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## Commentary on the environment (Protection) Act, 1986

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### Abstract

The environmental awareness needs to be cultivated in any society to be an ideal society, or rather to be more precise, in other words, an ideal society means the society which has the environmental awareness. There is no dearth of legislation on environmental protection in India but their enforcement has not been satisfactory. There is a need for the effective and efficient enforcement of the Constitutional mandate and other environmental legislation. The Bhopal gas tragedy of 1984 compelled the enactment of the Environment Protection Act (EPA), 1986. The clauses of the EPA vested this new ministry with powers to take the required measures 'to protect and improve the environment'. This includes regulating industrial activities, delegating responsibilities to specialized agencies and creating standards for managing environmental quality. This research paper is focused on the study of the effectiveness of environmental laws for environmental protection in India.

**Keywords:** Constitution, environment, legal protection, centre government, rules

### Introduction

The 'Environment' is very important for us to understand because it constitutes our surroundings and affects our ability to live on the earth. It comprises of the air we breathe, the water that covers most of the earth's surface, the plants and animals around us, and much more. It is therefore, very important to understand and appreciate the importance of 'environment' in our daily life. In recent years, scientists have been carefully examining the various ways by which people affect the 'Environment'. They have found that we are causing air pollution, deforestation, acid rain, and other problems that are dangerous both to the earth and to ourselves <sup>[1]</sup>.

Two international conferences on Environment and development - one at Stockholm in 1972 and another at Rio de Janeiro in 1992 - have influenced environmental policies in most countries, including India. Many countries and international agencies have accepted the polluter pays principle, the precautionary principle and the concept of intergenerational equity as guidelines for designing environmental policies <sup>[2]</sup>.

Soon after the Stockholm Conference, many Acts were introduced i.e. The Wildlife (Protection) Act, 1972; The Water (Prevention and Control of Pollution) Act, 1974; The Air (Prevention and Control of Pollution) Act, 1981 etc. Within five years of Stockholm Declaration, the Constitution of India was amended to include Protection and Improvement of Environment as constitutional mandate. The protection and improvement of environment is now a fundamental duty under the Constitution (Amendment Act of 1976. Govt., of India has set up a National Committee on Environmental Planning and Coordination <sup>[3]</sup>.

Government of India's programme for environment included the programme for cleaning the rivers including Ganga and Yamuna. Prime Minister, Sh. Rajiv Gandhi constituted Central Ganga Authority for the purpose of pollution control of Ganga. The enactment of Environment (Protection) Act, 1986 was the immediate off-shoot, of this programme.

### Environment and Constitution of India

In the Constitution of India, specific provisions for the protection of the environment have been incorporated by the Constitution (42 Amendment) Act, 1976. Now, it is an obligatory duty of the State and every citizen to protect and improve the environment. The Directive Principles of State Policy contain specific provisions enunciating the State's commitment for protecting the environment.

Initially, the Constitution of India had no direct provision for environmental protection. Global consciousness for the protection of environment in the seventies, Stockholm

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Conference and increasing awareness of the environmental crisis prompted the Indian Government to enact 42nd Amendment to the Constitution in 1976. The Constitution was amended to introduce direct provisions for protection of environment. This 42<sup>nd</sup> Amendment added Article 48-A<sup>[4]</sup> to the Directive Principles of State Policy.

Further Article 51-A (g) which deals with Fundamental Duties of the citizens states "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures." Thus, protection and improvement of natural environment is the duty of the State (Article 48-A) and every citizen (Article 51- A (g)).

Article 253 of the Constitution of India states that Parliament has power to make any law for the whole or any part of the country for implementing any treaty, agreement or convention with any other country. In simple words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural environment. Parliament's use of Article 253 to enact Air Act and Environment Act confirms this view. These Acts were enacted to implement the decisions reached at Stockholm Conference.

### **Major Provisions of the Environment (Protection) Act, 1986**

The Environment (Protection) Act, 1986<sup>[5]</sup> is an Act to provide for the protection and improvement of environment and for matters connected therewith. WHEREAS decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment; and whereas it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property. The Major Provisions of the Act can be summarized as under.

### **Power of Central Government to Take Measures to Protect and Improve Environment**

Subject to the provisions of Environment (Protection) Act, 1986 (hereinafter referred as "Act", the Central Government shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution<sup>[6]</sup>.

In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely<sup>[7]</sup>.

1. Co-ordination of actions by the State Governments, officers and other authorities.
2. Under this Act, or the rules made there under; or.
3. Under any other law for the time being in force which is relatable to the objects of this Act.
4. Planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution.
5. Laying down standards for the quality of environment in its various aspects.
6. Laying down standards for emission or discharge of

environmental pollutants from various sources whatsoever: Provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or composition of the emission or discharge of environmental pollutants from such sources.

7. Restriction of areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards.
8. Laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents.
9. Laying down procedures and safeguards for the handling of hazardous substances.
10. Examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution.
11. Carrying out and sponsoring investigations and research relating to problems of environmental pollution.
12. Inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution.
13. Establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act.
14. Collection and dissemination of information in respect of matters relating to environmental pollution;
15. Preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution.
16. Such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of this Act.

The Central Government may, if it considers it necessary or expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such of the powers and functions (including the power to issue directions under section 5) of the Central Government under this Act and for taking measures with respect to such of the matters referred to in sub-section (2) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers or perform those functions or take such measures<sup>[8]</sup>.

### **Appointment of Officers and their Powers and Functions**

The Act provides that without prejudice to the provisions of sub-section (3) of section 3, the Central Government may appoint officers with such designations as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit<sup>[9]</sup>. The officers appointed under sub-section (1) shall be subject

to the general control and direction of the Central Government or, if so directed by that Government, also of the authority or authorities, if any, constituted under sub-section (3) of section 3 or of any other authority or officer<sup>[10]</sup>.

### **Power to Give Directions**

The Act clarifies that notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any 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) stoppage or regulation of the supply of electricity or water or any other service<sup>[11]</sup>.

### **Rules to Regulate Environmental Pollution**

The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3<sup>[12]</sup>. In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely<sup>[13]</sup>.

1. The standards of quality of air, water or soil for various areas and purposes.
2. The maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas.
3. The procedures and safeguards for the handling of hazardous substances.
4. The prohibition and restrictions on the handling of hazardous substances in different areas.
5. The prohibition and restrictions on the location of industries and the carrying on of processes and operations in different areas; (f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

### **Persons Carrying on Industry, Operation, etc., Not to Allow Emission or Discharge of Environmental Pollutants in Excess of the Standards**

According to the Act no person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutant in excess or such standards as may be prescribed<sup>[14]</sup>.

### **Persons Handling Hazardous Substances to Comply with Procedural Safeguards**

The Act mentioned that no person shall handle or cause to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed<sup>[15]</sup>.

### **Furnishing of Information to Authorities and Agencies in Certain Cases**

Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to any accident or other unforeseen act or event, the person responsible for such discharge and the

person in charge of the place at which such discharge occurs or is apprehended to occur shall be bound to prevent or mitigate the environmental pollution caused as a result of such discharge and shall also forthwith<sup>[16]</sup>.

1. Intimate the fact of such occurrence or apprehension of such occurrence; and
2. Be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the authorities or agencies referred to in sub-section (1) shall, as early as practicable, cause such remedial measures to be taken as are necessary to prevent or mitigate the environmental pollution<sup>[17]</sup>. The expenses, if any, incurred by any authority or agency with respect to the remedial measures referred to in sub-section (2), together with interest (at such reasonable rate as the Government may, by order, fix) from the date when a demand for the expenses is made until it is paid, may be recovered by such authority or agency from the person concerned as arrears of land revenue or of public demand<sup>[18]</sup>.

### **Powers of Entry and Inspection**

Subject to the provisions of this section, any person empowered by the Central Government in this behalf shall have a right to enter, at all reasonable times with such assistance as he considers necessary, any place<sup>[19]</sup>.

1. For the purpose of performing any of the functions of the Central Government entrusted to him;
2. 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 or any notice, order, direction or authorization served, made, given or granted under this Act is being or has been complied with;
3. For the purpose of examining and testing any equipment, industrial plant, record, register, document or any other material object or for conducting a search of any building 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 equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act or the rules made there under or that such seizure is necessary to prevent or mitigate environmental pollution.

Every person carrying on any industry, operation or process or handling any hazardous substance shall be bound to render all assistance to the person empowered by the Central Government under sub-section (1) for carrying out the functions under that sub-section and if he fails to do so without any reasonable cause or excuse, he shall be guilty of an offence under this Act<sup>[20]</sup>. If any person wilfully delays or obstructs any person empowered by the Central Government under sub-section (1) in the performance of his functions, he shall be guilty of an offence under this Act<sup>[21]</sup>. The provisions of the Code of Criminal Procedure, 1973 (2 of 1974), or, in relation to the State of Jammu and Kashmir, or any area in which that Code is not in force, the provisions

of any corresponding law in force in that State or area 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 section 94 of the said Code or, as the case may be, under the corresponding provision of the said law <sup>[22]</sup>.

### **Power to Take Sample and Procedure to be followed in Connection Therewith**

The act provides that the Central Government or any officer empowered by it in this behalf, shall have power to take, for the purpose of analysis, samples of air, water, soil or other substance from any factory, premises or other place in such manner as may be prescribed <sup>[23]</sup>. The result of any analysis of a sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provisions of sub-sections (3) and (4) are complied with <sup>[24]</sup>. Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall <sup>[25]</sup>.

1. Serve on the occupier or his agent or person in charge of the place, a notice, then and there, in such form as may be prescribed, of his intention to have it so analysed;
2. In the presence of the occupier or his agent or person, collect a sample for analysis;
3. Cause the sample to be placed in a container or containers which shall be marked and sealed and shall also be signed both by the person taking the sample and the occupier or his agent or person;
4. Send without delay, the container or the containers to the laboratory established or recognized by the Central Government under section 12.

When a sample is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent or person, a notice under clause (a) of sub-section (3), then <sup>[26]</sup>.

1. In a case where the occupier, his agent or person willfully absents himself, the person taking the sample shall collect the sample for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample.
2. In a case where the occupier or his agent or person present at the time of taking the sample refuses to sign the marked and sealed container or containers of the sample as required under clause
3. Of sub-section (3), the marked and sealed container or containers shall be signed by the person taking the samples, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognized under section 12 and such person shall inform the Government Analyst appointed or recognized under section 13 in writing, about the willful absence of the occupier or his agent or person, or, as the case may be, his refusal to sign the container or containers.

### **Environmental Laboratories**

The Act says that the Central Government may, by notification in the Official Gazette <sup>[27]</sup>.

1. Establish one or more environmental laboratories.
2. Recognise one or more laboratories or institutes as environmental laboratories to carry out the functions

entrusted to an environmental laboratory under this Act.

### **The Central Government may, by notification in the Official Gazette, make rules specifying <sup>[28]</sup>**

1. The functions of the environmental laboratory.
2. The procedure for the submission to the said laboratory of samples of air, water, soil or other substance for analysis or tests, the form of the laboratory report thereon and the fees payable for such report.
3. Such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

### **Government Analysts**

The Act mentions that the Central Government may, by notification in the Official Gazette, appoint or recognize such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of samples of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognized under sub-section (1) of section 12 <sup>[29]</sup>.

### **Reports of Government Analysts**

Any document purporting to be a report signed by a Government Analyst may be used as evidence of the facts stated therein in any proceeding under this Act <sup>[30]</sup>.

### **Penalty for Contravention of the Provisions of the Act and the Rules, Orders and Directions**

The Act clearly prescribes that whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention <sup>[31]</sup>. If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years <sup>[32]</sup>.

### **Offences by Companies**

Where any offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly 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 <sup>[33]</sup>.

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



deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly <sup>[34]</sup>. 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.

### **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 <sup>[35]</sup>. Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government 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 officer, other than the Head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly <sup>[36]</sup>.

### **Protection of action Taken in Good Faith**

The Act Provides that no suit, prosecution or other legal proceeding shall lie against the Government or any officer or other employee of the Government or any authority constituted under this Act or any member, officer or other employee of such authority in respect of anything which is done or intended to be done in good faith in pursuance of this Act or the rules made or orders or directions issued there under <sup>[37]</sup>.

### **Cognizance of Offences**

No court shall take cognizance of any offence under this Act except on a complaint made by <sup>[38]</sup>.

1. The Central Government or any authority or officer authorized in this behalf by that Government.
2. 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 Central Government or the authority or officer authorised as aforesaid.

### **Information, Reports or Returns**

The Central Government may, in relation to its functions under this Act, from time to time, require any person, officer, State Government or other authority to furnish to it or any prescribed authority or officer any reports, returns, statistics, accounts and other information and such person, officer, State Government or other authority shall be bound to do so <sup>[39]</sup>.

### **Members, Officers and Employees of the Authority Constituted under Section 3 to be Public Servants**

All the members of the authority, constituted, if any, under section 3 and all officers and other employees of such authority when acting or purporting to act in pursuance of any provisions of this Act or the rules made or orders or directions issued there under shall be deemed to be public servants within the meaning of Section 21 of the Indian

Penal Code (45 of 1860) <sup>[40]</sup>.

### **Bar of Jurisdiction**

No civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act <sup>[41]</sup>.

### **Power to Delegate**

Without Prejudice to the Provisions of Sub-Section (3) of section 3, the Central Government may, by notification in the Official Gazette, delegate, subject to such conditions and limitations as may be specified in the notification, such of its powers and functions under this Act [except the power to constitute an authority under sub-section (3) of section 3 and to make rules under <sup>[42]</sup>.

### **Effect of other Laws**

The Act mentions that subject to the provisions of sub-section (2), the provisions of this Act and the rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act <sup>[43]</sup>. Where any act or omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act <sup>[44]</sup>.

### **Power to Make Rules**

The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act <sup>[45]</sup>. Rules made under this Act shall be laid before Parliament <sup>[46]</sup>.

### **Conclusion**

The right to environment is firmly entrenched in, and has contributed to the development of, domestic environmental jurisprudence in India. Its origin has been traced to decisions of the higher judiciary, where the right to environment was explicitly or implicitly interpreted to flow from the fundamental right to life or the duties of the State in DPSP, and/or based on a combined reading of the fundamental right to life, DPSP and the fundamental duty of citizens. The right to environment continues to provide the substantive and/or procedural basis for the decisions of the Supreme Court, High Courts, and the NGT. Many of these decisions do not deal with a specific 'right to environment'; instead, they address different components of the right <sup>[47]</sup>.

With excess use of natural resources and fossil fuel, the government introduced environment law for the protection of water, land, soil, public health and flora and fauna, it was in 1980s that the law was formed, taking into considered the situation for that time when urbanization was limited compared to what it is now, the growing population requires access to basic needs for which more land, water and food is required, which has resulted in excess deforestation, water pollution and air pollution due to increase in the transport on the road. Looking at the current situation where India is one of the most vulnerable country when it comes to climate change and environment degradation, a reformation in the laws are required as there is no limit on the part of Humans in the use of environment and nature, leading to climate

change.

The Apex Court has played an important role in directing the administrative officers from time to time to take necessary steps to improve the environment. What we need is social awareness from below, not law from above, any law works smoothly unless the interaction is voluntary. In order to educate people about the environmental issues, there should be exhibition of slides in the regional languages at cinema houses and television free of cost. Further, as directed by the Supreme Court, environment studies shall be made a compulsory subject at school and college levels in graded system so that there should be general growth of awareness. Finally, protection of the environment and keeping ecological balance unaffected is a task which not only the government but also every individual, association and corporation must undertake. It is a social obligation and fundamental duty enshrined in Article 51-A [g] of the Indian Constitution.

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