

Environment (Protection) Act,1986

The Environment (Protection) Act was enacted in the year 1986. It was enacted with the main objective to provide the protection and improvement of environment and for matters connected therewith. The Act is one of the most comprehensive legislations with a pretext to protection and improvement of the environment.

The Constitution of India also provides for the protection of the environment. Article 48A of the Constitution specifies that the State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country. Article 51 A further provides that every citizen shall protect the environment.

Premises of the Act

It is now generally accepted that environment is threatened by a wide variety of human activities ranging from the instinctive drive to reproduce its kind to the restless urge of improving the standards of living, development of technological solutions to this end, the vast amount of waste, both natural and chemical, that these advances produce.

Paradoxically, this urge to grow and develop, which was initially uncontrolled is now widely perceived to be threatening as it results in the depletion of both living and non-living natural resources and life support systems. The air, water, land, living creatures as well as the environment, in general, is becoming polluted at an alarming rate that needs to be controlled and curbed as soon as possible. The 1986 Act was enacted in this spirit.

From time to time various legislations have been enacted in India for this purpose. However, all legislations prior to the 1986 Act have been specific relating to precise aspects of environmental pollution. However, the 1986 Act was general legislation enacted under Article 253 (Legislation for giving effect to international agreements).

Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other bodies) of the Constitution, pursuant to the international obligations of India.

India was a signatory to the **Stockholm Conference of 1972** where the world community had resolved to protect and enhance the environment.

The United Nations conference on the human environment, held in Stockholm in June 1972, proclaimed that “Man is both creator and moulder of his environment, which gives him physical sustenance and affords him the opportunity for intellectual, moral, social and spiritual growth.

In the long and tortuous evolution of the human race on this planet, a stage has reached when through the rapid acceleration of science and technology man has acquired the power to transform his environment in countless ways and on an unprecedented scale. Both aspects of man’s environment, the natural and man-made are essential to his well being and to the enjoyment of basic human rights even the right to life itself”.

While several legislations such as **The Water (Prevention and Control of Pollution) Act, 1974** and **The Air (Prevention and Control of Pollution) Act, 1981** were enacted after the Conference, the need for general legislation had become increasingly evident. The EPA was enacted so as to overcome this deficiency.

Objectives

As mentioned earlier, the main objective of the Act was to provide the protection and improvement of environment and for matters connected therewith. Other objectives of the implementation of the EPA are:

- To implement the decisions made at the UN Conference on Human Environment held at Stockholm in June 1972.
- To enact a general law on the areas of environmental protection which were left uncovered by existing laws. The existing laws were more specific in nature and concentrated on a more specific type of pollution and specific categories of hazardous substances rather than on general problems that chiefly caused major environmental hazards.
- To co-ordinate activities of the various regulatory agencies under the existing laws
- To provide for the creation of an authority or authorities for environmental protection
- To provide deterrent punishment to those who endanger the human environment, safety and health.

Scope and Applicability

The Environment (Protection) Act is applicable to the whole of India including Jammu & Kashmir. It came into force on November 19, 1986.

Definitions

Section 2 of the EPA deals with definitions. Some important definitions provided in the Section are:

- Section 2 (a) “**Environment**” includes water, air, and land and the interrelationship that exists among and between water, air and land and human beings, other living creatures, plants, micro-organism and property. This definition is not exhaustive but an inclusive one.
- Section 2 (b) “**Environmental Pollutant**” means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment.
- Section 2 (c) “**Environmental Pollution**” means the presence in the environment of any environmental pollutant. This implies an imbalance in the environment. The materials or substances when after mixing in air, water or land alters their properties in such manner, that the very use of all or any of the air-water and land by man and any other living organism becomes lethal and dangerous for health.
- Section 2 (e) “**Hazardous Substance**” means any substance or preparation which, by reasons of its chemical or Physico-chemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or environment.

Powers of Central Government to take measures to Protect and Improve Environment

According to the provisions of the 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.

Such measures may include measures with respect to all or any of the following matters, namely:

- a. co-ordination of actions by the State Governments, officers and other authorities- (a) under this Act, or the rules made thereunder, or (b) under any other law for the time being in force which is relatable to the objects of this Act;
- b. planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- c. laying down standards for the quality of the environment in its various aspects;
- d. 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;

- e. 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;
- f. laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- g. laying down procedures and safeguards for the handling of hazardous substances;
- h. examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;
- i. carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- j. 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;
- k. establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;
- l. collection and dissemination of information in respect of matters relating to environmental pollution;
- m. preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;
- n. 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 purpose 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 any 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.

As considerable adverse environmental impact has been caused due to the degradation of the environment with excessive soil erosion and water and air pollution due to certain development activities therefore it is necessary to protect the environment.

This can be achieved only by careful assessment of a project proposed to be located in any area, on the basis of an environmental impact assessment and environmental management plan for the prevention, elimination or mitigation of the adverse impacts, right from the inception stage of the project.

The Central Government has passed certain notifications laying that the expansion or modernization of any existing industry or new projects listed shall not be undertaken in any part of India unless it gets environmental clearance by the Central Government or the State Government.

Powers of the Court

The Act does not curtail the powers of the Supreme Court. It has from time to time in various matters issued directions and orders to control pollution. Some such important cases pertaining to the protection of the environment are:

Directions issued to control vehicular pollution

In **Mehta v. Union of India (1998) 6 SCC 63**, in order to control the chaotic traffic conditions and vehicular pollution, the Supreme Court issued the following directions.

- a. All commercial/transport vehicles which are more than 20 years old should be phased out and not permitted to ply in Delhi after October 1998
- b. All such commercial /transport vehicles which are 17 to 19 years old (3200) shall not be permitted to ply in the National Capital Territory, Delhi after 1998;
- c. Such of the commercial /transport vehicles which are 15 and 16 years old (4962) shall not be permitted to ply after December 31, 1998

The Supreme Court made this order applies to all commercial/transport vehicles whether registered in the National Capital Territory of Delhi or outside (but ply in Delhi) which are of more than stipulated age and which do not have any authority to ply in Delhi.

Protection of Coastline of India

In **Indian Council for Enviro-Legal Action v Union of India (1996 AIR 1446)**, the Supreme Court in regard to the 600 km long coastline emphasized that it would be the duty and responsibility of the coastal states and Union Territories in which the stretch exists, to see that the notifications issued, declaring the coastal stretches should be properly and duly implemented.

Further, the various restrictions on the setting up and expansion of industries, operation or process, etc. in the regulation Zone should be strictly enforced.

In the same case, the court enunciated the principle further that the polluter pays. Once the activity carried on is hazardous or inherently dangerous, the person carrying on such activity is liable to make good the loss caused to any other person irrespective of the fact whether he took reasonable care while carrying on his activity.

Under this principle, it is not the role of the Government to meet the costs involved in either prevention of such damage or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident on the taxpayer. The responsibility of repairing the damage is that of the offending industry.

Other cases

In **Vellore Citizen Welfare Forum v. Union of India & others (AIR 1996 SC 2715)** the polluter principle as interpreted by the Supreme Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation.

Remediation of the damaged environment is part of the process of “Sustainable Development” and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology.

In **Goa Foundation v. Diksha Holdings Pvt. Ltd (1999 (2) BomCR 550)** the court observed that with a view to protecting the ecological balance in the coastal areas, notifications having been issued by the Central Government, there ought not to be any violation and prohibited activities should not be allowed to come up within the area declared as CRZ notification.

The court also emphasised that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should be allowed.

Prevention, Control and Abatement of Environment Pollution

Chapter III of the EPA deals with the prevention, Control and abatement of Environmental Pollution. Some important provisions of this chapter provide that, 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 of such standards as may be prescribed.

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.

Where the discharge of any environmental pollutant in excess of the prescribed standards occurs or is apprehended to occur due to an accident or other unforeseen act or event, the person responsible for such discharge and the person in charge of the place at which the discharge occurs shall be bound to prevent or mitigate the environmental pollution, and shall also:

- a. intimate the fact of such occurrence or apprehension of such occurrence; and
- b. be bound, if called upon, to render all assistance. On receipt of such information, the authorities or agencies shall cause such remedial measures to be taken as are necessary to prevent or mitigate environmental pollution.

The expenses incurred by any authority or agency may be recovered from the person concerned as arrears of land revenue or of public demand.

Penalties

Section 15 provides for Penalties for contravention of the provisions of the Act as well as the Rules, Orders and Directions. Whoever fails to comply with or contravenes any of the provisions, rules, orders or directions of this Act shall 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.

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.

If the failure or contravention 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.

Offences by Companies

Offences by Companies are dealt with under Section 16. Where an offence is 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 shall be deemed to be guilty of the offence.

If he proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of such offence he shall not be liable to any punishment.

Where the offence has been committed with the consent or connivance of or is attributable to any neglect on part of, any director, manager, secretary or other officers of the company, such person shall be deemed to be guilty of the offence.

Cognizance of Offences and Bar of Jurisdiction of Civil Courts

As per the provisions of Section 19 of the EPA, no court shall take cognizance of any offence under this Act except on a complaint made by:

- a. the central Government or any authority or officer authorized in this behalf by that Government; or
- b. any person who has given notice of not less than 60 days, of the alleged offence and his intention to make a complaint, to the Central Government or the authority or officer, authorized.

Section 22 provides that no civil court shall have jurisdiction to entertain any suit or proceeding in respect of anything done, action is taken or order or direction issued by the Central Government or any other authority or officer in pursuance of any power conferred under the Act.

The National Environment Appellate Authority

The **National Environment Appellate Authority (NEAA)** was set up as an independent body to address cases in which environmental clearances granted by the ministry of the environment are challenged by civil society.

On January 30, 1997, the President of India, in the exercise of the powers conferred under Article 123 (123. Power of President to promulgate Ordinances during recess of Parliament.—

(1) If at any time, except when both Houses of Parliament are in session, the President is satisfied that circumstances exist which render it necessary for him to take immediate action, he may promulgate such Ordinances as the circumstances appear to him to require of the Constitution,

promulgated an Ordinance to provide for the establishment of the NEAA to hear appeals with respect to restriction of areas in which any industries, operations and processes shall not be carried out or shall be carried out subject to the safeguards as provided under the EPA.

*The Ordinance was later on repealed with the enactment of the **National Environment Appellate Authority Act, 1997**. The NEAA Act, which was granted presidential assent on 26th March 1997 came into force from 9.4.97. This Act provides for the establishment of a NEAA. The Act was enacted with the following object:*

To hear appeals with respect to restriction of areas in which any industry, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA and for matters connected therewith or incidental thereto.

This is to bring in transparency in the process, accountability and to ensure smooth and expeditious implementation of developmental schemes and projects. Jurisdiction of the Act

Any aggrieved person may file an appeal within thirty days of passing of an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the EPA.

It is further provided that the Authority may entertain an appeal even after the expiry of the said term if a sufficient cause for delay in filing such an appeal exists.

The Authority is required to dispose of the appeal within ninety days from the date of filing of the same. However, the Authority may, for reasons that are to be recorded in writing, dispose of the appeal within a further period of thirty days.

(2) An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but every such Ordinance—

- a. shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions; and
- b. may be withdrawn at any time by the President.

Explanation.—Where the Houses of Parliament are summoned to reassemble on different dates, the period of six weeks shall be reckoned from the later of those dates for the purposes of this clause.

(3) If and so far as an Ordinance under this article makes any provision which Parliament would not under this Constitution be competent to enact, it shall be void.