

# **CHAPTER 1**

## **INTRODUCTORY**



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### 1.1. Scope.

The Water (Prevention and Control of Pollution) Act, 1974 is the first major Central law relating to pollution. Its object is to provide for the prevention and control of water pollution and the maintenance or restoration of wholesomeness of water, for the establishment (for the above purpose) of Boards, for the conferment of powers and functions on the Boards for the above purpose and for connected matters.

The Act applies to the specified States and to the Union Territories as provided in Section 1(2).

### 1.2. Scheme of the Act.

The Water Pollution Act consists of 64 sections comprised within 8 chapters. Chapter 1 (Sections 1 and 2) contains preliminary provisions, including definitions. The most important definitions are those contained in the following provisions:

Section 2 (e) - "pollution".

Section 2 (j) - "stream".

Section 2 (k) - "trade effluent".

Chapter 2 (Sections 3-12) deals with the Boards. The Act contemplates the creation of a Central Board as well as a State Board for the prevention and control of water pollution. Chapter 3 (Sections 13-15) deals with Joint Boards, while Chapter 4 devotes itself to the functions of the Boards. Chapter 5 (Sections 19-33A) is the principal operative Chapter of the Act, containing the substantive provisions of the Act. This Chapter (apart from making other provisions), confers a variety of powers on the Board or other authorities, including the power to obtain information, the power to take samples of effluents and to get them analysed, powers of entry and inspection, restrictions on opening new outlets and new discharges without the consent of the Board, appeals and revisions, emergency measures, restraint orders, giving of directions and so on. "Restraint orders", mentioned above, can be obtained by a Board, under Section 33, on making an application to a court not inferior to that of a metropolitan magistrate or magistrate of the first class. Power to give directions is, under Section 33A of the Act vested in "a Board". Such directions can be issued by a Board in exercise of its powers and performance of its functions under the Act. But the Board's power is subject to such directions as may be issued by the Central Government in this behalf. The

Explanation to Section 33A declares that the power to issue directions under the section includes the power to direct (a) the closure, prohibition or regulation of any industry, operation or process, or (b) the stoppage or regulation of supply of water, electricity or any other service.

The various measures that can be taken under these provisions, contained in Chapter 5, are not without their sanctions. Chapter 7 (to be noticed presently) provides the necessary sanctions. Chapter 6 of the Act (Sections 34-40) deals with funds, accounts and audit. Chapter 7 (Sections 41-50) deals with penalties and procedure, and most of the penal sections contained in this Chapter are in the nature of sanctions for breach of the orders or directions issued by the Board or other competent authority under the Act. Chapter 8 of the Act (Sections 51-64) contains miscellaneous provisions, including power to make rules. It should be noted in this context, that, in the scheme of the Act, power to make rules is divided between the Central Government and the State Government. The Central Government can make rules only on matters enumerated in Section 63(2), while the power of the State Government is much wider. Under Section 64(1), it can make rules to carry out the purposes of the Act in respect of matters not falling within Section 63. In particular, and without prejudice of the generality of the foregoing power, the State Government can, under Section 64 (2), make rules in respect of the matters specifically listed in that sub-section. The respective Governments must consult the respective Boards before making the rules.<sup>1</sup>

### 1.3. Penal provisions.

The penal provisions contained in Chapter 7 (comprising Sections 41-50), can be best understood, if one tries to analyse them and classify them suitably. It would appear that these provisions, in so far as they operate substantively by creating criminal liability, fall into the following classes:-

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| (a) | Provisions punishing contravention of certain <i>provisions</i> of the Act.   | Sections 43, 44, 45 and 45A (in part). |
| (b) | Provisions punishing contravention of an <i>order or direction</i> <sup>2</sup> given under the Act.                              | Section 41 and Section 45A (in part).  |
| (c) | Provisions penalising certain acts (not linked with any other provision of the Act or with any order or direction under the Act). | Section 42.                            |

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1. Sections 63 and 64 are silent about notifying the rules.

2. Contravention of rules is not covered

- (d) Provisions creating a vicarious criminal liability. Sections 47 and 48.
- (e) Provisions linking the Act with the Indian Penal Code. Section 50.

#### 1.4. Procedural provisions relevant to criminal liability.

(a) A part of the Water Pollution Act deals with procedural matters relevant to the enforcement of the substantive criminal liability created by, or flowing from, the penal provisions classified in the preceding paragraph. These are as under:-

Section 46.	Publication of names of offenders.
Sections 49(1) and 49 (2).	Cognizance of offences.
Section 49(3)	Sentencing powers of certain Magistrates.

(b) It is desirable to set out, in some detail, the purport of Section 49(i) and Section 49(2), concerned with the cognizance of offences. Section 49(1), first half, prohibits the court from taking cognizance of an offence under this Act except on a complaint made by (a) a Board or an officer authorised by it, or (b) any person who has given notice of not less than 60 days, in the prescribed manner, of the alleged offence and of his intention to make a complaint to the Board or to the officer authorised as aforesaid.

The latter part of Section 49(1) directs that no court inferior to that of a Metropolitan Magistrate or Magistrate of the first class shall try any offence punishable under the Act. Section 49(2) provides that where a complaint has been made by a person (i.e. a private person) under Section 49(1)(b), the Board shall, on demand, make available to that person<sup>3</sup> the relevant reports in its possession. But the proviso lays down that the Board may refuse to make any such report available to such person if the same is, in its opinion, against the public interest.<sup>4</sup>

(c) Section 49(3) enhances the sentencing powers of Magistrates.

#### 1.5. Section 2: Definitions.

Section 2 of the Act (as amended in 1988) contains 12 definitions of various expressions in the Act. Of these, the definitions in Section 2(d), 2(dd), 2(e), 2(g), 2(j) and 2(k), are of considerable importance. They define the expressions 'occupier', 'outlet', 'pollution', 'sewage affluent', 'strain' and 'trade effluent', respectively.

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3. No time limit is prescribed by Section 49(1)(b).

4. No appeal is provided for against the refusal under Section 49(1), proviso.

Some of the definitions are inter-connected with each other. For example, Section 2(dd), which defines the expression 'outlet', contains, *inter alia*, the words 'sewage' and 'trade effluent', as also the crucial word 'pollution'. The word 'pollution' itself, as defined in Section 2(e), speaks, *inter alia*, of "discharge of any sewage or trade effluent".

#### **1.6. Sources of Water**

Incidentally, the expression 'pollution' has been (rightly) defined in terms of contamination of 'water' or certain types of alteration of properties of water or certain types of discharge into water. Now, water may be in the form of streams or wells or reservoirs or lakes. Some of the substantive sections of the Act, such as Section 24, concentrate on streams and wells, but they do not mention the other sources of water.<sup>5</sup>

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5. Point relevant to Section 24. (Sources of water).