



LEGISLATION REVIEW – THE ENVIRONMENT (PROTECTION) ACT, 1986

AUTHOR – RACHANA SINGH, STUDENT AT S.S KHANNA GIRLS DEGREE COLLEGE, PRAYAGRAJ

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Abstract

From the ancient times, the environment was considered to be an important issue even religious textbooks are the source of it. According to Atharvaveda, "Man's paradise is on earth; this living world is the beloved place of all; it has the blessings of nature's bounties; live in a lovely spirit." Thus, Earth is our paradise, and it is our responsibility to safeguard it. Irrespective of any religion, the environment is considered to be very sacred and of utmost importance and its protection is considered a duty but with the advent of modernization and industrialization, as the world starts to grow up there was a substantive decline in the quality of the environment which results into its degradation. Keeping in view all these situations, a need was felt to curb it and protect it from further deprivation. One of the most contentious and divisive topics that is still being discussed in our day is the environment and how to protect it. For the sake of the next generation, every nation today strives to safeguard and maintain it. It had been covered by legislation in almost every country. In India, it is being dealt by The Environment (Protection) Act, 1986.

Keywords – Environment Protection Act, 1986, Pollution, Article 21, Right to Healthy Environment, 42nd Constitutional Amendment Act, 1976.

I. Introduction and Background of the Act

The Environment and its protection are one of the most debatable and controversial issues which are currently ongoing in today's time. Every country now aims to protect and preserve it for the future generation. Almost every country had made some or other legislation on it. In India, before the year 1986, there was no specific legislation which was there which only deals with the environment and its problem. The only provisions in the Indian Constitution dealing with the environment were Articles 47 and 21. In 1972, our late Prime Minister, Mrs. Indira Gandhi, attended the United Nations Conference on Human Environment and Development in Stockholm, which was considered to be a major development in the field of environmental protection, as the 42nd Constitutional Amendment was passed in 1976, which incorporated important provisions regarding the However, this was not quite sufficient because there was still a gap that

needed to be filled. To cover the gaps and offer protection and punishment for environmental dangers, the Environment Protection Act was enacted in 1986.

II. The Environment (Protection) Act, 1986¹

There was an immediate need to implement the decisions made at the 1972 Stockholm United Nations Conference on the Human Environment, to which India participated and was a party. As a result, a new piece of legislation was enacted in 1986 that contains all of the conference's decisions and strives to protect all living things, including humans, plants, animals, and other living things. The EPA Act came into effect on November 19, 1986, and it consists of a total of 4 chapters and 26 parts.

¹ The Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).



The chapters are as follows –

III. Chapter 1 – Preliminary

There are two provisions which falls under this head. The Section 1 deals with the acts scope and applicability whereas the Section 2 deals with its definition clause.

a) The Act's Scope and Applicability

The Section 1 of the Act states its title and its enforcement. The title of the Act signifies the broader aspect of the Act by putting the word Environment in place of pollution which emphasizes the legislature's intent that they want to cover every dimension of it. This Act applies to the complete nation of India, which means it covers all territories of India without restriction. The only limitation was that the Central Government choose the date of its implementation in various parts of India by notifying in the official gazette.

b) Definition Clause

The Section 2 of the EPA had defined few terms which is being used in the provision. The terms whose definitions are there are Environment, Environment Pollutant, Handling, Environmental Pollution; Hazardous Substance; and Occupier.

IV. Chapter II – The Central Government's General Powers

Under this head, there are 5 sections which falls under this category. All those sections define the powers of central government in some or other way. As this is a central legislation, so all the powers are aimed towards the central government only. The provisions are as follows –

a) Central Government's authority to take actions to conserve and enhance the environment² –

The Section 3 of the EPA defines about the power of the central government through which the government can take special measures and steps to protect and improve the environment and its quality. Some powers of the central government are as follows –

- i. Specify the requirements for the environmental quality.
- ii. The authority to limit industrial zones.
- iii. Outline safety procedures and protocols to prevent accidents, as well as remedies in the event that an accident does occur.
- iv. The responsibility for carrying out research and provide funding for environmental pollution research, as well as to establish laboratories.
- v. Compile data about environmental contamination.

b) Appointment of officials, their duties, and their authority to issue directives

The Section 4 of the EPA grants the central government the authority to select officials and define their duties for the purpose of managing the affairs related to the environment and the Section 5 deals with the power of giving directions.

Although the Central Government has a great opportunity to significantly improve the nation's environmental pollution problem and even revitalise the lives of the living by eliminating this menace entirely thanks to these expansive powers, it is rare to find instances in which the Central Government has lived up to expectations. It's possible that giving the central government such broad, nearly unrestricted powers might lead to systemic arbitrariness and the promotion and protection of other entrenched interests rather than the realisation of environmentally friendly goals and ambitions.

V. Chapter III – Environmental Pollution Prevention, Control, and Abatement

The Section 7 to 17 of EPA falls under this category which deals with the prevention, control and abatement of the environmental pollution. The sections are as follows –

A. Prevention:

1. People conducting businesses, operations, etc., are not permitted the release environmental pollutants that are above the standards –

² The Environment (Protection) Act, 1986, § 3, No. 29, Acts of Parliament, 1986 (India).



The Section 7 of EPA³ deals with it. It aims that the pollution should not be done above the standards. That's why it states that the people who are conducting any businesses, operations, etc. or the people who are not conducting or involved in any of the activity or business will not be permitted to release any environmental pollutants that above the standards in the natural body or in any other source.

2. Safeguards needs to be complied in handling of harmful substances –

The Section 8 of EPA⁴ states that in any of the circumstances the individuals who are handling dangerous materials must follow all safety procedures. According to Rule 3 of the Environment Protection Rules, 1986, any emissions or discharges of environmental pollutants from businesses, operations, or processes must comply with the standards outlined in Schedule 1 of the rules to protect and improve the environment's quality and to prevent and reduce environmental pollution.

The Section 9 of EPA deals with those furnishing information to authorities in certain cases to the agencies. One of those examples is if any person under Section 8 is handling the harmful substances but fails to take care of them properly which ultimately leads to some discharge of it or damage then that person who is responsible for handling it had to inform the authorities of it.

B. Control:

1. Power of Access and Examination and taking samples from there in connection with it

The Section 10 of EPA⁵ vests power under the Central Government or any other person who is being empowered by the central government to a right to access and examine any unit or place at any reasonable time to such place to perform his/her duties of inspection and to

examine any document, industrial equipment, etc. The Section 11 of the EPA outlines the authority to collect samples and the protocols that must be followed in doing so.

2. Environmental Laboratories and Government Analysts and its reports

The Section 12 of EPA⁶ enables the central government to build new laboratories or enables the old existing laboratories as environmental laboratories. Under this Act, the Central Government is authorized to establish one or more environmental labs or to acknowledge any laboratory as an environmental laboratory to fulfil its objectives and obligations.

The Section 13 of EPA⁷ deals with Government analysts. They are those persons who are either appointed or designated by the post of it by Central Government to analyse the samples of air, water, soil, or other substances which would be sent to the laboratories. The reports signed by these analysts may be used as a piece of evidence in the court of law too.

C. Abatement:

1. Penalties for breaching the Act's rules, regulations, instructions, and directives

The Section 15 of EPA⁸ states that anyone who violates any of the provisions of this Act, the rules made under it, or the orders or directions issued thereunder is subject to punishment, which may include imprisonment for a term up to five years, a fine of up to one lakh rupees, or both. If the violation persists, additional fines of up to 5,000 rupees may be imposed for each additional day that the violation continues. The offender faces up to seven years in jail if the failure or violation persists after one year from the date of conviction. This section is based on the Polluter Pays Principle.

³ The Environment (Protection) Act, 1986, § 7, No. 29, Acts of Parliament, 1986 (India).

⁴ The Environment (Protection) Act, 1986, § 8, No. 29, Acts of Parliament, 1986 (India).

⁵ The Environment (Protection) Act, 1986, § 10, No. 29, Acts of Parliament, 1986 (India).

⁶ The Environment (Protection) Act, 1986, § 12, No. 29, Acts of Parliament, 1986 (India).

⁷ The Environment (Protection) Act, 1986, § 13, No. 29, Acts of Parliament, 1986 (India).

⁸ The Environment (Protection) Act, 1986, § 15, No. 29, Acts of Parliament, 1986 (India).



D. Offences by Companies and Government Department –

The Section 16 of EPA⁹ states that any person who, at the time the offence was committed, was directly in charge of and responsible to the company for the conduct of the company's business, as well as the company, shall be deemed to have committed the offence and shall be subject to legal action and punishment in accordance with the law. As long as the offender is able to show that the act in question was committed without his knowledge or that he made numerous attempts in order to prevent it from taking place, nothing in this section will apply to the offender to any punishment imposed in this Act. When a company violates this Act and it is established that the violation was carried out with the knowledge or complicity of, or as a result of any neglect on the part of, any director, manager, secretary, or other officer of the company, that director, manager, secretary, or other officer shall also be deemed to have violated this Act and shall be subject to prosecution and punishment as appropriate.

The Section 17 of EPA¹⁰ deals with the Offences by Government Department which states that if any government department violates this Act and the department's head is considered to have committed the crime and is subject to legal action and punishment in accordance with the law. However, nothing in this section will be applicable when the Head of the Department has proof that the offence was committed without his knowledge or that he undertook every reasonable measure to prevent it.

VI. Chapter IV –Miscellaneous

There are total 9 sections under this Section. It contains all those sections which not very much connected with each other. The provisions are as follows –

⁹ The Environment (Protection) Act, 1986, § 16, No. 29, Acts of Parliament, 1986 (India).

¹⁰ The Environment (Protection) Act, 1986, § 17, No. 29, Acts of Parliament, 1986 (India).

A. Action taken or done in Good Faith –

According to Section 18 of EPA, any action taken or intended to be taken in good faith in accordance with this Act or the rules made or orders or directions issued thereunder shall not give rise to a claim, prosecution, or other legal action against the Government, any officer or other employee of the Government, or any authority established under this Act, or against any member, officer, or other employee of such authority.

B. Complaint must be made then only the cognizance of offence will be taken –

As per Section 19, a complaint has to be made by the aggrieved person to under Central Government or any other authority which are authorised by the Central Government.

C. Civil Court has no jurisdiction –

In relation to anything done, action taken, order or directive issued by the Central Government or any other authority or official pursuant to any power given by or in relation to his or her activities under this Act, no civil court shall have jurisdiction to hear any suit or process.

VII. Landmark Judgements of The Environment Protection Act, 1986

There are various judgments given by both Supreme Court and High Court which has changed the whole dimension of the environment protection and also contributed in making the act stricter in its nature by imposing the penalty upon the offenders. Some of the judgments are as follows:

a) In "*M.C. Mehta v. Union of India*"¹¹ which is famously known as "Ganga Pollution Case", the Supreme Court ruled out in this case that the Central Government has the authority to take any actions under Section 3 of the EP Act, 1986, which it considers necessary or beneficial for the purpose of preserving and enhancing the quality of the environment, in addition to preventing, regulating, and minimising environmental degradation.

¹¹ AIR 1988 SC 1037.



b) In "*AP Pollution Control Board v. Prof M.V. Nayudu*"¹², the Court ruled that the authority granted by the Central Government is free to visit the factory's grounds, request papers from the parties or any other organization or authority, as well as from the State or Union governments, and, if necessary, question any witnesses. Additionally, it is capable of obtaining technical information from any source too. The Court also ordered that an authority be constituted under the Section 3 of EP Act, 1986, to enforce the Precautionary Principle as well as the Polluter Pays Principle. Furthermore, it was determined that the new idea envisages that when a danger of significant or irreparable environmental damage is detected, the burden of evidence is on the person seeking to carry out the activity in question.¹³

c) In "*Vellore Citizens Welfare Forum v. Union of India*"¹⁴, the petitioner "Vellore Citizens Welfare Forum" filed a public interest litigation under Article 32 of the Constitution of India complaining against the pollution which is being produced by massive discharge of untreated waste water by the tanneries and other businesses in the State of Tamil Nadu. After hearing both parties and reviewing the report, the Supreme Court concluded that all efforts should be made to maintain the balance between environment and its development. The Court also recognised that these tanneries are the source of income and it provides employment to a large number of people. But at the same time, it endangers the environment and endangers everyone's health. The Court decided in favour of the Petitioners and directed all tanneries to pay a fine of Rs 10,000 to the Collector's office. The Supreme Court also made a point of emphasising the development of green benches when dealing

with issues concerning environmental preservation.¹⁵

d) In the case of "*Rural Litigation and Entitlement Kendra vs. State*"¹⁶, which is popularly known as "Dehradun Quarrying Case", the Supreme Court ordered a halt to excavation (illegal mining) under the Environment (Protection) Act of 1986. The right to live in a healthy environment, guaranteed by Article 21 of the Constitution, was recognised for the first time in this case.¹⁷

e) In the case of "T.N. Godavarman Thirumalpad (through K.M. Chinnappa) v. Union of India"¹⁸, the Supreme Court emphasised the need of sustainable development in promoting economic development without endangering the environment. The Court clearly recognised the obligation that citizens have to future generations. The court also observed that these concepts are relevant in the context of India's environmental policy.¹⁹

Conclusion

In the age of industrialization, and modernization we are progressing so fast and evolving so much that we have neglected the environment. Even though the need has been felt to protect and prevent it from further depletion but still we are not able to tackle it properly. The legislature had drafted various enactments to impose strict penalties and punish the offender who pollutes the environment but that is not at all enough as the people who are having money can easily pay the fine and get rid of the penalties easily. Even the Act also gives the Central Government sweeping and unrestricted authority to take whatever steps are necessary to ensure that the Act's requirements are followed. Persons with vested interests or political connections may be

¹² AIR 1999 SC 812.

¹³ Riya Rupani, *AP. Pollution Control Board vs. Prof. M.V. Nayudu (Retd.) and Others. (n.d.)*, Our Legal World - Law Notes, Legal Research, Law Blog, <https://www.ourlegalworld.com/a-p-pollution-control-board-vs-prof-m-v-nayudu-ret-d-and-others/> (Last Visited on July 01, 2023).

¹⁴ AIR 1996(5) SCC 647.

¹⁵ *Case Analysis: Vellore Citizens Welfare Forum vs Union of India*, LawSisto, <https://lawsisto.com/legalnewsread/OTA0NA==/Case-Analysis-Vellore-Citizens-Welfare-Forum-vs-Union-of-India>. (Last Visited on July 01, 2023).

¹⁶ AIR 1988 SC 2187.

¹⁷ *Environment Protection under Constitutional Framework of India*, [https://pib.gov.in/newsite/printrelease.aspx?relid=105411#:~:text=State,%20AIR%201988%20SC%202187,\(Protection\)%20Act,%201986](https://pib.gov.in/newsite/printrelease.aspx?relid=105411#:~:text=State,%20AIR%201988%20SC%202187,(Protection)%20Act,%201986) (Last Visited on July 01, 2023).

¹⁸ Writ petition (civil) 202 of 1995.

¹⁹ *Right to environment*, IILS Blog, [https://www.iilsindia.com/blogs/right-to-environment/#:~:text=Chinnappa\)%20v.,posing%20danger%20to%20the%20environment](https://www.iilsindia.com/blogs/right-to-environment/#:~:text=Chinnappa)%20v.,posing%20danger%20to%20the%20environment) (Last Visited on July 01, 2023).



able to avoid taking the burden of the consequences by using these unchecked abilities, but they can also be disastrous.

The Environment (Protection) Act was formulated in the year 1986 when the situation was different from today in this fast-growing era. It is also outdated and barely functional in its approach. Thus, the legislature had to make some improvements in it such as the definition lacks a modern, cutting-edge perspective and specifically fails to take into account recent advancements that have the potential to have catastrophic effects on the environment.

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