

Course Name	LL.B 4 <sup>th</sup> sem
Subject	Environment Law
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Concept	<b>Water Pollution Act, 1974</b>

## **Water Pollution Act, 1974**

### **3. Constitution of Central Board**

(1) The Central Government shall, with effect from such date (being a date not later than six months of the commencement of this Act in the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and in the Union Territories) as it may, by notification in the Official Gazette, appoint, constitute a Central Board to be called the Central Pollution Control Board] to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) The Central Board shall consist of the following members, namely,-

(a) a full-time Chairman, being a person having special knowledge or practical experience in respect of 5 [matters relating to environmental protection] or a person having knowledge and experience in administering institutions dealing with the matters aforesaid, to be nominated by the Central Government;

(b) such number of officials, not exceeding five], to be nominated by the Central Government to represent that government;

(c) such number of persons, not exceeding five to be nominated by the Central Government, from amongst the members of the State Boards, of whom not exceeding two shall be from those referred to in clause (c) of sub-section (2) of section 4;

(d) such number of non-officials, not exceeding three], to be nominated by the Central Government, 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 or managed by the Central Government, to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

(3) The Central Board shall be a body corporate with the name aforesaid having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire, hold and dispose of property and to contract, and may, by the aforesaid name, sue or be sued.

#### **4. Constitution of State Boards**

(1) The State Government shall, with effect from such date as it may, by notification in the Official Gazette, appoint, constitute a State Pollution Control Board, under such name as may be specified in the notification, to exercise the powers conferred on and perform the functions assigned to that Board under this Act.

(2) A State Board shall consist of the following members, namely,-

(a) 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, to be nominated by the State Government:

PROVIDED that the Chairman may be either whole-time or part-time as the State Government may think fit;

(b) such number of officials, not exceeding five to be nominated by the State Government to represent that government;

(c) such number of persons, not exceeding five,] to be nominated by the State Government from amongst the members of the local authorities functioning within the State;

(d) such number of non-officials, not exceeding three] to be nominated by the State Government 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, to be nominated by that government;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the State Government.

(3) Every State Board shall be a body corporate with the name specified by the State Government in the notification under sub-section (1), having perpetual succession and a common seal with power, subject to the provisions of this Act, to acquire hold and dispose of property and to contract, and may, by the said name, sue or be sued.

(4) Notwithstanding anything contained in this section, no State Board shall be constituted for a Union Territory and in relation to a Union Territory, the Central Board shall exercise the powers and perform the functions of a State Board for that Union Territory.

## **5. Terms and conditions of service of members**

Save as otherwise provided by or under this Act, a member of a Board, other than a member-secretary, shall hold office for a term of three years from the date of his nomination.

## **6. Disqualifications**

(1) No person shall be a member of Board, who-

(a) is, or at any time has been adjudged insolvent or has suspended payment of his debts or has compounded with his creditors, or

(b) is of unsound mind and stands so declared by a competent court, or

(c) is, or has been, convicted of an offence which, in the opinion of the Central Government or, as the case may be, of the State Government, involves moral turpitude, or

(d) is, or at any time has been, convicted of an offence under this Act, or

(e) has directly or indirectly by himself or by any partner, any share or interest in any firm or company carrying on the business of manufacture, sale or hire of machinery, plant, equipment, apparatus or fittings for the treatment of sewage or trade effluents, or

(f) is a director or a secretary, manager or other salaried officer or employee of any company or firm having any contract with the Board, or with the government constituting the Board, or with a local authority in the State, or with a company or corporation owned, controlled or managed by the government, for the carrying out of sewerage schemes or for the installation of plants for the treatment of sewage or trade effluents, or

(g) has so abused, in the opinion of the Central Government or as the case may be, of the State Government, his position as a member, as to render his continuance on the Board detrimental to the interest of the general public.

(2) No order of removal shall be made by the Central Government or the State Government, as the case may be, under this section unless the member concerned has been given a reasonable opportunity of showing cause against the same.

(3) Notwithstanding anything contained in sub-sections (1) and (7) of section 5, a member who has been removed under this section shall not be eligible for renomination as a member.

## **7. Vacation of seats by members**

If a member of a Board becomes subject to any of the disqualifications specified in section 6, his seat shall become vacant. 8. Meetings of Boards A Board shall meet at least once in every three months and shall observe such rules of procedure in regard to the transaction of business at its meetings as may be prescribed:

PROVIDED that if, in the opinion of the Chairman, any business of an urgent nature is to be transacted, he may convene a meeting of the Board at such time as he thinks fit for the aforesaid purpose.

### **9. Constitution of committees**

(1) A Board may constitute as many committees consisting wholly of members or wholly of other persons or partly of members and partly of other persons, and for such purpose or purposes as it may think fit.

(2) A committee constituted under this section shall meet at such time and at such place, and shall observe such rules of procedure in regard to the transaction of business at its meetings, as may be prescribed.

(3) The members of a committee (other than the members of the Board) shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board as may be prescribed.

### **10. Temporary association of persons with Board for particular purposes**

(1) A Board may associate with itself in such manner, and for such purposes, as may be prescribed any person whose assistance or advice it may desire to obtain in performing any of its functions under this Act.

(2) A person associated with the Board under sub-section (1) for any purpose shall have a right to take part in the discussions of the Board relevant to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member for any other purpose.

(3) A person associated with the Board under sub-section (1) for any purpose shall be paid such fees and allowances, for attending its meetings and for attending to any other work of the Board, as may be prescribed.

### **11. Vacancy in Board not to invalidate acts or proceedings**

No act or proceeding of a Board or any committee thereof shall be called in question on the ground merely of the existence of any vacancy in, or any defect in the constitution of, the Board or such committee, as the case may be.

### **11A. Delegation of powers to Chairman**

The Chairman of a Board shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board.

## **12. Member-secretary and officers and other employees of Board**

(1) The terms and conditions of service of the member-secretary shall be such as may be prescribed.

(2) The member-secretary shall exercise such powers and perform such duties as may be prescribed or as may, from time to time, be delegated to him by the Board or its Chairman.

(3) Subject to such rules as may be made by the Central Government or, as the case may be, the State Government in this behalf, a Board may appoint such officers and employees as it considers necessary for the efficient performance of its functions.

(3A) The method of recruitment and the terms and conditions of service (including the scales of pay) of the officers (other than the member-secretary) and other employees of the Central Board or a State Board shall be such as may be determined by regulations made by the Central Board or, as the case may be, by the State Board:

PROVIDED that no regulation made under this sub-section shall take effect unless-

- (a) in the case of a regulation made by the Central Board, it is approved by the Central Government; and
- (b) in the case of a regulation made by a State Board, it is approved by the State Government.
- (c) The Board may, by general or special order, and subject to such conditions and limitations, if any, as may be specified in the order, delegate to any officer of the Board such of its powers and functions under this Act as it may deem necessary.
- (d) Subject to such conditions as may be prescribed, a Board may from time to time appoint any qualified person to be a consulting engineer to the Board and pay him such salaries and allowances and subject him to such other terms and conditions of service as it thinks fit.

## **CHAPTER III JOINT BOARDS**

### **13. Constitution of Joint Boards**

(1) Notwithstanding anything contained in this Act, an agreement 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, to be in

force for such period and to be subject to renewal for such further period, if any, as may be specified in the agreement to provide for the constitution of a Joint Board-

(i) in a case referred to in clause (a), for all the participating States, and

(ii) in a case referred to in clause (b), for the participating Union Territory or Union Territories and the State or States.

(2) An agreement under this section may-

(a) provide, in a case referred to in clause (a) of sub-section (1), for the apportionment between the participating States and in a case referred to in clause (b) of that sub-section, for the apportionments between the Central Government and the participating State Government or State Governments, of the expenditure in connection with the Joint Board;

(b) determine, in a case referred to in clause (a) of sub-section (1), which of the participating State Governments and in a case referred to in clause (b) of that sub-section, whether the Central Government or the participating State Government (if there are more than one participating State, also which of the participating State Governments) shall exercise and perform the several powers and functions of the State Government under this Act and the references in this Act to the State Government shall be construed accordingly;

(c) provide for consultation, in a case referred to in clause (a) of sub-section (1), between the participating State Governments and in a case referred to in clause (b) of that sub-section, between the Central Government and the participating State Government or State Governments either generally or with reference to particular matters arising under this Act;

(d) make such incidental and ancillary provisions, not inconsistent with this Act, as may be deemed necessary or expedient for giving effect to the agreement.

(3) An agreement under this section shall be published, in a case referred to in clause (a) of sub-section (1), in the Official Gazette of the participating States and in a case referred to in clause (b) of that sub-section, in the Official Gazette of the participating Union Territory or Union Territories and participating State or States.

#### **14. Composition of Joint Boards**

(1) A Joint Board constituted in pursuance of an agreement entered into under clause (a) of sub-section (1) of section 13 shall consist of the following members namely,-

(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, to be nominated by the Central Government;

(b) two officials from each of the participating States to be nominated by the concerned participating State Government to represent that government;

(c) one person to be nominated by each of the participating State Governments from amongst the members of the local authorities functioning within the State concerned;

(d) one non-official to be nominated by each of the participating State Governments to represent the interests of agriculture, fishery or industry or trade in the State concerned or any other interest which, in the opinion of the participating State Government, is to be represented;

(e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

(2) A Joint Board constituted in pursuance of an agreement entered into under clause (b) of sub-section (1) of section 13 shall consist of the following members, namely,-

(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, to be nominated by the Central Government;

(b) two officials to be nominated by the Central Government from the participating Union Territory or each of the participating Union Territories, as the case may be, and two officials to be nominated, from the participating State or each of the participating States, as the case may be, by the concerned participating State Government;

(c) one person to be nominated by the Central Government from amongst the members of the local authorities functioning within the participating Union Territory or each of the participating Union Territories, as the case may be, and one person to be nominated, from amongst the members of the local authorities functioning within the participating State or each of the participating States, as the case may be, by the concerned participating State Government;

(d) one non-official to be nominated by Central Government and one person to be nominated by the participating State Government or State Governments to represent the interests of agriculture, fishery or industry or trade in the Union Territory or in each of the Union Territories or the State or in each of the States, as the case may be, or any other interest which in the opinion of the Central Government or, as the case may be, of the State Government is to be represented;



(e) two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the Central Government and situate in the participating Union Territory or Territories 9 and two persons to be nominated by the Central Government to represent the companies or corporations owned, controlled or managed by the participating State Governments;

(f) a full-time member-secretary, possessing qualifications, knowledge and experience of scientific, engineering or management aspects of pollution control, to be appointed by the Central Government.

(3) When a Joint Board is constituted in pursuance of an agreement under clause (b) of sub-section (1) of section 13, the provisions of sub-section (4) of section 4 shall cease to apply in relation to the Union Territory for which the Joint Board is constituted.

(4) Subject to the provisions of sub-section (3), the provisions of sub-section (3) of section 4 and sections 5 to 12 (inclusive) shall apply in relation to the Joint Board and its member-secretary as they apply in relation to a State Board and its member secretary.

(5) Any reference in this Act to the State Board shall, unless the context otherwise requires, be construed as including a Joint Board.

### **15. Special provisions relating to giving of directions**

Notwithstanding anything contained in this Act where any Joint Board is constituted under section 13-

(a) the government of the State for which the Joint Board is constituted shall be competent to give any direction under this Act only in cases where such direction relates to a matter within the exclusive territorial jurisdiction of the State;

(b) the Central Government alone shall be competent to give any direction under this Act where such direction relates to a matter within the territorial jurisdiction of two or more States or pertaining to a Union Territory.

## **CHAPTER IV POWERS AND FUNCTIONS OF BOARDS**

### **16. Functions of Central Board**

(1) Subject to the provisions of this Act, the main function of the Central Board shall be to promote cleanliness of streams and wells in different areas of the States.

(2) In particular and without prejudice to the generality of the foregoing function, the Central Board may perform all or any of the following functions, namely,-

(a) advise the Central Government on any matter concerning the prevention and control of water pollution;

(b) co-ordinate the activities of the State Boards and resolve disputes among them;

(c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(d) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;

(e) organize through mass media a comprehensive programme regarding the prevention and control of water pollution; 15[(ee) perform such of the functions of any State Board as may be specified in an order made under sub-section (2) of section 18;

(f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, codes or guides relating to treatment and disposal of sewage and trade effluents and disseminate information connected therewith;

(g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or well:

PROVIDED that different standards may be laid down for the same stream or well or for different streams or wells, having regard to the quality of water, flow characteristics of the stream or well and the nature of the use of the water in such stream or well or streams or wells;

(h) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of water pollution;

(i) perform such other functions as may be prescribed.

(3) The Board may establish or recognize a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

## **17. Functions of State Board**

(1) Subject to the provisions of this Act, the functions of a State Board shall be-

(a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;

(b) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;

(c) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof;

(d) to encourage, conduct and participate in investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;

(e) to collaborate with the Central Board in organizing the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organize mass education programmes relating thereto;

(f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

(g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter State stream) resulting from the discharge of effluents and to classify waters of the State;

(h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;

(i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;

(j) to evolve efficient methods of disposal of sewage and trade effluents on land, as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;

(k) to lay down standards of treatment of sewage and trade effluents to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the stream, after the discharge of such effluents;

(l) to make, vary or revoke any order-

(i) for the prevention, control or abatement of discharges of waste into streams or wells;

(ii) requiring any person concerned to construct new systems for the disposal of sewage and trade effluents or to modify, alter or extend any such existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;

(m) to lay down effluent standards to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;

(n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;

(o) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government.

(2) The Board may establish or recognise a laboratory or laboratories to enable the Board to perform its functions under this section efficiently, including the analysis of samples of water from any stream or well or of samples of any sewage or trade effluents.

## **18. Power to give directions**

(1) In the performance of its functions under this Act-

(a) the Central Board shall be bound by such directions in writing as the Central Government may give to it; and

(b) every State Board shall be bound by such directions in writing as the Central Board or the State Government may give to it:

PROVIDED that where a direction given by the State Government is inconsistent with the direction given by the Central Board, the matter shall be referred to the Central Government for its decision.

(2) Where the Central Government is of the opinion that any State Board has defaulted in complying with any directions given by the Central Board under subsection (1) and as a result of such default a grave emergency has arisen and it is necessary or expedient so to do in the public interest, it may, by order, direct the Central Board to perform any of the functions of the State Board in relation to such area for such period and for such purposes, as may be specified in the order.

(3) Where the Central Board performs any of the functions of the State Board in pursuance of a direction under sub-section (2), the expenses, if any, incurred by the Central Board with respect to the performance of such functions may, if the State Board is empowered to recover such expenses, be recovered by the Central Board with interest (at such reasonable rate as the Central Government may, by order, fix) from the date when a demand for such expenses is

made until it is paid from the person or persons concerned as arrears of land revenue or of public demand.

(4) For the removal of doubts, it is hereby declared that any directions to perform the functions of any State Board given under sub-section (2) in respect of any area would not preclude the State Board from performing such functions in any other area in the State or any of its other functions in that area.

## **CHAPTER V PREVENTION AND CONTROL OF WATER POLLUTION**

### **19. Power of State Government to restrict the application of the Act to certain areas**

(1) Notwithstanding anything contained in this Act, if the State Government, after consultation with, or on the recommendation of the State Board, is of opinion that the provisions of this Act need not apply to entire State, it may, by notification in the Official Gazette, restrict the application of this Act to such area or areas as may be declared therein as water pollution, prevention and control area or areas and thereupon the provisions of this Act shall apply only to such area or areas.

(2) Each water pollution, prevention and control area may be declared either by reference to a map or by reference to the line of any watershed or the boundary of any district or partly by one method and partly by another.

(3) The State Government may, by notification in the Official Gazette-

(a) alter any water pollution, prevention and control area whether by way of extension or reduction; or

(b) define a new water pollution, prevention and control area in which may be merged one or more water pollution, prevention and control areas, or any part or parts thereof.

### **20. Power to obtain information**

(1) For the purpose of enabling a State Board to perform the functions conferred on it by or under this Act, the State Board or any officer empowered by it in that behalf, may make surveys of any area and gauge and keep records of the flow or volume and other characteristics of any stream or well in such area, and may take steps for the measurement and recording of the rainfall in such area or any part thereof and for the installation and maintenance for those purposes of gauges or other apparatus and works connected therewith, and carry out stream surveys and may take such other steps as may be necessary in order to obtain any information required for the purposes aforesaid.

(2) A State Board may give directions requiring any person who in its opinion is abstracting water from any such stream or well in the area in quantities which are substantial in relation to the flow or volume of that stream or well or is discharging sewage or trade effluent into

any such stream or well, give such information as to the abstraction or the discharge at such times and in such form as may be specified in the directions.

(3) Without prejudice to the provisions of sub-section (2), a State Board may, with a view to preventing or controlling pollution of water, 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 to it information regarding the construction, installation or operation of such establishment or of any disposal system or of any extension or addition thereto in such establishment and such other particulars as may be prescribed.

## **21. Power to take samples of effluents and procedure to be followed in connection therewith**

(1) A State Board or any officer empowered by it in this behalf shall have power to take for the purpose of analysis samples of water 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 such stream or well.

(2) The result of any analysis of a sample of any sewage or trade effluent taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3), (4) and (5) are complied with.

(3) Subject to the provisions of sub-sections (4) and (5), when a sample (composite or otherwise as may be warranted by the process used) of any sewage or trade effluent is taken for analysis under sub-section (1), the person taking the sample shall-

(a) serve on the person in charge of, or having control over, the plant or vessel or in occupation of the place (which person is hereinafter referred to as the occupier) or any agent of such occupier, a notice, then and there in such form as may be prescribed of his intention to have it so analysed;

(b) in the presence of the occupier or his agent, divide the sample into two parts;

(c) cause each Part to be placed in a container which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent;

(d) send one container forthwith- (i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or recognised by the Central Board under section 16; and (ii) in any other case, to the laboratory established or recognised by the State Board under section 17;

(e) on the request of the occupier or his agent, send the second container-

(i) in a case where such sample is taken from any area situated in a Union Territory, to the laboratory established or specified under sub-section (1) of section 51; and

(ii) in any other case, to the laboratory established or specified under subsection (1) of section 52. (4) When a sample of any sewage or trade effluent is taken for analysis under subsection (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3) and the occupier or his agent wilfully absents himself, then-

(a) the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (e) of sub-section (3) and such person shall inform the government analyst appointed under sub-section (1) or sub-section (2), as the case may be, of section 53, in writing about the willful absence of the occupier or his agent; and

(b) the cost incurred in getting such sample analyzed shall be payable by the occupier or his agent and in case of default of such payment, the same shall be recoverable from the occupier or his agent, as the case may be, as an arrear of land revenue or of public demand:

PROVIDED that no such recovery shall be made unless the occupier or, as the case may be, his agent has been given a reasonable opportunity of being heard in the matter.]

(5) When a sample of any sewage or trade effluent is taken for analysis under subsection (1) and the person taking the sample serves on the occupier or his agent a notice under clause (a) of sub-section (3) and the occupier or his agent who is present at the time of taking the sample does not make a request for dividing the sample into two parts as provided in clause (b) of sub-section (3), then, the sample so taken shall be placed in a container which shall be marked and sealed and shall also be signed by the person taking the sample and the same shall be sent forthwith by such person for analysis to the laboratory referred to in sub-clause (i) or sub-clause (ii), as the case may be, of clause (d) of sub-section (3).

## **22. Reports of the result of analysis on samples taken under section 21**

(1) Where a sample of any sewage or trade effluent has been sent for analysis to the laboratory established or recognized by the Central Board or, as the case may be, the State Board, the concerned Board analyst appointed under sub-section (3) of section 53 shall analyze the sample and submit a report in the prescribed form of the result of such analysis in triplicate to the Central Board or the State Board as the case may be.

(2) On receipt of the report under sub-section (1), one copy of the report shall be sent by the Central Board or the State Board, as the case may be, to the occupier or his agent referred to in section 21, another copy shall be preserved for production before the court in case any legal proceedings are taken against him and the other copy shall be kept by the concerned Board.

(3) Where a sample has been sent for analysis under clause (e) of sub-section (3) or sub-section (4) of section 21 to any laboratory mentioned therein, the government analyst referred to in that sub-section shall analyze the sample and submit a report in the prescribed form of the result of the analysis in triplicate to the Central Board or, as the case may be, the State Board which shall comply with the provisions of subsection (2).

(4) If there is any inconsistency or discrepancy between, or variation in the results of, the analysis carried out by the laboratory established or recognised by the Central Board or the State Board, as the case may be, and that of the laboratory established or specified under section 51 or section 52, as the case may be, the report of the latter shall prevail.

(5) Any cost incurred in getting any sample analysed at the request of the occupier or his agent shall be payable by such occupier or his agent and in case of default the same shall be recoverable from him as arrears of land revenue or of public demand.

### **23. Power of entry and inspection**

(1) Subject to the provisions of this section, any person empowered by a State Board in this behalf shall have a right at any time to enter, with such assistance as he considers necessary, any place-

(a) for the purpose of performing any of the functions of the 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 this Act or the rules made there under of any notice, order, direction or authorization served, made, given, or granted under this Act is being or has been complied with;

(c) for the purpose of examining any plant, record, register, document or any other material object or for conducting a search of any place in which he has reason to believe that an offence under this Act or the rules made there under has been or is being or is about to be committed and for seizing any such plant, record, register, document or other material object, if he has reason to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made there under:

PROVIDED that the right to enter under this sub-section for the inspection of a well shall be exercised only at reasonable hours in a case where such well is situated in any premises used for residential purposes and the water thereof is used exclusively for domestic purposes.

(2) The provisions of the 19[Code of Criminal Procedure, 1973 (2 of 1974)], or, in relation to the State of Jammu and Kashmir, the provisions of any corresponding law in force in that State, shall, so far as may be, apply to any search or seizure under this section as they apply to any search or seizure made under the authority of a warrant issued under 20[section 94] of the said Code, or, as the case may be, under the corresponding provisions of the said law.



Explanation : For the purposes of this section, "place" includes vessel.

#### **24. Prohibition on use of stream or well for disposal of polluting matter, etc.**

(1) Subject to the provisions of this section-

(a) no person shall knowingly cause or permit any poisonous, noxious or polluting matter determined in accordance with such standards as may be laid down by the State Board to enter (whether directly or indirectly) into any Stream or well or sewer or on land; or

(b) no person shall knowingly cause or permit to enter into any stream any other matter which may tend, either directly or in combination with similar matters, to impede the proper flow of the water of the stream in a manner leading or likely to lead to a substantial aggravation of pollution due to other causes or of its consequences.

(2) A person shall not be guilty of an offence under sub-section (1), by reason only of having done or caused to be done any of the following acts, namely,-

(a) constructing, improving or maintaining in or across or on the bank or bed of any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain;

(b) depositing any materials on the bank or in the bed of any stream for the purpose of reclaiming land, or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream;

(c) putting into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream;

(d) causing or permitting, with the consent of the State Board, the deposit accumulated in a well, pond or reservoir to enter into any stream.

(3) The State Government may, after consultation with, or on the recommendation of, the State Board, exempt, by notification in the Official Gazette, any person from the operation of sub-section (1) subject to such conditions, if any, as may be specified in the notification and any condition so specified may by a like notification be altered, varied or amended.

#### **25. Restrictions on new outlets and new discharges**

(1) Subject to the provisions of this section, no person shall, without the previous consent of the State Board-

(a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage

or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or

(b) bring into use any new or altered outlet for the discharge of sewage; or

(c) begin to make any new discharge of sewage:

PROVIDED that a person in the process of taking any steps to establish any industry, operation or process immediately before the commencement of the Water (Prevention and Control of Pollution) Amendment Act, 1988, for which no consent was necessary prior to such commencement, may continue to do so for a period of three months from such commencement or, if he has made an application for such consent, within the said period of three months, till the disposal of such application.

(2) An application for consent of the State Board under sub-section (1) shall be made in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.]

(3) The State Board may make such inquiry as it may deem fit in respect of the application for consent referred to in sub-section (1) and in making any such inquiry shall follow such procedure as may be prescribed.

(4) The State Board may-

(a) grant its consent referred to in sub-section (1), subject to such conditions as it may impose, being-

(i) in cases referred to in clauses (a) and (b) of sub-section (1) of section 25, conditions as to the point of discharge of sewage or as to the use of that outlet or any other outlet for discharge of sewage;

(ii) in the case of a new discharge, conditions as to the nature and composition, temperature, volume or rate of discharge of the effluent from the land or premises from which the discharge or new discharge is to be made; and

(iii) that the consent will be valid only for such period as may be specified in the order, and any such conditions imposed shall be binding on any person establishing or taking any steps to establish any industry, operation or process, or treatment and disposal system or extension or addition thereto, or using the new or altered outlet, or discharging the effluent from the land or premises aforesaid; or (b) refuse such consent for reasons to be recorded in writing.

(5) Where, without the consent of the State Board, any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, is established, or any steps for such establishment have been taken or a new or altered outlet is brought into use for the discharge of sewage or a new discharge of sewage is made, the State Board may serve on the person who has established or taken steps to establish any industry, operation or process,

or any treatment and disposal system or any extension or addition thereto, or using the outlet, or making the discharge, as the case may be, a notice imposing any such conditions as it might have imposed on an application for its consent in respect of such establishment, such outlet or discharge.

(6) Every State Board shall maintain a register containing particulars of the conditions imposed under this section and so much of the register as relates to any outlet, or to any effluent, from any land or premises shall be open to inspection at all reasonable hours by any person interested in, or affected by such outlet, land or premises, as the case may be, or by any person authorised by him in this behalf and the conditions so contained in such register shall be conclusive proof that the consent was granted subject to such conditions.]

(7) The consent referred to in sub-section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of a period of four months of the making of an application in this behalf complete in all respects to the State Board.

(8) For the purposes of this section and sections 27 and 30-

(a) the expression "new or altered outlet" means any outlet which is wholly or partly constructed on or after the commencement of this Act or which (whether so constructed or not) is substantially altered after such commencement;

(b) the expression "new discharge" means a discharge which is not, as respects the nature and composition, temperature, volume, and rate of discharge of the effluent substantially a continuation of a discharge made within the preceding twelve months (whether by the same or a different outlet), so however that a discharge which is in other respects a continuation of previous discharge made as aforesaid shall not be deemed to be a new discharge by reason of any reduction of the temperature or volume or rate of discharge of the effluent as compared with the previous discharge.

## **26. Provision regarding existing discharge of sewage or trade effluent**

Where immediately before the commencement of this Act any person was discharging any sewage or trade effluent into a stream or well or sewer or on land], the provisions of section 25 shall, so far as may be, apply in relation to such person as they apply in relation to the person referred to in that section subject to the modification that the application for consent to be made under sub-section (2) of that section 5 shall be made on or before such date as may be specified by the State Government by notification in this behalf in the Official Gazette.

## **27. Refusal or withdrawal of consent by State Board**

(1) A State Board shall not grant its consent under sub-section (4) of section 25 for the establishment of any industry, operation or process, or treatment and disposal system or

extension or addition thereto, or to the bringing into use of a new or altered outlet unless the industry, operation or process, or treatment and disposal system or extension or addition thereto, or the outlet is so established as to comply with any conditions imposed by the Board to enable it to exercise its right to take samples of the effluent

(2) A State Board may from time to time review

(a) any condition imposed under section 25 or section 26 and may serve on the person to whom a consent under section 25 or section 26 is granted a notice making any reasonable variation of or revoking any such condition.

(b) the refusal of any consent referred to in sub-section (1) of section 25 or section 26 or the grant of such consent without any condition, and may make such orders as it deemed fit.

(3) Any condition imposed under section 25 or section 26 shall be subject to any variation made under sub-section (2) and shall continue in force until revoked under that sub-section.

## **28. Appeals**

(1) Any person aggrieved by an order made by the State Board under section 25, section 26 or section 27 may, within thirty days from the date on which the order is communicated to him, prefer an appeal to such authority (hereinafter referred to as the Appellate Authority) as the State Government may think fit to constitute:

PROVIDED that the Appellate Authority may entertain the appeal after the expiry of the said period of thirty days if such authority is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(2) An Appellate Authority shall consist of a single person or three persons as the State Government may think fit, to be appointed by that government.

(3) The form and manner in which an appeal may be preferred under sub-section (1), the fees payable for such appeal and the procedure to be followed by the Appellate Authority shall be such as may be prescribed.

(4) On receipt of an appeal preferred under sub-section (1), the Appellate Authority shall, after giving the appellant and the State Board an opportunity of being heard, dispose of the appeal as expeditiously as possible.

5) If the Appellate Authority determines that any condition imposed, or the variation of any condition, as the case may be, was unreasonable, then-

(a) where the appeal is in respect of the unreasonableness of any condition imposed, such authority may direct either that the condition shall be treated as annulled or that there shall be substituted for it such condition as appears to it to be reasonable;

(b) where the appeal is in respect of the unreasonableness of any variation of a condition, such authority may direct either that the condition shall be treated as continuing in force unvaried or that it shall be varied in such manner as appears to it to be reasonable.

## **29. Revision**

(1) The State Government may at any time either of its own motion or on an application made to it in this behalf, call 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 as to the legality or propriety of any such order and may pass such order in relation thereto as it may think fit:

PROVIDED that the State Government shall not pass any order under this sub-section without affording the State Board and the person who may be affected by such order a reasonable opportunity of being heard in the matter.

(2) The State Government shall not revise any order made under section 25, section 26, or section 27 where an appeal against that order lies to the Appellate Authority, but has not been preferred or where an appeal has been preferred such appeal is pending before the Appellate Authority.

## **30. Power of State Board to carry out certain works**

(1) Where under this Act, any conditions have been imposed on any person while granting consent under section 25 or section 26 and such conditions require such person to execute any work in connection therewith and such work has not been executed within such time as may be specified in this behalf, the State Board may serve on the person concerned a notice requiring him within such time (not being less than thirty days) as may be specified in the notice to execute the work specified therein.

(2) If the person concerned fails to execute the work as required in the notice referred to in sub-section (1), then, after the expiration of the time specified in the said notice, the State Board may itself execute or cause to be executed such work.

(3) All expenses incurred by the State Board for the execution of the aforesaid work, together with interest, at such rate as the State Government may, by order, fix, from the date when a demand for the expenses is made until it is paid, may be recovered by that Board from the person concerned, as arrears of land revenue, or of public demand.

## **31. Furnishing of information to State Board and other agencies in certain cases**

(1) If at any place where any industry, operation or process, or any treatment and disposal system or any extension or addition thereto is being carried on, due to accident or other unforeseen act or event, any poisonous, noxious or polluting matter is being discharged, or is

likely to be discharged into a stream or well or sewer or on land and, as a result of such discharge, the water in any stream or well is being polluted, or is likely to be polluted, then the person in charge of such place shall forthwith intimate the occurrence of such accident, act or event to the State Board and such other authorities or agencies as may be prescribed.

(2) Where any local authority operates any sewerage system or sewage works, the provisions of sub-section (1) shall apply to such local authority as they apply in relation to the person in charge of the place where any industry or trade is being carried on.

### **32. Emergency measures in case of pollution of stream or well**

(1) Where it appears to the State Board that any poisonous, noxious or polluting matter is present in any stream or well or on land by reason of the discharge of such matter in such stream or well or on such land] or has entered into that stream or well due to any accident or other unforeseen act or event, and if the Board is of opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing, carry out such operations, as it may consider necessary for all or any of the following purposes, that is to say-

(a) removing that matter from the stream or well or on land] and disposing it of in such manner as the Board considers appropriate;

(b) remedying or mitigating any pollution caused by its presence in the stream or well;

(c) issuing orders immediately restraining or prohibiting the person concerned from discharging any poisonous, noxious or polluting matter into the stream or well or on land] or from making insanitary use of the stream or well.

(2) The power conferred by sub-section (1) does not include the power to construct any works other than works of a temporary character which are removed on or before the completion of the operation.

### **33. Power of Board to make application to courts for restraining apprehended pollution of water in streams or wells**

(1) Where it is apprehended by a Board that the water in any stream or well is likely to be polluted by reason of the disposal or likely disposal of any matter in such stream or well or in any sewer or on any land, or otherwise, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class, for restraining the person who is likely to cause such pollution from so causing.

(2) On receipt of an application under sub-section (1) the court may make such order as it deems fit.

(3) Where under sub-section (2) the court makes an order restraining any person from polluting the water in any stream or well, it may in that order-

(i) direct the person who is likely to cause or has caused the pollution of the water in the stream or well, to desist from taking such action as is likely to cause pollution or, as the case may be, to remove from such stream or well, such matter, and

(ii) authorize the Board, if the direction under clause (i) (being a direction for the removal of any matter from such stream or well) is not complied with by the person to whom such direction is issued, to undertake the removal and disposal of the matter in such manner as may be specified by the court.

(4) All expenses incurred by the Board in removing any matter in pursuance of the authorization under clause (ii) of sub-section (3) or in the disposal of any such matter may be defrayed out of any money obtained by the Board from such disposal and any balance outstanding shall be recoverable from the person concerned as arrears of land revenue or of public demand.

### **33A. Power to give directions**

Notwithstanding anything contained in any other law, but subject to the provisions of this Act, and to any directions that the Central Government may give in this behalf, a Board may, in the exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. Explanation : For the avoidance of doubts, it is hereby declared that the power to issue directions under this section includes the power to direct-

(a) the closure, prohibition or regulation of any industry, operation or process; or

(b) the storage or regulation of supply of electricity, water or any other service.

## **CHAPTER VI FUNDS, ACCOUNTS AND AUDIT**

### **34. Contributions by Central Government**

The Central Government may, after due appropriation made by Parliament by law in this behalf, make in each financial year such contributions to the Central Board as it may think necessary to enable the Board to perform its functions under this Act.

### **35. Contributions by State Government**

The State Government may, after due appropriation made by the Legislature of the State by law in this behalf, make in each financial year such contributions to the State Board as it may think necessary to enable that Board to perform its functions under this Act.

### **36. Fund of Central Board**

(1) The Central Board shall have its own fund, and all sums which may, from time to time, be paid to it by the Central Government and all other receipts (by way of gifts, grants, donations, benefactions fees or otherwise of that Board shall be carried to the fund of the Board and all payments by the Board shall be made there from.

(2) The Central Board may expend such sums as it thinks fit for performing its functions under this Act, 2 [and, where any law for the time being in force relating to the prevention, control or abatement of air pollution provides for the performance of any function under such law by the Central Board, also for performing its functions under such law] and such sums shall be treated as expenditure payable out of the fund of the Board.

### **37. Fund of State Board**

(1) The State Board shall have its own fund, and the sums which may, from time to time, be paid to it by the State Government and all other receipts (by way of gifts, grants, donations, benefactions fees or otherwise) of that Board shall be carried to the fund of the Board and all payments by the Board shall be made there from.

(2) The State Board may expend such sums as it thinks fit for performing its functions under this Act, 2 [and, where any law for the time being in force relating to the prevention, control or abatement of air pollution provides for the performance of any function under such law by the State Board, also for performing its functions under such law] and such sums shall be treated as expenditure payable out of the fund of the Board.

### **37A. Borrowing powers of Board**

A Board may, with the consent of, or in accordance with, the terms of any general or special authority given to it by the Central Government or, as the case may be, the State Government, borrow money from any source by way of loans or issue of bonds, debentures or such other instruments, as it may deem fit, for the performance of all or any of its functions under this Act.

### **38. Budget**

The Central Board or, as the case may be, the State Board shall, during each financial year, prepare, in such form and at such time as may be prescribed, a budget in respect of the financial year next ensuing showing the estimated receipt and expenditure, and copies thereof shall be forwarded to the Central Government or, as the case may be, the State Government.

### **39. Annual report**

(1) The Central Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the



previous financial year and copies thereof shall be forwarded to the Central Government within four months from the last date of the previous financial year and that government shall cause every such report to be laid before both Houses of Parliament within nine months from the last date of the previous financial year.

(2) Every State Board shall, during each financial year, prepare, in such form as may be prescribed, an annual report giving full account of its activities under this Act during the previous financial year and copies thereof shall be forwarded to the State Government within four months from the last date of the previous financial year and that government shall cause every such report to be laid before the State Legislature within a period of nine months from the last date of the previous financial year.

#### **40. Accounts and audit**

(1) Every Board shall maintain proper accounts and other relevant records and prepare an annual statement of accounts in such form as may be prescribed by the Central Government or, as the case may be, the State Government.

(2) The accounts of the Board shall be audited by an auditor duly qualified to act as an auditor of companies under section 226 of the Companies Act, 1956 (1 of 1956).

(3) The said auditor shall be appointed by the Central Government or, as the case may be, the State Government on the advice of the Comptroller and Auditor-General of India.

(4) Every auditor appointed to audit the accounts of the Board under this Act shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect any of the offices of the Board.

(5) Every such auditor shall send a copy of his report together with an audited copy of the accounts to the Central Government or, as case may be, the State Government.

(6) The Central Government shall, as soon as may be after the receipt of the audit report under sub-section (5), cause the same to be laid before both Houses of Parliament.

(7) The State Government shall, as soon as may be after the receipt of the audit report under sub-section (5), cause the same to be laid before the State Legislature.

### **CHAPTER VII PENALTIES AND PROCEDURE**

41. Failure to comply with directions under sub-section (2) or sub-section (3) of section 20, or orders issued under clause (c) of sub-section (1) of section 32 or directions issued under sub-section (2) of section 33 or section 33A

(1) Whoever fails to comply with the direction given under sub-section (2) or subsection (3) of section 20 within such time as may be specified in the direction shall, on conviction, be

punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both 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.

(2) Whoever fails to comply with any order issued under clause (e) of sub-section (1) of section 32 or any direction issued by a court under sub-section (2) of section 33 or any direction issued under section 33A shall, in respect of each such failure and on conviction, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for everyday during which such failure continues after the conviction for the first such failure.

(3) If the failure referred to in sub-section (2) continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

#### **42. Penalty for certain acts**

(1) Whoever-

(a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or

(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or

(c) damages any works or property belonging to the Board, or

(d) fails to furnish to any officer or other employee of the Board any information required by him for the purpose of this Act, or

(e) fails to intimate the occurrence of any accident or other unforeseen act or event under section 31 to the Board and other authorities or agencies as required by that section, or

(f) in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular, or

(g) for the purpose of obtaining any consent under section 25 or section 26, knowingly or wilfully makes a statement which is false in any material particular, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees] or with both.

(2) Where for the grant of a consent in pursuance of the provisions of section 25 or section 26 the use of meter or gauge or other measure or monitoring device is required and such device is used for the purposes of those provisions, any person who knowingly or wilfully alters or interferes with that device so as to prevent it from monitoring or measuring correctly shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees] or with both.

#### **43. Penalty for contravention of provisions of section 24**

Whoever contravenes the provisions of section 24 shall be punishable with imprisonment for a term which shall not be less than one year and six month but which may extend to six years and with fine.

#### **44. Penalty for contravention of section 25 or section 26**

Whoever contravenes the provisions of section 25 or section 26 shall be punishable with imprisonment for a term which shall not be less than 29[one year and six months] but which may extend to six years and with fine.

#### **45. Enhanced penalty after previous conviction**

If any person who has been convicted of any offence under section 24 or section 25 or section 26 is again found guilty of an offence involving a contravention of the same provision, he shall, on the second and on every subsequent conviction, be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine:

PROVIDED that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.

#### **45A. Penalty for contravention of certain provisions of the Act**

Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with 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.

#### **46. Publication of names of offenders**

If any person convicted of an offence under this Act commits a like offence afterwards it shall be lawful for the court before which the second or subsequent conviction takes place to

cause the offender's name and place of residence, the offence and the penalty imposed to be published at the offender's expense in such newspapers or in such other manner as the court may direct and the expenses of such publication shall be deemed to be part of the cost attending the conviction and shall be recoverable in the same manner as a fine.

#### **47. Offences by companies**

(1) Where an offence under this Act has been committed by a company, every 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, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act 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.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by 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, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation : For the purposes of this section-

(a) "company" means anybody corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

#### **48. Offences by government departments**

Where an offence under this Act has been committed by any Department of Government, the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

PROVIDED that nothing contained in this section shall render such Head of the Department liable to any punishment 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.

#### **49. Cognizance of offences**

(1) No court shall take cognizance of any offence under this Act except on a complaint made by-

(a) a Board or any officer authorized 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 authorized as aforesaid, and no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under this Act.

(2) Where a complaint has been made under clause (b) of sub-section (1), the Board shall, on demand by such person, make available the relevant reports in its possession to that person:

PROVIDED 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.]

(3) Notwithstanding anything contained in section 29 of the Code of Criminal Procedure, 1973 (2 of 1974), it shall be lawful for any Judicial Magistrate of the first class or for any Metropolitan Magistrate to pass a sentence of imprisonment for a term exceeding two years or of fine exceeding two thousand rupees on any person convicted of an offence punishable under this Act.

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

All members, officers and servants of a Board when acting or purporting to act in pursuance of any of the provisions of this Act and the rules made there under shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (45 of 1860).