

- i) **Violation of Sec 32** violating orders prohibiting discharge.
- ii) **Violation of SEC 33**
Violating orders of Court
- i) **Violation of Sec 33A:** violating orders of State Board

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Penalties

- i) Imprisonment up to 3 months and Fine extending up to 10,000
If failure continues
Additional fine 5000/-per day till failure continues.

- ii) iii) iv) Imprisonment from 1yr 6 mnths ---6 yrs + fine
If contd ...Addnl fine 5000/-per day
Failure Beyond 1 yr....Imp 2yrs---7yrs + fine

Sec 42

46 Penalty for certain acts.—(1) Whoever—

- ▶ (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or
- ▶ (b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or
- ▶ (c) damages any works or property belonging to the Board, or
- ▶ (d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or
- ▶ (e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or
- ▶ (f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or

Sec 42

- ▶ (g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular,.
- ▶ ii) Alteration of monitoring instrument, meter guage etc
- ▶ Penalty : Imprisonment for a term 3 months or with fine which may extend to 10,000/- or with both
- ▶ Imprisonment 3mnths or Fine upto 10 000/- or both.

Sec 43

- ▶ **Contravention of Sec 24:**
discharge of poisonous material
in well stream

- ▶ Imprisonment—not less than
1 yrupto 6 years **and** fine

Sec 44

Contravention of Sec 25 ,sec 26

Sec 25 -new outlets, discharges

Sec 26—Existing discharge of
sewage

Imprisonment not less than 1yr -
--upto 6 yrs and Fine

Sec 45

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- ▶ Previous conviction u / sec 43 or sec 44 and again guilty (previous conviction not be more than 2 yrs earlier)

Sec 45 A

If no specific punishment for any offence....

- ▶ Enhanced punishment imprisonment from 2yrsup to 7yrs **and** Fine

Imprisonment 3 mnths or Fine up to 10,000/- or both

If continues...

Adnl fine 5000/-per day

Sec 46 :publication of name by court

- ▶ If any person convicted of an offence under this Act commits a like offence afterwards, the court before which the second or subsequent conviction takes place can cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in newspapers

Sec 47. OFFENCES BY COMPANIES

- ▶ (1) Where an offence under this Act has been committed by a company, every person who at the time the offence was committed was **in charge of, and was responsible** to the company for the conduct of, the business of the company, **as well as the company**, shall be deemed to be **guilty** of the offence and shall be liable to be proceeded against and punished accordingly:
- ▶ Not liable if he proves that the offence was committed without his knowledge for that he exercised all due diligence to prevent the commission of such offence.
- ▶ (2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any **neglect** on the part of, any **director, manager, secretary or other officer** of the company, such director, manager, secretary or other officer shall also be deemed to **be guilty** of that offence and shall be liable to be proceeded against and punished accordingly

Sec 48. OFFENCES BY GOVERNMENT DEPARTMENTS

- ▶ Where an offence under this Act has been committed by any Department of Government, the **Head of the Department** shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
- ▶ Not liable if he proves that the offence was committed **without his knowledge or that he exercised all due diligence to prevent** the commission of such offence.