

CHAPTER - 3

LAWS FOR PREVENTION AND CONTROL OF POLLUTION

There are certain enactments having main objective of protecting the environment by prevention and control of pollution. The Water (Prevention and Control of Pollution) Act, 1974, hereinafter referred as the Water Act, is first such enactment in this category. The Act tries to achieve its objective by creation of specialised agencies in the form of Water Pollution Control Boards, which was entrusted with the job of prevention and control of water pollution. The Air (Prevention and Control of Pollution) Act, 1981, hereinafter referred as the Air Act, was passed in the same fashion as the Water Act. After this enactment Water Pollution Control Boards were renamed as Pollution Control Boards having powers and performing function under the Water Act as well as Air Act. Both the enactments are based on permit system and they prescribe punishment in case of contravention of the provisions of the Acts.

The Environmental (Protection) Act, 1986, hereinafter referred as the Environment Act, is an comprehensive enactment not confined to a specific form of pollution like water or air pollution, rather it intends to cover all the forms of environmental pollutions. The Central Government has been assigned the role of custodian of the natural environment under the Act, and therefore, the Act confers omnibus powers in the hands of the Central Government to take measures for protecting the environment. The power of the Central Government to make rules and to appoint authorities to tackle the specific environmental problems are the highlights of the enactment.

A brief study of aforesaid enactments is essential in order to understand the nature and capacity of the system that works for the prevention and control of environmental pollution in India.

3.1. The Water (Prevention and Control of Pollution) Act, 1974 :

The Water Act has been enacted, as the name suggests, for the purpose of prevention and control of water pollution. "It came into being at a time when the country had already prepared itself to be a part of industrialisation and urbanisation. The need was keenly felt for treatment of domestic and industrial effluents, before they were

discharged into rivers and streams".¹ The availability of clean drinking water was becoming a rare phenomenon due to unrestricted and ever-growing pollution of streams, rivers and other water sources. It was, therefore, expedient to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water. In order to achieve this object the Act provided for the establishment of Boards and enumerates the powers and functions of such Boards.

Water is a subject in the State list under the Constitution of India.² Consequently, the Act has been enacted by the Union Parliament by making use of Article 252(1) of the Constitution. Article 252(1) empowers the Union Parliament to legislate in a field reserved for the states, where two or more state legislatures have shown their willingness for a central law. Such law is applicable to the consenting states and to any other state which has adopted the law afterwards by passing a resolution in its legislative assembly.

In pursuance of clause (1) of Article 252 of the Constitution, resolutions were passed by the Houses of Legislatures of twelve states³ to the effect that the matters relating to prevention and control of water pollution should be regulated in those states by Parliament made law. Now, all the states have approved implementation of the Water Act as enacted in 1974.

The Act consists of sixty four sections which are divided into eight chapters. Section 2 of the Act provides definitions of certain terms used in the Act, clause (e) of this section defines water pollution in following terms -

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 organism.

1. P.Leeakrishnan, *Environmental Law in India*, 79 (1999).

2. Entry 17.

3. States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal.

Thus, it is very comprehensive definition and covers all changes in physical, chemical or biological properties of water. There are some other important definitions in the Act. 'Sewage effluent' has been defined as "effluent from any sewerage system or sewage disposal works and includes sullage from open drains".⁴

An inclusive definition of 'stream' has been given in the Act. "Stream" includes- river; water course (whether flowing or for the time being dry); inland water (whether natural or artificial); sub-terranean waters; sea or tidal waters to such extent or, as the case may be, to such point as the state government may, by notification in the Official Gazette, specify in this behalf.⁵ 'Trade effluent'⁶ also finds an elaborate definition under the Act. It includes any liquid, gaseous or solid substance which is discharged from any premises used for carrying on any industry, operation or process or treatment and disposal system other than domestic sewage.

3.1.1. Central Pollution Control Board :

The Water Act establishes the Central and State Boards for the prevention and control of water pollution. Section 3 of the Act provides that the Central Government shall appoint and constitute a Central Pollution Control Board to perform the functions assigned under the Act. The Central Board shall consist of the following members nominated or appointed by the Central Government -

- (a) a full-time Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid;
- (b) officials, not exceeding five, to represent the Central Government;
- (c) persons, not exceeding five from amongst the members of the State Boards;
- (d) non-officials, not exceeding three, to represent the interests of agriculture, fishery or industry or trade, or any other interest, which, in the opinion of the Central Government, ought to be represented;
- (e) two persons to represent the companies or corporations owned, controlled

4. Section 2 (g).

5. Section 2 (j).

6. Section 2 (k).

or managed by the Central Government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

The Central Pollution Control Board is a body corporate having perpetual succession with power to acquire, hold and dispose off property and to contract, and may sue or be sued.

3.1.2. State Pollution Control Board :

Section 4 of the Water Act empowers the State Governments to appoint and constitute a State Pollution Control Board in their respective States to perform the functions assigned under the Act. A state Board shall consist of the following members, nominated or appointed by the State Government -

(a) a chairman, either whole-time or part-time as the state government may think fit, being a person having special knowledge or practical experience in respect of matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters aforesaid;

(b) Officials, not exceeding five, to represent the state government;

(c) persons, not exceeding five, from amongst the members of the local authorities functioning within the state;

(d) non-officials, not exceeding three, to represent the interests of agriculture, fishery or industry or trade or any other interest, which, in the opinion of the state government, ought to be represented;

(e) two persons to represent the companies or corporations owned, controlled or managed by the state government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control.

Every State Pollution Control Board, like Central Pollution Control Board is a body corporate having perpetual succession. It can acquire, hold and dispose of property, enter into a contract and can also sue or be sued in its name.

A member of a Board, other than a member-secretary, shall hold office for a period of three years from the date of his nomination. He can continue, even after

expiry of his term, till the new members enters upon his office. The Central Government or the State Government, as the case may be, may if it thinks fit, remove any member from their respective Boards before the expiry of his term of office, after giving him a reasonable opportunity to represent himself. A member of a Board, other than the member-secretary, may at any time resign his office or if a member absents himself from three consecutive meetings of the Board, his seat would automatically fall vacant.⁷

3.1.3. Joint Pollution Control Board :

Beside Central and State Pollution Control Board the Act also provides for the 'Joint Board'. As per section 13 of the Act, an agreement to this effect may be entered into -

(a) by two or more Governments of contiguous states, or

(b) by the Central Government (in respect of one or more Union territories) and one or more Governments of States contiguous to such union territory or union territories. Such agreement is to remain in force for such period as may be specified in the agreement which provides for the constitution of a Joint Board.

3.1.4. Powers and Functions of Central Pollution Control Board :

The Central Pollution Control Board has been empowered under the Water Act to carry out a variety of functions to promote cleanliness of streams and wells and to prevent and control pollution of water. The Central Pollution Control Board may advise the Central Government; co-ordinate the activities of state boards; provide them technical assistance and guidance; carryout and sponsor research on water pollution, organize training of personnel for control of water pollution, collect, compile and publish technical and statistical data, prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate concerned information, lay down water quality standards and execute nation wide plan for the prevention, control or abatement of water pollution. It may also establish or recognize a laboratory or laboratories for analysis of sample.⁸

The Central Board may perform any of the functions of the State Board in those

7. Section 5.

8. Section 16.

cases where the Central Government has issued direction to do so. Where the Central Government is of the opinion that any State Board has defaulted in complying with the direction issued by the Central Board, and a grave emergency has arisen as to warrant immediate action, it may direct the Central Board to perform any of the function of the State Board.⁹

3.1.5. Powers and Functions of State Board :

The State Boards carry out programmes very similar to those of the Central Board within the territory of the State. The functions of the State Boards are to plan a comprehensive programme; to advise the State Government; to collect and disseminate information and to encourage; conduct and participate in research relating to prevention; control or abatement of water pollution; to collaborate with the Central Board in organising the training of persons and to organise mass education programmes; to inspect sewage and trade effluents treatment plants; to lay down standards for water quality; to evolve methods of treatment and disposal of sewage and trade effluents; formulate modes of utilisation of sewage and trade effluents for agriculture; to make, vary or revoke any order for the prevention, control or abatement of discharge of waste into streams or wells; requiring any person to construct new systems or modify existing systems for the disposal of sewage and trade effluents and to adopt remedial measures necessary for the prevention and control of water pollution. The Board may advise the State Government with respect to the location of any industry and may perform such other functions as may be prescribed or entrusted to it by the Central Board or the State Government.¹⁰

3.1.6. Mechanism for Control of Water Pollution :

Chapter V of the Act, consisting of Sections 19 to Sections 33-A, provides for the prevention and control of water pollution. Section 19 empowers the State Government to restrict the application of the Act to certain area(s) after consultation with or on recommendation of the State Board. The provisions of the Act shall apply, in such situation, to such declared area(s) only. The State Government may alter any such

9. Section 18(2).

10. Section 17.

area whether by way of extension or reduction.¹¹

The correct and relevant information has a very important role in prevention and control of water pollution and therefore, the Act provides that the State Board or its officer may make surveys, gauge and keep records of flow or volume and other characteristics of any stream or well and may measure or record the rainfall. It may take necessary steps in order to obtain any information required for the aforesaid purposes. The State Board may also give directions requiring any person to give information as to the abstraction of water from a stream or well if it is substantial in relation to the flow or volume of the stream or well. It may also give directions requiring any person in charge of any establishment where any industry, operation or process or treatment and disposal system is carried on, to furnish information regarding the construction, installation or operation of such establishment and other related information, with a view to preventing or controlling water pollution.¹²

The State Board or its officer can take sample for analysis from any stream or well or samples of any sewage or trade effluent which is passing from any plant or vessel or from or over any place into any stream or well. Such sample however, is admissible in evidence in any legal proceeding only if the procedure provided in sub-sections (3), (4) and (5) of section 21 are complied with. The processor requires -

- (a) a prior notice to the occupier, indicating intention to take sample;
- (b) in the presence of the occupier or his agent, division of the sample into two parts;
- (c) each sample be placed in a container, marked, sealed and signed by both, the person taking the sample and the occupier or his agent;
- (d) one of the samples be sent forthwith to the laboratory established or recognised under section 16 or 17, as the case may be.
- (e) on the request of the occupier, the second part of the sample be sent to the laboratory established or specified under sections 51(1) or 52(1) as the case may be.

In case the occupier wilfully absents himself during the process of taking the sample, the person who has taken the sample is required to inform the Government

11. Section 19 (3) (a).

12. Section 20.

analyst in writing about the wilful absence of the occupier or his agent.¹³ The sample so collected and sent is required to be analysed by the central, state or any recognised laboratory and the report has to be sent to the Board and occupier or his agent. Such report can be produced before a court of law in a legal proceeding if required.¹⁴

Any person empowered by a State Board has a right to enter any place for the purpose of performing any of the functions of the Board entrusted to him and for the purpose of examining any plant, record, register, document or any other material object. The person may conduct a search of any place in which he has reason to believe that an offence under the Water Act has been or is being or is about to be committed. He may seize such plant, record, register, document or other material object if it furnishes evidence of the commission of an offence punishable under the Act.¹⁵

No person is allowed to pollute or enter any poisonous or noxious matter into any stream, well, sewer or land. A person, however, is not guilty of an offence if he has a right to construct, improve or maintain any stream, well, building, bridge, weir, dam, dock, pier, drain, sewer, or deposit material for reclaiming land or to support or protect the banks of stream, or does accumulation of such material with the consent of the Board.¹⁶

A major amendment in the Act was done in 1988 by virtue of which the Act now prohibits a person to establish any industry, operation or process or any treatment and disposal system or any extension or addition thereto, without the previous consent of the State Board, if it is likely to discharge sewage or trade effluent. Similarly a person cannot, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or begin to make any new discharge of sewage. The Board after receiving the application for prior consent may either grant or refuse the consent, for reason to be recorded in writing, or may impose appropriate conditions. However, if the Board fails to grant or refuse the consent for discharge within a period of four months, the consent shall be deemed to have been

13. Section 21.

14. Section 22.

15. Section 23.

16. Section 24.

given unconditionally on the expiry of four months.¹⁷

The Supreme Court has held that after the amendment of section 25 in 1988, "the prohibition now extends even to "establishment" of the industry or taking of steps for that purpose and therefore, before consent of the Pollution Board is obtained, neither can the industry be established nor can any steps be taken to establish it."¹⁸

The Act has provision regarding existing discharge of sewage or trade effluent as well. According to section 26 of the Act if a person was already discharging any sewage or trade effluent before the commencement of the Act, he must also seek the consent of the State Board within the time prescribed in the notification by the State Government in this behalf. The State Board may from time to time review the conditions imposed while granting consent under section 25 and section 26 and may also revoke or modify them if necessary.¹⁹

The Act provides for the provision of appeal for any person aggrieved by an order of the State Board. The aggrieved person may prefer an appeal within 30 days to the appellate authority constituted by the State Government. The appellate authority can, after giving an opportunity of hearing to the appellant and the State Board, dispose off the appeal expeditiously. While doing so the authority can -

- (a) annul any condition;
- (b) substitute any condition;
- (c) continue the condition without change; or
- (d) reasonably change the condition.²⁰

The Supreme Court has suggested amendment in section 28 of the Water Act in view of difficulty, which might be faced by the Appellate authority in deciding complex environmental issues. Jagannadha Rao, J. has emphasised this immediate need in the following words -

There is also an immediate need that in all the States and Union Territories, the appellate authorities under section 28 of the Water (Prevention and Control of Pollution) Act, 1974 and section 31 of the Air (Prevention and

17. Section 25.

18. *A.P. Pollution Control Board v. M.V. Nayudu*, (2001) 2 SCC 62, 84.

19. Section 27.

20. Section 28.

Control of Pollution) Act, 1981 or other rules there is always a Judge of the High Court, sitting or retired, and a scientist or group of scientists of high ranking and experience, to help in the adjudication of disputes relating to the environment and pollution. An amendment to existing notifications under these Acts can be made for the present."²¹

The State Government has been given power to ask for the records of any case where an order has been made by the State Board under section 25, section 26 or section 27 for the purpose of satisfying itself about the legality or propriety of such order and it may pass appropriate order after hearing the State Board and the affected person.²²

Where any industry, operation or process is being carried on and due to accident or other unforeseen event any poisonous, noxious or polluting matter is being discharged or is likely to be discharged polluting the water in any stream or well, then the person in-charge of such place is liable to immediately intimate the occurrence of such accident or event to the State Board. This provision is equally applicable to the local authority operating any sewage system or sewage works.²³

The Act empowers the State Board to take emergency measures if there is any discharge of poisonous, noxious or polluting matter polluting any stream, well or land. Such measures may include all or any of the following -

- (a) removal of that matter and disposal of it in an appropriate manner;
- (b) remedying or mitigating any pollution; and
- (c) issuing order immediately restraining or prohibiting person concerned from discharging any poisonous, noxious or polluting matter into a stream or well or on land.²⁴

The Act also provides for the provision of judicial interference. Where there is an apprehension of a Board that the water in any stream or well is likely to be polluted by disposal of any matter in a stream, well, sewer or on any land, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial

21. *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, AIR 1999 SC 812, 823.

22. Section 29(1).

23. Section 31.

24. Section 32.

Magistrate of the first class, for restraining the person who is likely to cause pollution. The court may pass such order as it deems fit. In order to restrain any person from polluting water, the court may -

- (a) direct the person to desist from causing pollution and to remove pollutant or matter likely to cause pollution from such stream or well; and
- (b) if the person fails to comply with the order of removal of such matter, authorise the Board to remove and dispose of the matter.

The expenses incurred by Board in removal of such matter can be recovered from the person concerned as arrears of land revenue or of public demands.²⁵

One of the most important power given to the Boards in the Act is power to give direction. This provision has been inserted in the Act through Amendment of 1988. In the exercise of its powers and performance of its functions under the Water Act, a Board may issue any directions to any person, officer or authority and they are bound to comply with such directions. The directions may include -

- (a) the closure, prohibition or regulation of any industry, operation or process; or
- (b) the stoppage or regulation of supply of electricity, water or any other service.

3.1.7. Penalties and Procedure :

The Act prescribes different penalties for different kinds of act or non-compliance of provisions under the Act,²⁶ for the convenience it may be summarised as follows.

Offences	Penalties
(i) Failure to comply with directions given under section 20(2) or (3) by the State Board.	<p>Imprisonment for a term which may extend to three months or fine upto Rs.10,000 or both.</p> <p>In case the failure continues, an additional fine upto Rs. 5000 for every day during which such failure continues.²⁷</p>

25. Section 33.

26. Section 41 to 45A.

27. *Id*, Section 41(1).

(ii) Non-compliance with any order issued under section 32(1) (e) by State Board or any direction issued by a Court under section 33(2) of the Act or any direction issued under section 33A by the Board.

Imprisonment for a term, not less than one year and six months but which may extend to six years with fine.

In case failure continues, with additional fine upto Rs. 5000 for every day during which such failure continues.

If the failure continues beyond a period of one year after first conviction, imprisonment for a term not less than two years which may be extended to seven years and fine.²⁸

(iii) Certain acts, mentioned under section 42(i)(a)-(g).

Imprisonment for a term which may extend to three months or fine upto Rs.10,000 or both.²⁹

(iv) Wilful alteration of monitoring device.

Imprisonment upto three months or fine upto Rs.1000 or both.³⁰

(v) Contravention of provisions of sections 24 of the Act.

Imprisonment for a term not less than one year and six months but which may extend to six years and fine.³¹

(vi) Contravention of section 25 or section 26 of the Act

Imprisonment for a term not less than one year and six months but which may extend to six years and fine.³²

If any person who has been convicted of any offence under sections 24, 25 or

28. Section 41(2).

29. Section 42(1).

30. Section 42(2).

31. Section 43.

32. Section 44.

<p>(vii) Contravention of any provision of Water Act or non-compliance with any order or direction given under the Act, for which no penalty has been elsewhere provided in the Act.</p>	<p>26 is again found guilty of an offence involving a contravention of the same provision, on the second and on every subsequent conviction, is punishable with imprisonment for a term not less than two years but which may extend to seven year and fine.³³</p> <p>Imprisonment which may extend to three months or fine which may extend to ten thousand rupees or both, and in the case of a continuing contravention or failure, an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure.³⁴</p>
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The Act provides along with penalty another deterrent measures for the habitual offender i.e., the publication of the offender's name, place of residence, the offence and penalty imposed, at the offender's expense in newspapers or in any other manner as the court may direct.³⁵

It was difficult to fix the liability on a particular individual in cases where the wrong was committed by a company or Government department, to overcome this difficulty the Act has added the doctrine of vicarious liability and joint liability based on the maxim of *qui-facit per alium facit per se* and *respondent superior* meaning he who acts through another does it himself and let the principal be liable, respectively.

Section 47(1) of the Act makes it clear, where an offence under the Act has been committed by a company, every person who at the time of the offence was in

33. Section 45.

34. Section 45A.

35. Section 46.

charge and was responsible to the company for the conduct of the business of the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However, if the person can prove that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence, he shall not be held liable for the offence.

Where the offender is 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 or secretary or other officer of the company, he shall also be deemed to be guilty of that offence and is liable to be punished.³⁶

In *U.P. Pollution Control Board v. Modi Distillery*,³⁷ the question before the Court was, whether the chairman, Vice-Chairman, Managing Director and members of the Board of Directors are liable to be proceeded against under section 47 of the Water Act in the absence of a prosecution of the company owning the industrial unit? The Court held -

On a combined reading of the provisions contained in sub sections (1) and (2), we have no doubt, whatever that the Chairman, Vice-Chairman, Managing Director and members of the Board of Directors of Messrs Modi Industries Limited, the company owning the industrial unit Messers Modi Distillery could be prosecuted as having been in charge of and responsible to the company, for the business of the industrial unit Messers Modi Distillery owned by it and could be deemed to be guilty of the offence with which they are charged.³⁸

In *U.P. Pollution Control Board v. M/s Mohan Meakins Ltd.*³⁹ the argument of respondents to rescue the Directors of the Company on the ground of lapse of a long time since the institution of the complaint was turned down by the Court. The Court opined -

... [L]apse of such long period cannot be a reason to absolve the respondents from the trial. It must reach its logical culmination. Courts cannot afford to lightly deal with cases involving with pollution of air and water ... so the courts should not deal with the prosecutions for offences under the Act

36. Section 47(2).

37. AIR 1988 SC 1128.

38. *Id.* at 1131.

39. AIR 2000 SC 1456, 1460.

in a casual or routine manner.

According to section 48, where an offence under the Water Act has been committed by any Department of Government, the Head of the Department is deemed to be guilty of the offence and is liable to be punished. But 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, he can be absolved of his liability.

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class can try any offence punishable under Water Act. Such court can take cognizance of the offence, if the complaint is made by -

- (a) a Board or any officer authorised in this behalf by it, or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed for the alleged offence and his intentions to make a complaint, to the Board or officer authorised for it.

When a complaint has been made by any person under above mentioned category (b) the Board shall, on demand, make available all the relevant reports in its possession to that person. The Board can, however, refuse any such report if the same is, in its opinion, against the public interest.⁴⁰ The citizen suit provision brought through the 1988 amendments is an important breakthrough in field of pollution control and prevention.

3.1.8. Government's power to supersede the Boards and to make rules :

The Act assigns the role of guardian to the Central and State Governments as it is evident from the provisions of section 61 and section 62 of the Act.

The Central Government may supersede the Central Board or any Joint Board, at any time, after giving an opportunity of hearing, for a period, not exceeding one year, if the Government is of the opinion -

- (a) that the Central Board or any Joint Board has persistently made default in the performance of the functions imposed on it by or under the Act; or
- (b) that circumstances exist which render it necessary in the public interest to

40. Section 49.

do so.⁴¹

Similarly, the State Government may supersede the State Board after giving an opportunity to show cause, for a period, not exceeding one year if the State Government is of the opinion-

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

(b) that circumstance exist which render it necessary in the public interest to do so.⁴²

The Act gives rule making power to both the Central Government as well as the State Government. The Central Government may, simultaneously with the constitution of the Central Board make rules in respect of the matters specified in section 63(2), provided that after the constitution of the Central Board, no such rule shall be made, varied, amended or replaced without consulting the Board.⁴³

The State Government may also, simultaneously with the constitution of the State Board, make rules to carry out the purposes of this Act in respect of matters not falling within the purview of section 63 of the Act; provided that after the constitution of the State Board, no such rule shall be made, amended or replaced without consulting that Board. Section 64(2) enumerates certain matters with respect to which the State Government may make rules.⁴⁴

It is clear from the aforesaid discussion that the Water Act aims to achieve its objective of the prevention and control of water pollution by establishing pollution control boards. The Act confers regulatory powers in the hands of state boards and therefore, these boards are responsible to establish and enforce effluent standards for factories discharging pollutants into water bodies. The central board has been entrusted to perform the same functions for union territories along with the task of coordination of activities among the states. The boards exercise their powers to prevent, control and abate the water pollution by approving, rejecting or conditioning the application for

41. Section 61.

42. Section 62.

43. Section 63.

44. Section 64.

any discharge of sewage or trade effluent. Moreover, by advising State Governments on appropriate site for new industrial units, the state boards may help the cause of prevention and control of pollution. The Act gives enormous powers to the Boards, they may close a defaulting industrial plant or withdraw its supply of power or water by an administrative order. The stringent penal provisions and the right of ordinary citizens to make complaint have made the Act more meaningful.

3.2. The Air (Prevention and Control of Pollution) Act, 1981 :

The Air Act has been enacted by the Parliament by invoking the Parliament's power under Article 253 of the Constitution to make laws for implementing decisions taken at international conferences. The preamble to the Air Act states that the Act represents an implementation of the decision made at the United Nation Conference on the Human Environment held in Stockholm in June 1972. In this conference India participated and was a party to the decision taken at the conference, to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution.

The Air Act has been enacted on lines of the provisions of the Water Act. The Central and State Pollution Control Boards envisaged under the Air Act. In the functions of the board, the two laws make identical provision with regard to criminal and administrative sanctions, powers of the government vis-a-vis the actions of the board and the rule-making powers of the Central Government and State Government. Although the Air Act is a Central Statute, executive functions under the Act are to be carried out in the States by State Pollution Control Boards. Such delegation of executive functions is permitted by Article 258 of the Constitution. The Central Government, however, is required to compensate the states for the cost of carrying out these delegated functions.

The Air Act consists of fifty four sections divided into seven chapters. Section 2 of the Act defines certain terms used in the Act. The term 'air pollutant' has been defined in the following terms -

air pollutant means any solid, liquid or gaseous substance including noise present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or

environments.⁴⁵

Air pollution according to the Act means the presence in the atmosphere of any air pollutant.⁴⁶ The definition of 'air pollutant' is wide enough to cover the noise pollution but the pollution caused by heat or nuclear radiation are not covered by this definition. 'Emission' means any solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlets.⁴⁷

3.2.1. The Central and State Pollution Control Boards :

Chapter II of the Air Act deals with the provisions related to Central and State Boards for the prevention and control of air pollution. The Central Pollution Control Board constituted under the Water Act is to perform the functions of the Central Board for the prevention and Control of Air pollution as well.⁴⁸ Similarly, the States Board constituted under the Water Act are to perform the functions of the State Boards in respect of prevention, control and abatement of air pollution.⁴⁹

In those state where the State Pollution Control Board has not been constituted under the Water Act, the State Government has to appoint and constitute a State Board for the prevention and control of Air Pollution under Air Act.⁵⁰ Such board shall consist of the following members, nominated or appointed by the State Government -

- a) a chairman, having special knowledge in environmental protection;
- b) official members, not exceeding five;
- c) members of the local authorities, not exceeding five;
- d) non-official members, not exceeding three, to represent the interests of agriculture, fishery or industry or trade or labour or any other interest which, in the opinion of the Government, ought to be represented.
- e) two persons to represent the government owned, controlled or managed

45. Section 2(a).

46. Section 2(b).

47. Section 2(j).

48. Section 3.

49. Section 4.

50. Section 5(1).

companies or corporations.

f) a full-time member secretary having practical experience in environmental matters, to be appointed by the State Government.⁵¹

This chapter also deals with the terms and conditions of service of the State Board constituted under the Act, filling in of vacancy, meetings of Board, constitution of committees by the Board, temporary association of person with Board, employees of State Board and delegation of powers, etc.

3.2.2. Powers and Functions of the Central Board :

The third chapter of the Act deals with the powers and functions of Boards. The main functions of the Central Board is to improve the quality of air and to prevent, control or abate air pollution in the country. In this regard the Central Board may -

- (a) advice the central Government on any matter concerning the improvement of the quality of air and the prevention, control or abatement of air pollution;
- (b) plan and cause to be executed a nationwide programme for the prevention, control or abatement of air pollution;
- (c) co-ordinate the activities of the State Boards and resolve disputes among them;
- (d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problem of air-pollution and prevention, control or abatement of air pollution;
- (e) plan and organise the training of persons for the prevention, control or abatement of air pollution;
- (f) organise through mass media a comprehensive programme regarding the prevention, control or abatement of air pollution;
- (g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control or abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;
- (h) lay down standards for the quality of air;

51. Section 5(2).

- (i) collect and disseminate information in respect of matters relating to air pollution;
- (j) perform such other functions as may be prescribed.

The Central Board may also perform such of the functions of any state Board as may be specified in an order made under section 18(2) of the Act. It may establish or recognise a laboratory or may delegate any of its functions under the Act to any of the committees appointed by it.⁵²

3.2.3. Powers and Functions of the State Boards :

The functions of State Boards under Air Act are as follows -

- (a) to plan and secure the execution of a comprehensive programme for the prevention, control or abatement of air pollution;
- (b) to advise the State Government on prevention, control or abatement of air pollution;
- (c) to collect and disseminate information relating to air pollution;
- (d) to collaborate with the Central Board in organising the training of persons relating to prevention, control or abatement of air pollution and to organise mass-education programme;
- (e) to inspect any control equipment, industrial plant or manufacturing process and to give directions to take steps for the prevention, control or abatement of air pollution;
- (f) to inspect air pollution control areas, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
- (g) to lay down, in consultation with the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or from any other source whatsoever, not being a ship or an aircraft;
- (h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;
- (i) to perform such other functions as may be prescribed or may be entrusted to it by the Central Board or the State Government;

52. Section 16.

(j) to do such other things as it may think necessary for the purpose of carrying into effect the purposes of this Act.

The State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions efficiently.⁵³

The Central Board and State Board are bound by such directions in writing as the Central Government and State Government respectively may give to them. Where a direction by the State Government is inconsistent with the direction given by the Central Board the matter has to be decided by the Central Government.⁵⁴

Where in the opinion of the Central Government, any State Board has defaulted in complying with any directions given by the Central Board and due to it a grave emergency has arisen and it is necessary or expedient so to do in public interest, the Central Government may direct the Central Board to perform any of the functions of the State Board.⁵⁵

3.2.4. Mechanism for Control of Air Pollution :

Chapter IV of the Act provides various measures to be adopted by the Government and Boards to improve the quality of air and to prevent, control and abate air pollution. One of the important measures is the power of the State Government to declare air pollution control areas.

As per section 19 of the Act, the State Government may declare any area or areas within the State as air pollution control area or areas. Such area or areas may be altered by way of extension or reduction by the State Government. Similarly a new air pollution control area may be declared in which existing air pollution control areas or any part or parts thereof may be merged. The State Government may prohibit the use of any fuel, other than an approved fuel, in any air pollution control area or part thereof, if it is likely to cause air pollution. The State Government may direct that no appliance, other than an approved appliance, shall be used in the premises situated in an air pollution control area. Moreover, if the State Government is of the

53. Section 17.

54. Section 18(1).

55. *Id.* clause (2).

opinion that the burning of any material (not being fuel) in any air pollution control area or part thereof may cause or is likely to cause air pollution, it may prohibit the burning of such material in such area or part thereof.

The aforesaid measures may be taken by the State Government by notifications in the official Gazette after consultation with the State Board.

One of the functions of the State Board under the Act is to lay down the standards for the emission of air pollution from automobiles. In this regard, the State Government is empowered to give such instructions as may be deemed necessary to the authority incharge of motor vehicles under the Motor Vehicles Act, 1988 and such authority is bound to comply with such instructions.⁵⁶

The Act has made prior consent of the State Board mandatory for a person who wants to establish or operate any industrial plant in an air pollution control area. If the industrial plant of a person was already operational before April 1, 1988, for which no consent was required, the person is required to apply for consent to the State Board within a period of three months and continue its work till disposal of his application. The State Board after making enquiry shall, within four months of the date of application, either grant the consent applied for subject to such conditions and for such period as may be specified in the order, or refuse such consent in writing. The State Board is free to cancel such consent before the expiry of the period for which it is granted or refuse further consent after such expiry if the conditions imposed are not fulfilled. For this a reasonable opportunity of being heard shall be given to the person concerned by the Board.⁵⁷

Section 21(5) enumerates the conditions which are to be complied with by the person to whom consent has been granted by the State Board as follows -

- (i) the control equipment of such specifications as the State Board may approve in this behalf has to be installed and operated in the premises where the industry is carried on or proposed to be carried on;
- (ii) The existing control equipment, if any, has to be altered or replaced in

56. Section 20.

57. Section 21.

accordance with the directions of the State Board;

(iii) the control equipment referred to in clause (i) or (ii) has to be kept at all times in good running condition;

(iv) chimney, wherever necessary, of such specifications as the State Board may approve in this behalf has to be erected or re-erected in such premises;

(v) such other conditions as the State Board may specify in this behalf; and

(vi) the conditions referred to in clauses (i), (ii) and (iv) has to be complied with within such period as the state Board may specify in this behalf.

Provided that in the case of a person operating any industrial plant in an air pollution control area immediately before the date of declaration of such area as an air pollution control area, the period so specified can not be less than six months.

Provided further that no control equipment or chimney can be altered or replaced or re-erected except with the previous approval of the State Board. However, if due to any technological improvement or otherwise the State Board is of opinion that all or any of the aforesaid conditions require(s) variation, it may vary all or any of such conditions after giving an opportunity of hearing to the person to whom consent has been granted. No person operating any industrial plant, in any air pollution control area can discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standard laid down by the State Board under the Act.⁵⁸

The Act has given power to the Boards to make application to court for restraining persons from causing air pollution. Where it is apprehended by a Board that emission of any air pollution, in excess of the standards laid down by the State Board, is likely to occur by reason of any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court for restraining such person emitting such air pollution. On receipt of application, the court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, may make such order as it deems fit. If the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may -

58. Section 22.

(a) direct such person to desist from taking such action as is likely to cause emission;

(b) authorise the Board, if the direction is not complied with by the person, to implement the direction in such manner as may be specified by the court.⁵⁹

It is duty of the person in charge of the premise from where due to emission air pollution occurs or is apprehended to occur due to accident or other unforeseen act or event, to intimate forthwith the fact of such occurrence or the apprehension of such occurrence to the State Board and to the prescribed authorities or agencies. On receipt of information, the State Board and the authorities or agencies are required to cause such remedial measures to be taken as are necessary to mitigate the emission of such air pollutants at an earliest possible time.⁶⁰

The Act confers power of entry and inspection of any place to any person empowered by a State Board in this behalf, at all reasonable times with such assistance as he considers necessary. Such entry and inspection can be for the following purposes-

(a) for the purpose of performing any of the functions of the State Board entrusted to him;

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

(c) for the purpose of examining and testing any control equipment, industrial plant, record, register, document or any other material object or for conducting a search of any place where he believes that an offence under the Act or the rules has been or is about to be committed for seizing evidence of the commission of an offence punishable under the Act or the rules made thereunder.

Every person operating any control equipment or any industrial plant, in an air pollution control area is bound to render all assistance to the person empowered by the State Board for carrying out his functions under the Act, and if he fails without

59. Section 22A.

60. Section 23.

any reasonable cause or excuse, it will amount to an offence under the Act. Even wilful delays or obstruction of any person empowered by the State Board in the discharge of his duties has been made an offence under the Act.⁶¹

The State Board or any officer empowered by it may call for any information, including information regarding the types of air pollutants emitted into the atmosphere and the level of the emission of such air pollutants from the occupier or any other person carrying on any industry or operating any control equipment or industrial plant. The State Board or such officer has the right to inspect the premises for the purpose of verifying the correctness of such information.⁶²

The Act empowers a state Board or its officer to take, for the purpose of analysis, samples of air or emission from any chimney, flue or duct or any other outlet. The result of any analysis of such sample is admissible as evidence in any legal proceeding if the correct procedure has been followed in collection of the sample. Following procedure should be followed by the person taking a sample -

- a) serve on the occupier or his agent, a notice, then and there, in prescribed form, of his intention to have it so analysed;
- b) in the presence of the occupier or his agent, collect a sample of emission for analysis;
- c) cause the sample to be placed in a container or containers, marked, sealed and signed by both the person, taking the sample and the occupier or his agent.
- d) send, without delay, the container or containers to the laboratory established or recognised by the State Board.

Where the person taking the sample serves the notice to the occupier or his agent but they wilfully absents themselves, the person taking the sample can collect the sample of emission for analysis in a container marked, sealed and also signed by the persons taking the sample. Similarly, where the occupier or his agent is present at the time of taking the sample but refuse to sign the marked and sealed container of the sample, the marked and sealed container has to be signed by the person taking the

61. Section 24.

62. Section 25.

sample and it must be sent without delay for analysis to the laboratory and such person must inform the Government analyst in writing, about the wilful absence of the occupier or his agent, or, as the case may be, his refusal to sign the container.⁶³

As per section 27 of the Act the sample so collected and sent for analysis to the laboratory established or recognised by the State Board, shall be analysed by the board analyst. The analyst is required to submit a report in the prescribed form of such analysis in triplicate to the State Board.

The State Government may establish one or more State Air Laboratories or specify one or more laboratories or institutes as State Air Laboratories.⁶⁴ The State Government may appoint persons as Government analysts for the purpose of analysis of samples in State Air Laboratories. The State Board, with approval of the state government may also appoint persons as Board analysts for the purpose of analysis of sample of air or emission sent for analysis to any laboratory established or recognised by the Board under section 17 of the Act.⁶⁵ A report signed by the Government analyst or by a State Board analyst may be used as evidence of the facts stated therein in any proceeding under this Act.⁶⁶

The Act has made a provision for the Appellate Authority. The Appellate Authority appointed by the State Government shall consist of a single person or three persons as the State government may think fit. Any person aggrieved by an order of State Board may within thirty days from the date on which the order is communicated to him, prefer an appeal to the Appellate Authority. The Appellate Authority may, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.⁶⁷

One of the important powers in the hands of a Board under the Act is power to give directions. A board may issue any direction in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such direction, which may include –

63. Section 26.

64. Section 28.

65. Section 29.

66. Section 30.

67. Section 31.

- a) the closure, prohibition or regulation of any industry, operation or process; or
 b) the stoppage or regulation of supply of electricity, water or any other service.⁶⁸

In *Pollution control Board v. Mahabir cake Industry*,⁶⁹ the direction was issued by the Board to the respondent industry to conform to the required standards or establish an air pollution control device. The Supreme Court upheld the direction of the Board.

3.2.5. Penalties and Procedure :

Chapter vi of the Act contains sections 37 to 46 and deals with the penalties and procedure. Sections 37, 38 and 39 of the Act enumerate offences and punishments thereof. A summary of offences and punishment under the Act is as follows -

Offence	Penalties
i) failure to comply with the provisions of section 21 or section 22 or directions issued under section 31-A.	Imprisonment for a term not less than one year and six months but which may extend to six years and fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. ⁷⁰
ii) Where the aforesaid failure continues beyond a period of one year after the date of conviction.	Imprisonment for a term, not less than two years but which may extend to seven years and fine. ⁷¹
iii) Certain acts mentioned under section 38(a) – (g) of the Act.	Imprisonment for term which may extend to three months or fine which may extend to ten thousand rupees or both. ⁷²

68. Section 31-A.

69. (2000) 9 SCC 344.

70. Section 37(1).

71. Section 37(2).

72. Section 38.

<p>iv) Contraventions of any of the provisions of Air Act or any order or direction issued under the Act, for which no penalty has been elsewhere provided in the Act.</p>	<p>Imprisonment for term which may extend to three months or fine which may extend to ten thousand rupees or both.</p> <p>In the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.⁷³</p>
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Where an offence under the Act has been committed by a company or government department, like the Water Act, liability under the Air Act is also based on the principles of vicarious and joint liability.

In case of a company every person who at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, shall be deemed to be guilty of the offence. However, when the said offence was committed without his knowledge or he exercised all due diligence to prevent the commission of such offence, he cannot be held liable for the offence. Where 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, they shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.⁷⁴

Similarly, the Head of the Government Department shall be deemed to be guilty of the offence and shall be liable to be punished, if the offence has been committed by any Department of Government. But 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, he cannot be held liable for the offence. Where 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 officer other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and

73. Section 39(1).

74. Section 40.

punished accordingly.⁷⁵

A court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class can try any offence punishable under the Air Act. The court shall take cognizance of any offence under the Act only if the complaint has been made by—

- a) a Board or any officer authorised in this behalf by it; or
- b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised.⁷⁶

Section 46 of the Act makes it clear that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of any matter which Appellate Authority constituted under this Act is empowered by the Act to determine and no injunction shall be granted by any court to other authority in respect of any action taken or to be taken in pursuance of any power conferred by the Act.

3.2.6. Government's Power to Supersede the Board and Make Rules :

The State Government may supersede the State Board for a period not exceeding six months if the state government is of opinion that —

- a) a State Board constituted under the Act has persistently made default in the performance of its functions, or
- b) circumstances exist which render it necessary in the public interest so to do.

This can be done, however, by the state government only after giving a reasonable opportunity to the State Board to show cause why it should not be superseded.⁷⁷

Section 48 of the Air Act provides that, where the Central Board or any State Board constituted under the Water Act is superseded by the Central Government or the State Government under that Act, all the powers, functions and duties of such Board under Air Act is to be exercised, performed or discharged during the period of this supersession by the person or persons, exercising, performing or discharging the powers,

75. Section 41.

76. Section 43.

77. Section 39.

functions and duties of the Board under the water Act, during such period.

According to Section 49 of the Act, as and when the Water Act, 1974 comes into force in any state and the State Government constitutes a State Pollution Control Board under that Act, the State Board constituted by the State Government under the Air Act shall stand dissolved and the Board constituted under the Water Act shall exercise the powers and perform the functions of the Board in that state.

The Act has given for the rule making power to both the Central as well as the State governments. The Central Government may, in consultation with the Central Board make rules in respect of the matters enumerated in section 53(a)-(g) of the Act. The State Government may also make rules to carry out the purposes of the Act in respect of matters not falling within the purview of section 53, such rules may provide for all or any of the matters enumerated under section 54(2)(a)-(z).

It is evident that the framework of the Air Act is similar to the one adopted by its predecessor, the Water Act. The Air Act expands the authority of the Central and State Boards established under the Water Act to include air pollution prevention, control and abatement. All industries operating within designated air pollution control areas are required to obtain a 'permit' from the State Board under the Air Act. Emission standards for industry and automobiles are to be prescribed by the states after consulting the Central Board and noting its ambient air quality standards. Under the Act boards are empowered to close down a defaulting industrial unit or may stop its electric or water supply. A board has the option to apply to a court to restrain emissions that exceed prescribed standards. The stiff penalties, citizens' suit provision and inclusion of noise pollution have made the Air Act more purposeful and effective.

3.3. The Environment (Protection) Act, 1986 :

The Environment Act is intended to implement the decisions taken at Stockholm in the United Nation Conference on the Human Environment in June, 1972. India participated in the conference and in order to fulfil its commitment at the conference relating to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property passed the aforesaid enactment.

Although there were existing laws dealing directly and indirectly with several environmental matters, it was necessary to have a general legislation for environmental protection as there were uncovered gaps in areas of major environmental hazards. Moreover, because of a multiplicity of regulatory agencies, there was need for an authority which could assume the lead role for studying, planning and implementing long term requirements of environmental safety and to provide direction to, and co-ordinate a system of speedy and adequate response to emergency situations threatening the environment. The need for creation of an authority or authorities with adequate powers for environmental protection, regulation of discharge of environmental pollutants and handling of hazardous substance, speedy response in the event of accidents threatening environment and deterrent punishment to those who endanger human environment, safety and health were the driving force which led to enactment of the Environment Act. The Environment Act extends to the whole of India and it came into force w.e.f. 19-11-1986. The Act consists of twenty six sections distributed in four chapters.

3.3.1. Meaning of Some Terms :

Section 2 in chapter 1 of the Act defines certain terms used in the Act. It is good to see that technical definitions have been provided by the Act to various terms of the environment including the term 'environment'. Section 2 of the Act contains seven definitions in clause (a) to (g). The most important among these definitions is of 'environment'. According to section 2(a) 'environment' includes water, air and land and the inter-relationship which exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property.

The definition is very wide, clear and it covers the entire field of environment. The first part of the definition covers 'water', 'air', and 'land', these expressions have a very wide coverage as water may include ground water, inland water etc. Likewise, the expression 'air' and 'land' may cover many layers of atmosphere and earth respectively. The second part of this definition describes the inter-relationship existing among and between eight named elements which cover the whole living world by the mention of terms 'human beings', 'other living creatures', 'plants' and 'micro-organisms'.

The most significant feature of the definition is that "the definition is an inclusive

one and, therefore, does not necessarily exhaust the entire field that is not covered by the word 'environment'. It is well settled that where a word is defined to include certain things, the definition is not restrictive, but is prima facie extensive".⁷⁸

According to the Environment Act, 'Environmental Pollution' means the presence in environment of any environmental pollutant.⁷⁹ The 'environmental pollutant', according to the Act, means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment.⁸⁰

Due to inclusion of two very wide and important terms i.e., 'environment' and 'environmental pollutant', the ambit of definition under section 2 (c) has become very wide, it seeks to supplement the existing definitions relating to 'pollution' in Water Act and Air Act by generalization of the term pollution and thereby filling the gaps which were left open by the previous enactments.

It may be pointed out that the Environment Act has intended to find out the clear cut meaning of 'environmental pollution' by defining its different components. But this has, on the contrary, resulted into complications and problems of interpretation of different terms used therein. The definitions of 'Environmental pollutant' and 'Environmental pollution' are considered to be disappointing by scientists who have a holistic view of the environment. According to them matters like heat, radiation, plasma and organisms like bacteria and virus have not been included in the definition of pollution. 'Heat energy' is a major pollutant because the increased temperature interferes with the biological activity, dissolution of gases and may lead to release of toxic chemicals. Similarly 'sound' is not a substance but is a propagation of pressure waves, excess presence of which is called noise pollution.

The pollutant of modern days i.e., 'nuclear radiation' does not find any mention in the entire body of the Act, and hence does not fall within the scope of this Act. Moreover, it is not only the presence of certain substance that forms pollution, but also the absence or lack in concentration, or non-availability of a non-pollutant may also form pollution. For example, withdrawal of oxygen from the environment will result into severe instance

78. P.M. Bakshi, *The Environment (Protection) Act, 1986*, 111 (1987).

79. Section 2 (c).

80. Section 2 (b).

of pollution.

Further, presence or absence of any particular organism in such numbers as to destroy the eco-system is also pollution but has not been covered by the definition under the Act. Destruction of forests, depletion of any species of organism, concentration of any species in an area and undesirable physiographic modifications may also lead to degradation in environmental quality. Thus, it is clear that the definition of environmental pollution given under the Act is inadequate and needs some changes so that the aforesaid shortcomings may be overcome.

The Environment Act has given a wide meaning to the term 'handling'. Handling, in relation to any substance, means - manufacture; processing; treatment; package; storage; transportation; use; collection; destruction; conversion; offering for sale; transfer or the like of such substance.⁸¹

The definition is not an exhaustive one but it is an inclusive definition. Section 2(e) of the Act explains the meaning of the term 'hazardous substance' as any substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.

According to section 2(f) of the Act, 'occupier', in relation to any factory or premises, means a person who has control over the affair of the factory or the premises and includes in relation to any substance, the person in possession of the substance.

3.3.2. Powers of the Central Government :

The concentration of powers in the hands of the Central Government is the hallmark of the Environment Act. Extensive powers have been given to the Central Government for prevention, control and abatement of environmental pollution subsection 1 of section 3 prescribes this power in its widest plenitude when it says -

The Central Government shall have power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution.

81. Section 2(d).

Sub-section (2) of section 3 enumerates such measures which may include measures with respect to all or any of the following matters, namely -

(i) Co-ordination of actions by the State Government officers and other authorities under the Act, or the rules made there under; or under any other law which relates to the objects of the Environment Act;

(ii) Planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) Laying down standards for emission or discharge of environmental pollutants from various sources whatsoever;

(v) restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

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

(x) inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, such directions to such authorities, officers or persons as it may consider necessary for the prevention, control and abatement of environmental pollution;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under the Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the Act.

From the scheme of the Act "it is clear that power is really coupled with a duty. If nothing is done, for example, by way of exercise of this power, a mandamus will lie".⁸² The Central Government is empowered to constitute an authority or authorities by order, for the purpose of exercising and performing such of the powers and functions of the Central Government under the Act and for taking measures with respect to such of the matters referred to in sub section (2) of section 3 of the Act as may be mentioned in the order. Such authority or authorities may exercise the powers or perform the functions or take the measures as if such authorities had been empowered by the Act to do so.

This power of Central Government to create authority or authorities is also coupled with the duty as it is evident from the decisions of the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India*.⁸³ Here, Kuldip Singh, J observed -

It is obvious that Environment Act contains useful provisions for controlling pollution. The main purpose of the Act is to create an authority or authorities under section 3(3) of the Act with adequate powers to control pollution and protect the environment. It is a pity that till date no authority has been constituted by the Central Government. The work which was required to be done by an authority in terms of section 3(3) read with other provisions of the Act is being done by this Court and other Courts in the country. It is high time that the Central Government realises its responsibility and statutory duty to protect the degrading environment in the country.

In *S. Jagannath v. Union of India*,⁸⁴ the Supreme Court directed the Central Government to constitute an authority under section 3(3) and confer all the power necessary to prevent the ecological fragile coastal areas, sea shore, water front and other coastal areas and specially to deal with the situation created by the shrimp culture industry in the coastal states and Union Territories.

The Act authorises the Central Government to appoint officers and endorse to them such of the powers and functions under the Act as it may deem fit. Such officer is

82. Upendra Baxi (ed.), *Environment Protection Act : An Agenda for Implementation*, 12 (1987).

83. AIR 1996 SC 2715, 2724.

84. AIR 1997 SC 811, 488-49.

be subject to the general control and direction of the Central Government or authority or authorities constituted under section 3(3) or of any other authority or officer.⁸⁵

Section 5 of the Act empowers the Central Government to issue directions to any person, officer or any authority and such person, officer or authority is bound to comply with such directions if they have been issued by the Government in the exercise of its powers and performance of its function under the Act. The Central Government's power to issue directions includes the power to direct -

- (a) the closure, prohibition or regulation of any industry, operation, process;
- or
- (b) Stoppage or regulation of the supply of electricity or water or any other service.

Thus the Act gives unlimited powers in the hand of Central Government without providing any safeguards like providing chance of hearing to the accused before issuing closure order etc. under section 5 of the Act.

Section 6 of the Environment Act provides the procedure for making rules in respect of all or any of the matters referred to in the section 3 of the Act. The Central Government may, by notification in the official Gazette, make such rules which may include all or any of the following matters, namely -

- (a) the standards of quality of air, water or soil for various areas and purposes.
- (b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
- (c) the procedures and safeguards for the handling of hazardous substances;
- (d) the prohibition and restrictions on the handling of hazardous substances in different area;
- (e) the prohibition and restriction on the location of industries and the carrying on the processes and operations in different areas;
- (f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accident.

85. Section 4.

The Central Government, in exercising its powers under section 6 of the Act, has already made various standards to maintain the quality of air, water, soil and for the safe handling, management and disposal of hazardous substances.

3.3.3. Prevention, Control and Abatement of Environmental Pollution :

Chapter III of the Environment Act provides a scheme for the prevention, control and abatement of environmental pollution. To begin with the chapter, under sections 6, 8 and 9 enumerates the preventive measures to be adopted by the person carrying on industry, operation etc. or handling hazardous substances. Section 10 and section 11 of the Act prescribe the role of Central Government or its officer in controlling the pollution. The job of Laboratories and Analysts and evidentiary value of their reports have been discussed under sections 12, 13 and 14 of the Act. Sections 15, 16 and 17 concentrate on prosecution and punishment under the Act.

Every person carrying on any industry, operation or process is duty bound, not to discharge or emit, or permit to be discharged or emitted, any environmental pollutant in excess of the prescribed standard.⁸⁶ Any discharge or emission in excess of the permissible limits amounts to violation of the Act and attracts punishment as well. Thus, this provision is concerned with the general safeguards to prevent the discharge or emission of environmental pollution.

Section 8 of the Act on the other hand deals with specific types of pollutants i.e. hazardous substances. It provides that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed. So far various rules dealing with the procedure and safeguards for handling hazardous substances have been notified by the Central Government.

Even after taking all safeguards and precautions one can not rule out the possibilities of discharge of pollutants, therefore, section 9(1) provides, where the environmental pollution occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such pollution and the person in charge of the place at which such pollution occurs or is apprehended to occur is bound

86. Section 7.

to prevent or mitigate the pollution and must also forthwith -

- (a) intimate the fact of such occurrence or apprehension of such occurrence, and
- (b) be bound, if called upon, to render all assistance, to the prescribed authorities or agencies.

After receiving information about the pollution the authorities or agencies shall take necessary remedial measures to prevent or mitigate the environmental pollution.⁸⁷ The expenses incurred with respect to such remedial measures may also be recovered from the person concerned.⁸⁸

The Act gives the powers of entry and inspection at any place, to any person who is empowered by the Central Government in this behalf, for the purpose of -

- (a) Performing any of the functions entrusted to him by the Central Government;
- (b) determining whether and if so in what manner, any provision of this Act or the rules or directions etc. made there under is being or has been complied with;
- (c) examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building and for seizing any such equipment, industrial plant, record, register, document or other material object if it furnishes evidence of the commission of an offence punishable under the Act or the rules made thereunder or if such seizure is necessary to prevent or mitigate environmental pollution.⁸⁹

It is duty of every person carrying on any industry, operation or process or handling any hazardous substance to render all assistance to the person empowered by the Central Government for carrying out the functions under sub section (1) of section 10. The failure in this duty without reasonable cause or excuse shall invite punishment under the Act.⁹⁰ Furthermore, if any person wilfully delays or obstructs any person empowered by the Central Government, he shall be guilty of an offence under the Act.⁹¹

87. Section 9(2).

88. Section 9(3).

89. Section 10(1).

90. Section 10(2).

91. Section 10(3).

The power to take sample and procedure to be followed in connection there with has been described by section 11 of the Act. The power to take samples from any factory, premises or other place for the purpose of analysis is with the Central Government or any officer empowered by it in this behalf.⁹²

To make the result of any such analysis admissible in evidence in any legal proceeding, it is necessary for the person taking the sample to follow following procedures -

- (a) Serve a notice on the occupier or his agent or person in charge of the place, of his intention to have it so analysed;
- (b) in the presence of the occupier or his agent or person, collect a sample for analysis;
- (c) Container or containers containing sample be marked, sealed and signed by both, the person taking the sample and the occupier or his agent;
- (d) immediate dispatch of the container or the containers to the laboratory established or recognised by the Central Government.⁹³

In case where the occupier, his agent or person wilfully absents himself, the person taking the sample has to collect the sample for analysis to be placed in a container or containers which must be marked and sealed and also signed by the person taking the sample,⁹⁴ and in case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers it has to be signed by the person taking samples. The sample so collected has to be sent immediately for analysis to the laboratory established or recognised by the Central Government. The person who has collected the sample is required to inform the Government Analyst in writing about the wilful absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.⁹⁵

The Environment Act empowers the Central Government to establish one or more environmental laboratories and/or recognise one or more laboratories or institutes as

92. Section 11(1).

93. Section 11(3).

94. Section 11(4) (a).

95. Section 11(4) (b).

environmental laboratories to carry out the functions entrusted to an environmental laboratory under the Act. The functions of the environmental laboratory, procedures for the submission of samples to such laboratory for analysis or tests and other details of related matters may be specified in rules made by the Central Government.⁹⁶

The Central Government may also appoint or recognise a fit person, having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory.⁹⁷ The report signed by a Government analysts may be used as evidence of the facts stated in the said report, in any proceeding under Environment Act.

3.3.4. Penalties and Procedures :

The only section of the Environment Act which provides penalty and punishment is section 15. According to this section failure to comply with or contravention of any of the provision of Environment Act or the rules made or orders or directions issued thereunder, by any person is punishable.

Such person in respect of each such failure or contravention may be punishable as follows :-

- (i) Imprisonment for a term which may extend to five years, or
- (ii) Fine which may extend to one lakh rupees, or
- (iii) Imprisonment and Fine both.

In case the failure or contravention continues,

(iv) Additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the first such failure or contravention.

(v) Imprisonment for a term which may extend to seven years, in case the failure or contravention continues beyond a period of one year after the date of conviction.

The punishment under the Act is harsher if compared with the penal provision given under the water Act or Air Act. "This is the first time that very heavy penalties like imprisonment for periods up to 5 years and fine up to Rs. 1 lakh have been

96. Section 12.

97. Section 13.

prescribed for environmental violation. The section was put in perhaps to appease the environmental activists. But curiously enough, no minimum punishment is prescribed".⁹⁸

The Act provides for the vicarious liability in case of offences committed by the companies and the Government Departments on the lines of the Water Act and the Air Act. According to section 16(1) of the Act, when a company is guilty of an offence under the Act, every person who, at the time of commission of offence, was directly in charge of and was responsible to the company for the conduct of the business of the company, as well as the company is deemed to be guilty of the offence and is liable to be proceeded against and punished accordingly. No such person can be held liable, however, 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.

When the said 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 is also deemed guilty and is liable to be punished under the Act.⁹⁹

The Environment Act equally operates against the pollution generating activities of the governmental agencies. Section 17(1) of the Act provides, where the offender is a Government Department, the Head of the Department is deemed to be guilty of the offence and is liable to be punished. But, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of the offence, he cannot be held liable for the said offence. Furthermore, where 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 officer other than the Head of the department, such officer is also deemed guilty and is liable to be punished.¹⁰⁰

"The loopholes provided in section 16 and 17 to get off the hook on proof of knowledge or due diligence dilute the effect of the penal provisions and make them

98. K. Jaya Kumar, "Environmental Acts : A Critical Overview" in Leelakrishnan (ed.), *Law and Environment*, 237 (1992).

99. Section 16(2).

100. Section 17(2).

ineffective".¹⁰¹ Therefore, the relevant provisions should be suitably amended, so that liability may be fixed strictly.

A very strange provision under section 24 of the Environment Act makes it even more soft. Section 24 deals with the effect of other laws and postulates, where an offence under the Environment Act is also an offence under any other Act, the offender shall be punished only under the other Act. "Therefore, section 24 will have the effect of obliterating the Act itself for all intentions and purposes. Thus as the Act stands it is a toothless tiger even its claws pulled out".¹⁰²

The Court can take cognizance of any offence under the Environment Act only if the complaint has been made by-

(a) The Central Government or any authority or officer authorised in the behalf by that Government; or

(b) any person who has given notice of not less than sixty days of the alleged offence and of his intention to make complaint, to the Central Government or the authority or officer authorised as aforesaid.¹⁰³

No civil court has jurisdiction to entertain any suit or proceeding under this Act.¹⁰⁴

3.3.5. Power to Delegate and Make Rules :

The Central Government may delegate its powers and functions under the Act, except the power to constitute an authority under section 3(3) and to make rules under Section 25, to any officer, state Government or other authority.¹⁰⁵

Section 25(1) of the Act empowers the Central Government to make rules for carrying out the purposes of the Act. Such rules may provide for all or any of the following matters namely.¹⁰⁶

101. Bhagirathi Panigrahi, "Environmental Pollution and the Law in India. - An Analysis", *SCJ* 46, (Vol.3, 1992).

102. S. Indira Devi, "Law on Environmental Pollution: A Review", *SCJ*, 76 (Vol.2 1995).

103. Section 19.

104. Section 22.

105. Section 23.

106. Section 25(2).

- (a) the standards for environmental pollutants;
- (b) the handling of hazardous substances;
- (c) the authorities or agencies under section 9 of the Act;
- (d) the procedure to take samples;
- (e) the form in which notice of intention to have sample analysed shall be served;
- (f) the functions etc. of environmental laboratories;
- (g) the qualifications of Government Analyst;
- (h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government under section 19(b) shall be done.
- (i) the authority or officer to whom any reports or any information shall be furnished under section 20;
- (j) any other matter.

Every rule made under the Environment Act is required to be laid before each House of Parliament. Rules can be accepted, modified or rejected by both the House of Parliament.¹⁰⁷

So far various rules have been notified by the Central Government in the exercise of the powers conferred under the Act. These Rules includes -

- (i) The Environment (Protection) Rules, 1986
- (ii) The Hazardous Wastes (Management and Handling) Rules, 1989
- (iii) The Manufacture, Storage and Import of Hazardous Chemical Rules, 1989.
- (iv) The Hazardous Micro-Organism Rules, 1989.
- (v) The Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996.
- (vi) The Bio-Medical Waste (Management and Handling) Rules, 1998
- (vii) The Recycled Plastics Manufacture and Uses Rules, 1999.
- (viii) The Municipal Solid Waste (Management and Handling) Rules, 2000.
- (ix) Noise Pollution (Control and Regulation) Rules, 2000.

Thus the environment Act being an 'umbrella' legislation intends to provide a framework for Central Government to coordinate the activities of various Central and

107. Section 26.

State authorities established under previous enactments, such as the Water Act and Air Act. The Act empowers the Centre to take all such measures as it deems necessary or expedient for protection and improvement of the quality of the environment and prevention, control and abatement of environmental pollution. The Central Government in order to fulfil its obligations under the Act may appoint authorities. Central Government may delegate its powers and functions to any officer, state government or other authority. The Act confers a broad rule making power on the Central Government, various rules have been framed by the Central Government in exercise of this power. The Act provides for severe penalties but at the same time if any act or omission constitutes an offence punishable under the Environment Act as well as any other law, the offender is liable to be punished under the other law and not under the Environment Act. This provision brings unnecessary dilution in the stringent penal scheme of the Act.