

## **CHAPTER 6**

### **CRIMINAL LAW (SPECIAL) : WATER POLLUTION ACT**

#### **6.1. Scope of the Act**

The Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) is one of the major laws relevant to the environment. Its main objects are the following :-

- (a) to provide for the prevention and control of water pollution;
- (b) to provide for the maintaining or restoring of wholesomeness of water;
- (c) to provide for the establishment of Boards for the prevention and control of water pollution;
- (d) to provide for conferring powers on such Boards and assigning functions to such Boards; and
- (e) to provide for matters connected with the above.

#### **6.2. Constitutional position**

The Water Pollution Act was taken as relating to a subject not within the competence of Parliament (except as provided in articles 249 and 250 of the Constitution). The Act has been enacted in pursuance of resolutions passed by certain States under article 252(1) of the Constitution. The Act applies in the first instance to all the Union Territories and to the following States whose Legislatures have passed the requisite resolution : Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir,

Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal.

### **6.3. The Boards**

By sections 3 and 4, the Act provides for the creation of the Central Pollution Control Board and State Pollution Control Boards. Sections 13-15 authorise the establishment of Joint Boards. The main function of the Central Board, under section 16(1) of the Act, is to “promote cleanliness of streams and wells in the States”. Section 16(2) provides certain functions in the nature of advice, planning, co-ordination, publication, education and programmes for preventing, controlling and abating water pollution.

The State Boards (section 17) are expected not only to plan comprehensive programmes for the prevention and control of water pollution in the State but also to inspect sewage or trade effluents, works and plants for their treatment, to lay down standards for such effluents and for the quality of receiving waters, to make orders for waste disposal and the like.

### **6.4. Directions by Boards**

By section 18 of the Water Pollution Act, power to give “directions” is conferred on -

- (a) the Central Government (which can give directions to the Central Board);
- (b) the Central Board (which can give directions to the State Boards);
- (c) the State Government (which can give directions to the State Board).

In case of conflict between directions given by the Central Board and the State Government, that matter shall be referred to the Central Government for decision. If the Central Board's directions are not complied with by the State Board, the Central Government can order the former to perform the functions of the latter for a specified period.

### **6.5. Control of pollution of water**

Apart from the general powers of the State Boards (section 17), a State Board has statutory powers to obtain information (section 20), to take samples of effluents and have them analysed (sections 21-22) and to enter and inspect premises and vessels (section 23). Violation is punishable under section 40.

### **6.6. Prohibition against pollution**

Section 24 prohibits every person from knowingly doing certain acts which cause water pollution. Most important is the prohibition against causing or permitting the entry into any stream or well or sewer or byland of -

- (i) any poisonous matter;
- (ii) any noxious matter;
- (iii) any polluting matter as per standards laid down by the State Board;
- (iv) any other matter tending to impede the proper flow of water of a stream “ in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or its consequences”.

Violation is punishable under section 43.

### **6.7. New outlets and new discharges**

Section 25 prohibits the following acts, if committed without the previous consent of the State Board:-

- (a) establishment of any industry etc. or any treatment and disposal system likely to lead to discharge of sewage;
- (b) bringing into use any new or altered outlet for discharge of sewage; or
- (c) beginning to make any new discharge or sewage.

Violation is punishable under section 44.

Section 27 lays down the circumstances in which consent may be granted. Orders refusing consent are, under section 28, appealable to the prescribed appellate authority. They can also be revised by the State Government under section 29.

### **6.8. Power to carry out works**

Where consent of the Board is subject to the condition of execution of works and the person to whom such conditional consent is given fails to execute the works, the State Board can get those works executed at his cost, under section 30.

### **6.9. Accidents and emergencies**

Where owing to any accident etc. there is any discharge of poisonous, noxious or polluting matter, section 31 imposes on the person concerned an obligation to inform the State Board. Failure to do so is punishable under section 45A, which is the residuary penal provision.

By section 32, the State Board is empowered to take emergency measures in case of such accident. Violation is offence under section 41.

### **6.10. Restraint order**

In case of apprehended pollution of water of any stream or well, section 33 enables the State Board to apply to the Court for a restraint order. Violation of the restraint order becomes punishable under section 44. Further, the Court may authorise the Board to undertake removal and disposal of the matter.

### **6.11. Power of a Board to give directions**

By section 33A of the Water Pollution Act (subject to directions of the Central Government), a Board can, in the exercise of its powers and performance of its functions under the Act, issue directions. Breach of such direction is punishable under section 41.

### **6.12. Penalties.**

Chapter 7 (sections 41 to 50) of the Water Pollution Act is of considerable importance in practice. The Chapter is headed "Penalties and Procedure". The offences created by each section may be stated in brief as under:-

**Section 41** Failure to comply with directions issued under section 20(2), 33(2) or 33A.

(Section 20(2) is concerned with directions requiring information. Section 33(2) is concerned with restraint orders. Section 33A relates to Board's power).

**Section 42** Penalty for certain acts. (These are acts in the nature of destruction of structures put up by the Board, obstruction, damaging Board's property, failure to furnish information etc.).

**Section 43** Penalty for contravention of provisions of section 24. (Section 24 relates to prohibition on use of stream or well for the disposal of polluting matter).

**Section 44** Penalty for contravention of section 25 or section 26. (These sections relate to restrictions on new outlets and new discharges. Consent of Board is required for establishing any industry etc. or disposal system etc. likely to discharge sewage or trade effluent, or for bringing into use new outlet for discharge of sewage or for making new discharge).

**Section 45** Enhanced penalty after previous conviction. (A person convicted of offence under Section 24, 25 or 26, if again found guilty of such offence, must undergo imprisonment - minimum 2 years, maximum 7 years to which fine may be added. For this purpose, cognizance is not to be taken of conviction made more than 2 years before the new offence).

**Section 45A** Penalty for contravention of certain provisions of the Act. (This is a residuary penal provision for contravention of any provision of the Act or non-compliance with any order or direction under this Act for which no penalty is provided elsewhere in the Act).

The above sections having laid down the offences, the subsequent sections in chapter 7 deal with connected matters as under :-

**Section 46** Publication of names of offenders.

**Section 47** Offences by companies.

(Section 47 contains the usual provision whereunder in the case of an offence by a company, not only is the company liable, but also the following :-

(a) a very person who, at the time the offence was committed, was in charge of, and was responsible to the company for the conduct of the business of the company unless that person proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent its commission;

(b) every director, manager, secretary or other officer of the company, if it is proved that the offence was committed with his consent or connivance or is attributable to any neglect on his part).

**Section 48** Offences by Government departments.

**Section 49** Cognizance of offence.

Complaint by the following is required :-

(a) a Board or any officer authorised in this behalf by it, or

(b) any person who has given to the Board etc. notice of not less than 60 days (in the prescribed manner) of the commission of the alleged offence and of his intention to make a complaint.

Where such a complaint is made, relevant documents must be made available unless the public interest otherwise demands.

**Section 50** Members, officers and servants of Board to be public servants.