

A STUDY ENVIRONMENTAL PROTECTION AND REGULATIONS SUBJECTED TO THE ENVIRONMENT (PROTECTION ACT), 1986

Aleti RajashekarReddy

Research Scholar

Shri JJT University

Rajasthan

Lionarsreddy99@gmail.com

Dr. Jaipal Reddy Battu

M.Sc, LLM, PhD

Principal

Bhaskar Law College

Hyderabad

drjrbattu@gmail.com

Abstract:

An Act to accommodate the insurance and improvement of condition and for issues associated therewith. While the choices were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India took an interest, to make suitable strides for the assurance and improvement of human condition; And Whereas it is viewed as fundamental further to actualize the choices previously mentioned to the extent that they identify with the insurance and improvement of condition and the counteractive action of dangers to individuals, other living animals, plants and property.

1.0 Introduction

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 pretext to protection and improvement of environment. The Constitution of India also provides for the protection of the environment. Article 48A of the Constitution specifies that the State shall endeavor 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. The Environment Protection Act, 1986 came into force soon after the Bhopal Gas Tragedy which was a major leak of toxic chemical gases occurred from the Union Carbide chemical plant in the city of Bhopal in 1984 and is considered an umbrella legislation as it fills many gaps in the existing laws. Therefore a large number of laws came into existence as the problem began arising. The Bhopal disaster underlines the problem governments confront in formulating a response to disaster situations when poverty levels are high and health infrastructures and government resources are severely limited. This brings into focus the need for private multinational (or public) industries to take some responsibility towards the environments and populations they are located in.

Environment (Protection) Act, 1986 (EPA): An Act to provide for the protection and improvement of environment and for matters connected therewith. It provide a framework for the co-ordination of central and state authorities established under the water (prevention and control) act, 1974 and air (prevention and control) act, 1981 and the central government is empowered to

take measures necessary to protect and improve the quality of the environment by setting standards for emissions and discharges; regulating the location of industries; management of hazardous wastes, and protection of public health and welfare.

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 a general legislation enacted under Article 253 (Legislation for giving effect to international agreements.—Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has 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 body) 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 human environment, held in Stockholm in June 1972, proclaimed that “Man is both creator and molder 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 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 a general legislation had become increasingly evident. The EPA was enacted so as to overcome this deficiency.

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 pollutant⁶ . This implies the imbalance in 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.

Objectives of the Act

The general objectives of this Act shall include —

- (a) to coordinate the role of government in relation to environmental protection and sustainable development;
- (b) provide a mechanism for the development of environmental policy and law;
- (c) to promote a clean and healthy environment for all Tuvaluans;
- (d) to prevent, control, monitor and respond to pollution;
- (e) to promote public awareness and involvement in environmental issues and the preservation of Iloga as it relates to the environment;
- (f) to facilitate compliance and implementation of obligations under any regional and international environmental or natural resource agreements or conventions to which the Government of Tuvalu has ratified or acceded to;
- (g) to facilitate sustainable development with respect to the management of the environment and natural resources;
- (h) to facilitate the assessment and regulation of environmental impacts of certain activities;
- (i) to promote the conservation and, where appropriate, sustainable use of biological diversity and the protection and conservation of natural resources, on the land, in air and in the sea;
- (j) to reduce the production of wastes, and to promote the environmentally sound management and disposal of all wastes.

Appointment of officers and their powers and functions -

(1) Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may appoint officers with such designation 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.

(2) 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 subsection (3) of section 3 or of any other authority or officer.

5. Power to give directions - 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.

6. Rules to regulate environmental pollution - (1) 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.

(2) 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:-

- (a) the standards of quality of air, water or soil for various areas and purposes;
- (b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
- (c) the procedures and safeguards for the handling of hazardous substances;
- (d) the prohibition and restrictions on the handling of hazardous substances in different areas;
- (e) the prohibition and restriction on the location of industries and the carrying on process 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.

PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION

7. Persons carrying on industry operation, etc., not to allow emission or discharge of environmental pollutants in excess of the standards - No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.

8. Persons handling hazardous substances to comply with procedural safeguards - 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.

9. Furnishing of information to authorities and agencies in certain cases - (1)

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(

a) intimate the fact of such occurrence or apprehension of such occurrence;

and

(b) be bound, if called upon, to render all assistance, to such authorities or agencies as may be prescribed.

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 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 environment are challenged by civil society.

On January 30, 1997, the President of India, in 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 off 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 off 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.

Conclusion

Each standard made under this Act will be laid, when might be after it is made, before each House of Parliament, while it is in session, for an all out time of thirty days which might be contained in one session or in at least two progressive sessions, and if, before the expiry of the session quickly following the session or the progressive sessions aforementioned, the two Houses concur in

making any alteration in the standard or the two Houses concur that the standard ought not be made, the standard will from that point have impact just in such changed structure or be of no impact, all things considered; along these lines, in any case, that any such adjustment or revocation will be without partiality to the legitimacy of anything recently done under that standard.

Reference:

1. Syed Ussain Saheb, Environment and Their Legal Issues in India, International Research Journal of Environment Sciences, ISSN 2319–1414
2. Rajiv Chopra, Environmental Degradation in India: Causes and Consequences, International Journal of Applied Environmental Sciences ISSN 0973-6077 Volume 11, Number 6 (2016), pp. 1593-1601
3. Nagdeve, D. A. (2006). Population, Poverty and Environment in India. IIPS Mumbai, ENVIS center, 3(3).
4. Ray, S., & Ray, I. A. (2011). Impact of Population Growth on Environmental. Journal of Economics and Sustainable Development, 2(8).
5. Saarangapani , B., & Sripathi, K. (2015). Environmental Degradation in India - Dimensions and Concerns: A Review. Prabandhan Indian Journal of Management, 8(4).
6. Tyagi, S., Garg, N., & Paudel, R. (2014). Environmental degradation: Causes and Consequences. European Researcher, 81(8-2).
7. <https://www.legalbites.in/environmental-protection-act1986/>