

# Constitution of India and Environmental Governance: Administrative and Adjudicatory Process

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Lecture 16

Authorities Regulating Pollution Control

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## III. ADMINISTRATIVE ARCHITECTURE



(AA:Ss.3,4,5,6; WA:Ss.3,4,13)

- CG
- CPCB
- REGIONAL OFFICES
- SG JB
- SPCB
- NATURE OF RELATIONSHIP-AMONG VARIOUS AUTHORITIES & FUNCTIONARIES:
- # CENTRAL LAWS ENFORCED BY STATE FUNCTIONARIES ;Stds. BY THE CENTRE
- #STATE GOVT. SETS STDS.,DESIGNATES AIR AND WATER POLLUTION CONTROL AREAS, DETERMINES THE NATURE AND KIND OF FUNCTIONS TO BE PERFORMED BY THE STATE BOARD-STATE BOARDS ARE THE ARMS OF IMPLEMENTATION OF THE INSTRUCTIONS OF THE STATE GOVT.



Let us look into the administrative architecture of government. As one can see at the top are in the body of all the slides we have, I have put these acronyms AA as Air Act, WA for Water Act and those numbers refer to sections. Like for example, at the top, you have in this slide, Air Act sections 3, 4, 5, and 6. So, all these are covered under Water Act, sections 3, 4 and 13. All these provisions are discussed here in the administrative architecture part of our discussion on the pollution control regime, what is the structure of administration?

A very simple structure, we have the Central Government at the top, the Central Pollution Control Boards are immediately below the Central Government. You have regional offices in different parts of India of the Central Pollution Control Board. And then at the state level, you have the State Government and the State Government under its immediate authority, you have the State Pollution Control Board.

This is the general structure of administration. The Central Government, under it, Central Pollution Control Board, regional offices, State Government, under the State Pollution Control Board and then there is 1 more thing. To establish a pollution control board the State Government will have to invest huge resources and appoint a large number of personnel. In India, the states that we have are of different dimensions and sizes.

Big size states, small states and almost microstates, especially in the North-eastern region and things like that. And many a time, since a lot of budgetary allocation need to be made, some small states will not be in a position to have an independent Pollution Control Board exclusively for themselves. In such a situation, there is a provision made under these 2 laws to have what is called as a joint board.

A joint board has the same status as the State Pollution Control Board which is having representatives from 2 or more states which have come together to constitute this joint board and its status, its role, its responsibility and its functions are the same as the State Pollution Control Board. So that is the administrative architecture that we have for provision administration.

Now, how are these entities related to each other? What is the relationship between the Central Government and CPCB, State Government and SPCB, Regional Offices, the joint board is a question. For that the answer is the relationship is as follows. Point number 1, all laws are made by the center. So, the Central Government makes the law and these central laws are enforced as a general rule by the state functionaries.

Who are the state functionaries? The State Pollution Control Board that means the center lays down the standards, prescribes the norms as to how pollution needs to be controlled and managed and the state agency in the form of the Pollution Control Board at the state level will enforce it.

But in the case of union territories, it is the Central Pollution Control Board which performs a function of a State Pollution Control Board. So, the central law is enforced by the Central

Pollution Control Board in union territories. At the state level, only the State Pollution Control Board, CPCB will not enforce; SPCB enforces. Then along with the standards set by the center, there is a minimum level of pollution.

Let us assume that in a water body when somebody is going to put something into that water body, it should not cause pollution beyond a particular limit. That is the maximum allowed and you should not exceed that limit. That means 1 gram of contamination, okay. You cannot have 1 and half grams of contamination. I am putting it in very simple crude terms just to drive home a point.

Now, the law is so designed that even the very laws that are made by the Central Government and the very rules that are made by the Central Government after adoption by the state the central laws and central rules. The state also has the power of making its own rules. Why should it make its own rules when the central rules are there? Well, you know that each and every state will have its own unique requirements.

So, to give that elbow space, rules can be framed by the states also, but make sure that the rules made at the state level should not go beyond what the rules and statute at the central level are made. So it is written or framed that the central law and the central rule the state rule should be framed. And similarly the State Government can make its own rules with regard to standards.

As given the example of contamination of water, 1 gram of pollutant let us assume that 1 gram of pollutant can be there in that water body and I am not guilty of any offence if I have in that water body 1 gram of pollutant put into it by me. The state rule can say and prescribe a formal stricter standard than what has been fixed by the center but it cannot dilute this standard. That means what?

The standard fixed by the state should be such that in the same example, in the water body, that 1 gram of contamination that I am adding to it which is permissible under the central law at the state level, the state can make it more stringent. "No, no, no, no in my state. You cannot exceed 0.75 grams. If it is 0.80 grams, you are guilty under this law." The law can be stricter, but the

State Government cannot prescribe that the contamination can be to the extent of 1.2 grams, no. 1 gram is the cap.

It can be seen below that that means you can be more stricter but you cannot be more relaxed. That is the sum and substance of it. States also can make law, but these laws need to be aligned, to be in consonance with their central law and the prescriptions made there. So that way the center law comes up with powers functions and authorities, what different authorities can perform, the state can also come up with its own additional rules of prescribing what the State Pollution Control Board do. And so, in a way, the state pollution control boards are just the operative arm of implementation of the instructions of the State Government. While they also discuss functions that has been prescribed to it in very general terms by the central government under the central law.

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- *#IN THE PERFORMANCE OF ITS FUNCTIONS, THE CPCB IS BOUND BY THE DIRECTIONS ISSUED BY THE CG AND SO IS THE SPCB TO THOSE COMING FROM CPCB & SG- CENTRAL GOVT. TO DECIDE ON INCONSISTENCIES IN THE DIRECTIONS OF SG WITH THOSE OF CPCB*
- *# DEFAULT IN THE COMPLIANCE OF DIRECTIONS OF CPCB BY SPCB LEADING TO A GRAVE EMERGENCY, NECESSITY OR EXPEDIENCY IN PUBLIC INTEREST MAY DICTATE THE CG TO DIRECT CPCB TO PERFORM ANY OF THE FUNCTIONS OF THE SPCB, IN SUCH AREA AND FOR SUCH PERIOD, AS STIPULATED IN ITS ORDER(S.18(1) & (2), WA& AA; GENERAL POWERS U/S 3 EPA)*
- *# CG HAS POWER TO SUPERSEDE CPCB/JB (S.61,WA;S.48 AA)*
- *#SG HAS POWER TO SUPERSEDE SPCB (S.62 WA;S.47 AA )*
- *#SG HAS THE POWER TO DISSOLVE THE BOARD CONSTITUTED UNDER AA*



The second point; in the performance of their functions, the Central Pollution Control Board is bound by the directions issued by the Central Government. The point is simply this. The Central Pollution Control Board primarily has an advisory role. The role of an expert. The role of an educator, the role of a trainer. It is supposed to train and equip all the state and state agencies in performance of their duties at the state level.

So, it has to have a research wing, which will constantly be able to come up with new, better devices of implementation and give guidance to the state from time to time as to how to work on it. That is the primary function. The other function of the Central Pollution Control Board is that in case of union territories, it will do the same job of a State Pollution Control Board. So, it is not just a think tank, it is not a brain trust, it is not just a guide, advisor, monitor or anything like that.

It is actually the implementer, in union territories and here the Central Pollution Control Board, whatever actions it takes, whatever decision it takes, it is bound by the directions issued by the Central Government only. Similarly, the State Pollution Control Board is also bound by those obligations that are prescribed to it by the Central Pollution Control Board and the State Government. Follow it carefully.

The Central Pollution Control Board has only one master, the Central Government, the State Pollution Control Board has two masters, Central Pollution Control Board and the State Government. Suppose I am giving a hypothetical situation. Supposing an action that has been taken by the State Pollution Control Board is based upon the directions issued by the State Government.

Unfortunately, the directions to the State Government are at variance with the directions given by the Central Pollution Control Board. What happens? There is an inconsistency here and in that case, the matter will go to the Central Government and which will take an appropriate decision whichever way it decides, it is binding on all.

Let me elaborate a little further on the next point. Your direction given by the Central Pollution Control Board is binding on the State Pollution Control Board. But supposing there is a default, the State Pollution Control Board defies, "You are from the center. I am only bound by what my State Government has and the State Government has not given me the instruction and you are giving me instructions. I do not follow you.

Let us see what happens." The law makes it very clear, that if such a kind of its defiance or a default in compliance of a direction of the Central Pollution Control Board by the State Pollution

Control Board, if it leads to a grave emergency and it is almost like the entire thing is brought to a standstill and no action can be taken. The law is made to work and law is made inactive because of the clash between a central board and the state board. Then what to do?

The law says, and here is a provision. I have mentioned it here under Water Act is section 18 clause 1 and 2, and even in the Air Act the same provision and under the Environment Protection Act, Section 3, you have the same provision. It makes it very clear that in such a situation of grave emergency of necessity or expediency and public interest may demand that the Central Government can direct the Central Pollution Control Board to take over the functions of the State Pollution Control Board and perform those functions in such areas and for such a period as stipulated in its order by the Central Government.

What is the effect? What is the effect of this direction? It is a highly centralized law. It is almost like the center state relations. You must have heard of the Governor's rule or the President's rule. The same thing is applicable in a different way here, whereby there is a kind of a breakdown of the machinery of implementation because of a conflict between directions of CPCB and SPCB is not obliging it in which event law will have the grave danger of becoming redundant.

And to prevent that, the center may ask the Central Pollution Control Board to take all such functions at that area. So to the central rule at the state level, that is what is contemplated here. So look at the status of the Central Government and its Central Board, vis-a-vis the State Government and the State Board. It is a very interesting situation.

For the simple reason that the power to the center in relation to the State Pollution Control Board of assigning some of its functions in a particular area to go to the Central Board may have certain unintended consequences. There is another provision whereby the State Pollution Control Board has a duty to follow every instruction of the State Government.

But let us suppose, here is a situation where the State Pollution Control Board is given 2 sets of instructions, one instruction by the State Government and another instruction by the Central Government and both are one and the same. In fact they are in conflict. There is an inconsistency

there, who to follow?

It is very difficult to answer for the simple reason that if the State Pollution Control Board does not follow the instructions of the Central Pollution Control Board, it may invite the wrath of the Central Government and it may take away its powers and functions and hand it over to the Central Pollution Control Board, okay. But suppose, by the same token, if the State Pollution Control Board says, and submits before the State Government, “You had given us instructions, but unfortunately, we have a problem.

The Center is requiring us to do something else. And if you do not do it, our job is going to be taken away and handed over to the other body. What shall we do? So we will follow their instructions.” Can the State Board say that? Answer is no. The State Pollution Control Board is a kind of a captive in the hands of the State Government because the State Government has another extraordinary power.

It can not only give instructions to the State Board and the State Board does not comply with its requirements, it can supersede the board. Look at that, a devil and deep sea situation. This anomaly has not been completely ironed out as yet. Ofcourse, there has been no occasion when such a kind of an emergency on one hand and defiance to the instructions of State Government by the State Board has occurred but should not occur; you will have difficulty.

The Central Government has power to supersede CPCB and joint boards. A State Government has power to supersede State Pollution Control Board this is what I have said. And this would lead to an anomalous situation of the kind that I had explained a little while back. The State Government has the power to dissolve the board constituted under Air Act. So, there is a power to supersede, there is a power to dissolve.

That means, under Water Act and Air Act, although you are supposed to be subordinate to the State Government, you have as many as 3 masters, the state board is bound by directions of State Government, is bound by the directions of the Central Pollution Control Board is bound by the orders issued by the Central Government. So 3 masters for one person, and that is a State

Pollution Control Board.

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*AS AND WHEN IT ESTABLISHES SPCB UNDER WA(-S.49 AA)- TRANSITIONAL PROVISION*

- *#SG HAS THE POWER OF REVISION OF ORDERS PASSED BY SPCB, EXCEPT WHERE PROVISION FOR SEEKING APPEAL BEFORE AN APPELLATE AUTHORITY EXISTS (S.29 OF WA- NO COMPARABLE PROVISION UNDER AA)*



There is a transition provision that has been made under the Air Act, because you know, these 2 legislations came at different points of time and as such, the law could not be worked uniformly, although same functions were given to the same authority. And so, when the authority that was created under the Water Act is different from the authority created under the Air Act, as and when a consolidated authority is created, till then the authorities under these 2 laws can continue to operate. That was a transitional provision, made in the first or second year at the most 2 years, when these 2 laws came at different points of time in 18, in 1974, and 1981. Yes, a probable situation of this kind arose, but now, we are in the year 2020. And our position is that we have one uniform State Pollution Control Board which will implement both the Air Act and Water Act.

In addition, the State Government has the power of revising the orders passed by the State Pollution Control Board. So every order passed by the State Pollution Control Board is final. We will discuss the functions a little later. But as far as the State Government is concerned, every order passed by them can be revised by the State Government except as to an order issued by the State Pollution Control Board under certain circumstances.



We will see later as to what those circumstances are. But there are certain circumstances where the order passed by the State Pollution Control Board is appealable. And there is an appellate authority created there. So, if there is a scope for appeal, the State Government has no power of revising the orders of the State Pollution Control Board. The matter should go for resolution before the appellate authority.

But if there is no such appellate body and the state pollution control board as a final authority has given the decision, it is binding on the industry or whoever who has come before the state board under the purview of it. But appeal is always there, to the State Government. The State Government can take it up for revision and pass appropriate orders. That is a sum and substance of this particular provision.