

The water (prevention and control of pollution) Act, 1974

Objectives of the Module

After going through this module, you should be able to

1. Understand the aim behind the water Act
2. Comprehend its salient features
3. Get a grip over the seminal cases associated with this Act

As will be observed that the UN Conference on human environment held at Stockholm from 5th to 16th June, 1972, was a landmark event that changed the destiny of peoples across the world. One of the offshoots of this landmark event was the Water Act of 1974 which was enacted by the Indian Parliament based on the discussion of the Stockholm Conference.

Friends! It is interesting to note that the water Act was enacted to prevent and control the water pollution while at the same time maintaining and restoring the wholesomeness of water. Water pollution is considered as a nuisance.

Now what is meant by pollution of water? On one hand it implies the contamination of water and the alteration of its physical, chemical and biological properties. On the other hand it could imply such a discharge of sewerage or trade effluents or any liquid gaseous or solid substances in to water directly or indirectly as may or is likely to cause nuisance or render such water harmful or injurious to public health or safety (The water Act)

Prof. P. Leelakrishnan in his seminal work Environmental law in India quotes from the case ***Mohan Vaniya Viniyog private Ltd V/s State of West Bengal*** and states that filling up of water bodies and streams result in the alteration of physical properties of water and the same could be held as water pollution. It is to be noted here that Articles 51 A (g) of the constitution states that one of the fundamental duties of the citizen is to protect and improve the natural environment including Forest, Lakes and Rivers and wildlife and to have compassion for living creatures. Further water is a state subject.

- Some significant Definitions under Water Act
- Sewage effluents: These include effluents from any sewage system or sewage disposal work and includes sullage and open drains.
- Trade Effluents:- It is any disposal from any process, operation or from any treatment from an Industry.
- Stream:- It includes rivers, flowing or dry water course, natural or artificial inland water, subterranean water or sea or tidal water.

Objectives of the Act

The main objectives of the Water Act are

- Prevention, control and abatement of pollution
- Provisioning for the establishment of Central and State water pollution control Boards
- Providing for and conferring on such boards necessary powers and assigning relevant functions commensurate with the powers.

Constitution of Central and State Boards:-

As indicated earlier the Act requires two boards to be constituted- Central and State. Let us firstly discuss the constitution of the Central Board.

The Central water pollution control Board:-

Sub section 3 to 12 of the Act deal with this board. The Central government under section 3 (1) of the Act shall by a notification in the official gazette constitute a central board called the Central Pollution Control Board.

Under Section 3 (2) of the Act it is stated that the board shall consist of

- A fulltime Chairman having special knowledge or practice in matters relating to environmental protection or a person having knowledge and experience in administering institutions dealing with the matters and nominated by the Central Government.
- Such number of officials not exceeding five to be nominated by the Central Government to represent it.
- Such number of persons not exceeding five to be nominated by the Central Government from amongst the members of the State board.
- Such number of officials not exceeding three to be nominated by the Central Government to represent the interest of Agriculture, Fisheries, Industry or Trade or any other interest which in the opinion of the Central Government or to be represented.
- Two persons representing companies or corporation or by the Central Government nominated by it.
- A fulltime member Secretary possessing qualification, knowledge and experience of scientific, engineering or management related aspects of pollution control and is appointed by the Central Government.

Under sec 3(3) of the Act it is stated that the central board shall be a body corporate with perpetual succession and a common real.

The State Board:-

The State Government shall by a notification in the official gazette appoint and constitute the state pollution control board and perform the function assigned to the board.

Section 4(2) of the Act states the constitution of the board as follows:

- A chairman having special knowledge or practical experience on matters related to the environment or a person having knowledge and experience in administering institutions dealing with the matter. The nomination shall be made by the State Government.
- Such numbers of officials not exceeding five nominated by the State Government to represent it.
- Such numbers of person not exceeding five nominated by the State Government by members of local authority within the state.
- Such numbers of non-officials not exceeding three to be nominated by the State Government to represent Agriculture, Fisheries, industries or Trade or any other interest which in the opinion of State Government or to the representatives.
- Two persons to represent the company or corporations owned control or managed by the State Government and nominated by it.
- A fulltime member Secretary possessing qualification, knowledge and experience of scientific, engineering or management related aspects of pollution control to be appointed by the State Government.

The State board shall be a body corporate having perpetual succession and common seal with powers to acquire, hold and dispose of property and to contract and may by its name sue or be sued. This is given under Section 4 (4) of the Act states that there shall be no State board for union territories and the Central Board shall exercise the power and perform the functions of the union territories.

Powers and Functions of the Central Board:-

The following shall be the powers and functions of the Central Board as per Section 16 of the Act.

- The main functions of the Central Board shall be to promote cleanliness of the street and wells in the Indian Union.
- The Central Board shall perform any or all of the following function

1. Advise the Central Government on matters concerning prevention and control of water pollution
 2. Coordinate the activities of the State Boards and resolve any disputes between them.
 3. Provide technical assistance and guidance to State Board and Sponsor Research and Investigation in to water pollution and suggest measures for prevention, control and abatement of such pollution.
 4. Plan and organize training programs for persons engaged in the prevention, control and abatement of water pollution.
 5. Organize public awareness programs through mass media for the prevention and control of water pollution
 6. Collect, compile, publish technical and substantial data related to water pollution and measures devised for effective prevention and control, prepare manuals, code or guides related to treatment and disposal of sewage and trade effluents.
 7. Plan and execute nationwide programs for the prevention, control and abatement of water pollution.
 8. The board may establish or recognize a laboratory or laboratories to assist the board in performing its function.
- The board may establish or recognize a laboratory or laboratories to assist the board in performing its function.

It is also to be highlighted here that the Central Board may step in to the shoes of the State Pollution Control Board, if the Central Government has directed it to do so, consequent upon a report that there was a default on the part of the State Government or that there is a great emergency.

Functions of State Board:-

The State Board shall under Section 17 perform the following functions

- Plan a comprehensive program for prevention, control and abatement of pollution of streams and wells in the state.
- Advise the State Government on matters concerning prevention, control and abatement of water pollution.
- To collect and disseminate information regarding prevention, control and abatement of water pollution.
- Conduct and participates in investigations and research related to prevention, control and abatement of water pollution.
- Collaborate with the Central Board to organize training program for persons engaged in prevention, control and abatement of water pollutions.
- To inspect sewage or trade effluents and to review plans relating to plants set up for treatment of water and for purification and disposal of water and trade effluent.
- To evolve economic and reliable methods for the treatment of sewage and trade effluents while considering the peculiarities of soil, climate, and water resources of the area.
- To evolve methods to utilize sewage and trade effluents from agriculture.
- To lay down standards for the treatment of sewage and trade effluents to be discharged in to streams.
- To lay down effluents standard to be complied with by persons while causing discharge of sewage or sullage.
- To advice the State Government with respect to location of any industry which is likely to pollute water bodies.

The State Board may establish or recognize laboratories for the analysis of water samples. The Central or State Government may give directives to the State Board under Section 18 of the Act.

Is Mens rea and essential factor in water pollution cases:-

Students; there is diversity of opinion on this matter- while some legal experts strongly feel that mens-rea is an essential factor in dealing with cases involving water pollution, others feel that it is not. Prof. Leela Krishnan feels that knowledge about the harm and mensrea are two important elements which constitute an offence under the water Act (Leelakrishnan, 2016). A guilty mind about the consequences of a polluting act is a component which shall surely lead to conviction. To strengthen the legal provision involving water pollution it has therefore been stated very clearly that no person shall set up industries likely to discharge effluents without taking permission from the competent authority. From what proceeds below it shall become crystal clear that

the powers assigned to the boards implicitly assume that mensrea has to be obliterated with strong provisions of law.

1. Section 20 of the Act dealing with the power of boards to obtain information states that for the purpose of performing its duty, the State board may make survey of any area and keep records of flow or volume or other characteristics of water bodies in an area. It may also install and maintain equipment for recording rainfall. The State Board may give directions to any person who in its opinion is abstracting water from any water body in the area in substantial quantities or is discharging sewage or trade effluents shall give information regarding the abstraction or discharge as specified in the directions.

In order to prevent or control pollution the State Board may give directions to any person in charge of an industry or operations where treatment or disposal is carried on to furnish information regarding its construction, insulation or operations.

Penalty for offences

There shall be a punishment with imprisonment of a term which may extend upto 3 months or with a fine which may extend up to Rs. 10,000/- or with both for the following offences. (Section 42)

1. Obstruction of any person acting under the directions of the board performing its functions under the Act.
2. Damage to works and property of the board.
3. Failure to furnish any information required from the person under the Act.
4. Failure to intimate the occurrence of any accident under the Act.
5. Destruction, removal or defacement of any filler post or State fixed on the ground or any notice put up under the authority of the board.

Section 41 of the Act states that who so ever fails to comply with the directions give under 20 (2) or 20 (3) within the stipulated time frame shall be imprisoned for a term which may extend up to 3 months or with a fine or up to Rs. 10,000/- or both. An additional fine of Rs. 5,000/- per day can be imposed for continued failure to comply after the conviction for the 1st such failure.

Who so ever fails to comply with any order issued under 32 (e) or 32(2) shall be punished with imprisonment for a term not less than 1 ½ years but which may extend up to 6 years with fine and in the case of continued failure with a fine of Rs.5,000/- per day.

In case of noncompliance/failure continues beyond a year after conviction the offender shall be punished with an imprisonment of not less than 2 years and which may extend up to 7 years with fine.

There is also a provision for enhanced penalty after previous conviction. If a person convicted for an offence under section 24, 25 or 26 is found guilty of same offence, shall be punished with a jail term of not less than 2 years but which may extend up to 7 years with fine on each location.

A significant inclusion in the Act under Sec 47 is the offenses by the companies. It states that where an offence under this Act is committed by a company the person in charge of conducting the business of the company shall be deemed with guilty and shall be punished accordingly. This section once again highlights the role of mensrea in this act it is stated clearly that nothing contained in the subsection shall render any person liable for punishment if he proves that the offence was conducted without his knowledge or that he exercise due diligence to prevent the commission of that offence.

However if it is true that an offense that committed by a company with the consent of or attributable to any Manager, Director, Secretary or other officers of the company, they shall be proceeded against and punished accordingly.

Section 48 states that where an offense has been committed by a department of the Government, the head of that department shall be proceeded against unless he can prove that the offence has been committed without his knowledge or that he exercised due diligence.

The 1998 Amendment:-

An amendment was brought about in 1998 reflecting the following

- It brought in more coercive force under Section 33 (A) of the water Act. Now the court can take cognizance of the complaint if a 60 day notice has been served on the board. Upon receipt of the complaint the board has to provide relevant records and documents on demand such disclosure can be denied only on public interest.

The Central and State Board have to submit annual reports to their respective Government.

Some important cases related to the Water Act

- Ganga Pollution case (MC Mehta Vs Union of India):-

The Supreme Court of India brought on record the utter indifference of Kanpur tanneries and ordered the immediate stoppage of discharge of effluents in to the river Ganga they held that adverse impact of discharge in to the river would far outstrip the inconvenience caused to polluting industry due to the closure. Strict orders were given to the tanneries to start primary treatment plants (Leelakrishnan, 2016). The State Board where instructed to monitor the enforcement. The court also held that under Article 51A of the constitution the Central Government had a duty to prevent pollution and improve the environment.

- UP Pollution Control Board Vs. Modi Distilleries:-

Modi industries was prosecuted for the discharge of noxious trade effluents without the consent of the board. The company was not made a party to the proceedings. In an application under Section 482 of CrPC the High Court held that the lapse was detrimental to the validity of the process initiated against the MD, Chairman and Vice Chairman of the company. However the Supreme Court of India held that these technical flows could be corrected by an amendment. It also held that due to the inaction of State Boards many business houses escapes punishment in spite of breach in the provisions of Water Act.

- UP Pollution Control Board Vs. Mohan Meakins:-

The applicant board had launched prosecution on Mohan Meakins and its Directors for continuously polluting a river. There was a long delay in legal proceedings as the case shuttled between Sessions Court, Magistrate Court and High Court. The Supreme Court of India observed that such delays would harm the cause of environment of protection and therefore the case has to be expedited. The respondents (Mohan Meakins) tried to stall the case citing the inordinate delay. The Supreme Court of India held that the very fact of delay was more than sufficient for expediting the proceedings of the case. It was also stated that Court should not deal with matters of grave importance in a routine manner.

Let us Sum Up

It is crystal clear that Water Pollution is a scourge of the modern times. Though all countries suffer from water pollution up to some extent, the problem is acute in water scarce countries such as India. The Water Act is a major step forward in solving or atleast containing the problem of water pollution in India.

Self Assessment Question(s)

- Go through the CrPC and understand what Section 482 is about. Once the same is done explain how section 482 of CrPC applies to environmental issues such as water pollution

References

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