

CHAPTER 2
BOARDS
SECTIONS 3 TO 12

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2.1. Scope.

Chapter 2 (Section 3 to 12) of the Water Pollution Act deals with the Central and State Boards for the Prevention and Control of Water Pollution. Sections 3 and 6 provide for the composition of the Boards. Sections 5 and 7 deal with the members, their qualifications and disqualifications. Sections 8 to 11 are connected with matters relating to working of the Boards. Under Section 11A, a Board can delegate powers to the Chairman. Section 12 deals with the Secretariat of the Board.

2.2. Sections 3 and 4: The Board: Need for amendment.

Section 3 and 4 of the Act deal with the constitution of the Central Board and the State Boards respectively. Two comments are in order on these sections, of which one is of substance, and the other of drafting.¹

The point of substance relates to Section 3(2)(d) and Section 4(2)(d). The Act, while permitting the nominations of three non-officials, is silent about the nomination of persons interested in the environment. No doubt, the words "any other interest which ... ought to be represented" are wide enough. But they do not pointedly deal with the above aspect, which ought to be covered.

The point of drafting concerns Section 3(2)(c), Section 3(2)(d), Section 4(2)(c) and Section 4(2)(d). These provisions make use of the phraseology - "such number of persons (or non-officials...) to be nominated...." Gramatically, the word "such" should be followed by the word "as". Thus, taking Section 3(2)(c) as an examples the correct words would be "such number of persons, not exceeding five *as may be* nominated". This verbal improvement is desirable.

2.3. Sections 5, 6 and 7: Terms and conditions and qualifications: Amendment needed.

Section 5 deals with the terms and conditions of service of members. Section 6 deals with the disqualification of members. Section 7 provides that if a member of a Boards becomes subject to any of the disqualifications specified in Section 6, his seat shall become vacant. Several points need to be raised, concerning these sections.²

(i) By Section 6 (1)(d), there is disqualification of a member who is convicted of an offence "under this Act". To this clause, there should be added

1. Point for amendment.

2. Point for amendment.

the words "or under any other law for the time being in force relating to environmental pollution, including the Public Liability Insurance Act, 1991". Such an amendment will cover the case of persons convicted under other laws.

(ii) Section 6(1)(f), while dealing with manager etc. of a firm, is silent about *partners* of the firm. They should be added.

(iii) Section 6(2) provides that - "No order of removal shall be made by the Central Government or the State Government unless the member concerned has been given a reasonable opportunity of showing cause against the same." This sub-section *assumes*, that an express order of removal of the member is to be passed, though it does not expressly so provide. But Section 7 is indicative of an automatic cessation of office on the part of the member who has incurred a disqualification. Section 7 reads as under:-

"7. If a member of a Board becomes subject to any of the disqualification specified in Section 6, his seat shall become vacant."

It would be a reasonable statement to make that both Section 6(2) and Section 7 need re-casting so as to introduce harmony between the two.³

2.4. Redrafts.

Here are tentative suggestions for redrafting these two provisions, namely, Section 6(2) and Section 7.

Section 6(2) (suggested redraft)

"(2) If a member of a Board becomes subject to any of the disqualifications specified in sub-section (1), the Central Government or the State Government, as the case may be, *may remove such member*, after the member concerned has been given a reasonable opportunity of showing cause against the same."

Section 7 (suggested redraft)

"7. If a member of a Board becomes subject to any of the disqualifications specified in Sections 6, his seat shall become vacant *upon the making of an order of removal under sub-section (2) of that section.*"

3. See para 2.4, *infra* for redrafts.