

# The Environment (Protection) Act, 1986

February 11, 2013

## 1. SHORT TITLE, EXTENT AND COMMENCEMENT.

(1) This Act may be called the **Environment (Protection) Act, 1986**.

(2) It extends to the whole of India.

(3) It shall come into force on such date <sup>1</sup> as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas.

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**1. Came into force on 19-11-1986, vide G.S.R. 1198(E), dated 12th November, 1986**

## 2. DEFINITIONS.

In this Act, unless the context otherwise requires, –

(a) "environment" includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property;

(b) "environmental pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment;

(c) "environmental pollution" means the presence in the environment of any environmental pollutant;

(d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;

(e) "hazardous substance" means any substance or preparation which, by reason 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 the environment;

(f) "occupier", in relation to any factory or premises, means a person who has control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance;

(g) "prescribed" means prescribed by rules made under this Act.

## 3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT.

(1) Subject to the provisions of this 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.



(2) 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 :

(i) co-ordination of actions by the State Governments, officers and other authorities –

(a) under this Act, or the rules made there under; or

(b) under any other law for the time being in force which is relatable to the objects of this Act;

(ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;

(iii) laying down standards for the quality of environment in its various aspects;

(iv) 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;

(v) 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;

(vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;

(vii) laying down procedures and safeguards for the handling of hazardous substances;

(viii) examination of such manufacturing processes, materials and substances as are likely to cause environmental pollution;

(ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;

(x) 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;

(xi) establishment or recognition of environmental laboratories and institutes to carry out the functions entrusted to such environmental laboratories and institutes under this Act;

(xii) collection and dissemination of information in respect of matters relating to environmental pollution;

(xiii) preparation of manuals, codes or guides relating to the prevention, control and abatement of environmental pollution;

(xiv) 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.



(3) 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.

## COMMENTS

In exercise of the powers conferred by sub-sections (1) and (3) of section 3 of the Environment (Protection) Act, 1986 (29 of 1986), the Central Government hereby constitutes an authority to be known as "Water Quality Assessment Authority" consisting of the following members with effect from, 20th June, 2001 namely:—

01	Secretary, Ministry of Environment and Forests	— Chairperson
2	Additional Secretary and Project Director, National River Conservation Directorate, Ministry of Environment and Forests	—Member
3	Chairman, Central Water Commission	—Member
4	Additional Secretary, Ministry of Water Resources	—Member
5	Adviser, National River Conservation Directorate, Ministry of Environment and Forests	—Member
6	Joint Secretary, Ministry of Agriculture and Cooperation	—Member
7	Joint Secretary, Ministry of Urban Affairs and Poverty Alleviation	—Member
8	Chairman, Central Ground Water Authority	—Member
9	Chairman, Central Pollution Control Board	—Member
10	Director, Indian Agricultural Research Institute, New Delhi	—Member
11	Director, National Environmental Engineering Research Institute, Nagpur	—Member
12	Commissioner (Water Management), Ministry of Water Resources	—Member-Secretary.

2. The Authority shall exercise the following powers and functions:—

I. to exercise powers under section 5 of the said Act for issuing directions and for taking measures with respect to matters referred to in clauses (ix), (xi), (xii) and (xiii) of sub-section (2) of section 3 of the Act;

II. to direct the agencies (government/local bodies/non-governmental) for the following:

(a) to standardise method(s) for water quality monitoring and to ensure quality of data generation for utilization thereof;

(b) to take measures so as to ensure proper treatment of wastewater with a view to restoring the water quality of the river/water bodies to meet the designated-best-uses;

(c) to take up research and development activities in the area of water quality management;

(d) to promote recycling/re-use of treated sewage/trade effluent for irrigation in development of agriculture;

(e) to draw action plans for quality improvement in water bodies, and monitor and review/assess implementation of the schemes launched/to be launched to that effect;

(f) to draw schemes(s) for imposition of restriction in water abstraction and discharge of treated sewage/trade effluent on land, rivers and other water bodies with a view to mitigating crisis of water quality;

(g) to maintain minimum discharge for sustenance of aquatic life forms in riverine system;

(h) to promote rain water harvesting;

(i) to utilize self-assimilation capacities at the critical river stretches to minimise cost of effluent treatment;

(j) to provide information to pollution control authorities to facilitate allocation of waste load;

(k) to review the status of quality of national water resources (both surface water and groundwater) and identify "Hot Spots" for taking necessary actions for improvement in water quality;

(l) to interact with the authorities/committees constituted or to be constituted under the provisions of the said Act for matters relating to management of water resources;

(m) to constitute/set-up State level Water Quality Review Committees (WQRC) to coordinate the work to be assigned to such committees; and

(n) to deal with any environmental issue concerning surface and groundwater quality which may be referred to it by the Central Government or the State Government relating to the respective areas, for maintenance and/or restoration of quality to sustain designated-best-uses.

3. The Authority shall exercise the powers under section 19 of the said Act.

4. The Authority may appoint domain experts for facilitating the work assigned to it.

5. The Ministry of Water Resources shall create a cell to assist the Authority to carry out the assigned functions.

6. The Authority shall furnish report about its activity at least once in three months to the Ministry of Environment and Forests.

7. The tenure of the Authority shall be upto 31st March, 2007.

[Vide S.O. 583(E), dated 29th May, 2001 and amended by S.O. 635(E), dated 26th May, 2004.]

### **Approach of court**

The court should approach that no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction at all be allowed and the courts must scrupulously try to protect the ecology and environment; Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd., AIR 2001 SC 184.

### **CNG-buses**



To protect the health of the present and future generation and protect and improve the environment, the non-CNG-buses were phased out and ordered for the use of CNG-buses; M.C. Mehta v. Union of India, AIR 2002 SC 1696.

### **Environmental awareness**

A public interest petition was filed seeking directions from the apex court to the Government for exhibition of slides in cinema halls containing information and messages on environment free of cost, spread of relative valuable information relating to environment in national and regional languages through television and Radio in regular and short-term programmes and for making environment as compulsory subject in schools and colleges. The Supreme Court accepted the prayers in principle and issued directions to that effect holding that keeping the citizens informed is an obligation of the Government; M.C. Mehta v. Union of India, AIR 1992 SC 382.

### **Power of Central Government**

The Central Government is empowered 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; M.C. Mehta v. Union of India, AIR 1988 SC 1037.

### **Responsibility to repair damage**

The responsibility for repairing the damage is of the offending industry. The task of determining the amount required for carrying out the remedial measures, its recovery/realisation and the task of undertaking the remedial measures is placed upon the Central Government; Indian Council for Enviro-Legal Action, etc. v. Union of India, AIR 1996 SC 1446.

### **Scope**

The main purpose of the Act is to create an authority or authorities with adequate powers to control pollution and protect the environment; Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715.

### **Sustainable development**

(i) To ensure sustainable development is one of the goals of Environmental Protection Act, 1986, and this is quiet necessary to guarantee 'right to life' under Article 21. If the Act is not armed with the powers to ensure sustainable development, it will become a barren shell. In other words, sustainable development is one of the means to achieve the object and purpose of the Act as well as the protection of 'life' under Article 21; N.D. Jayal v. Union of India, AIR 2004 SC 867.

(ii) It is necessary that green areas and the parks in all the towns and cities of Rajasthan are maintained to protect environment and ecology, but it is seen they are allowed to be encroached upon due to commercial and other pressures. They are converted from green areas to commercial areas and residential areas. Concrete jungles are swallowing green areas. That trend needs to be halted to protect and preserve ecology; Justice R.S. Verma v. State of Rajasthan, AIR 2004 Raj 175.

(iii) The harmonisation of the two namely, the issue of ecology and developmental project cannot but be termed to be the order of the day and the need of the hour; Goa Foundation, Goa v. Diksha Holdings Pvt. Ltd., AIR 2001 SC 184.



(iv) There is need for creating general awareness towards the hazardous effects of noise pollution. Similar awareness need to be created in Police and Civil administration as well. Not only the use of loudspeakers and playing of hi-fi amplifier systems has to be regulated, even the playing of high sound instruments which create noise beyond tolerable limit need to be regulated; Noise Pollution (in re:), AIR 2005 SC 3136..

## 4. 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 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.

(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 sub-section (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.

### COMMENTS

Prohibition to establish industry

Where total prohibition against establishment of industries in an area is in force, the State Government cannot grant exemption to a specified industry located within or attempting to locate itself within such area. Neither can the State direct the State Pollution Control Board to prescribe conditions for grant of No Objection Certificate; A.P. Pollution Control Board v. Prof. M.V. Nayudu, (2001) 2 SCC 62.

Void lease of land

(i) The grant of lease of land belonging to forest area to be used for setting up beneficiation plant which involve dust and water pollution and consequent destruction of adjoining forest and subsequently affecting the environment and ecology of the area and right to life, was declared void; Goa Foundation v. State of Goa, AIR 2001 Bom 318.

(ii) If the Central Government has issued certain directions and notified certain industries as hazardous and stone crushers have not been included then the Board would not be forbidden from exercising its power under provisions of Air Act or Water Act; Bihar State Pollution Control Board v. Hiranand Stone Works, AIR 2005 Pat 62.



## 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 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.

### COMMENTS

Right to life

(i) The Karnataka High Court has directed the operation of industrial units in land earmarked as residential area in the Development plan to be stopped which were being established in gross violation of various statutory provisions thereby causing persistent pollution detrimental to health and held that where due to human negligence the quality of air or environment are threatened the court would not hesitate to use its innovative powers within its epistolary jurisdiction to enforce and safeguard the right to life to promote public interest. Since the right to life inherent in Article 21 of the Constitution of India contemplates qualitative life which is possible only in an environment of quality; V. Lakshmi v. State of Karnataka, AIR 1992 Karn 57.

(ii) A limited power of exemption from the operation of Noise Rules by the Central Government is not unreasonable. The power to grant exemption is a reasonable restriction in public interest; Forum, Prevention of Environment & Sound Pollution v. Union of India, AIR 2006 SC 348.

## 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 pollutant in excess of such standards as may be prescribed.

### COMMENTS

Pollution of Ganga water

Discharge or emittance or permission to discharge or emit of any environmental pollutant in excess of standards is strictly prohibited. The Supreme Court has issued directions to the concerned authorities to control and prevent the pollution of Ganga water at Kanpur, inter alia, being—(a) prevention from waste gathered at the dairies. (b) enlargement of sewers and construction of sewers where absent. (c) provision for public latrines to avoid use of open land. (d) High Courts should not ordinarily stay criminal proceedings in such matters. (e) Corpses or Half cremated bodies are not thrown in the river. (f) new industries to get licences only after making provision for treatment of effluents and immediate action against existing polluting industries. (g) Central Government to include environment as a subject in educational institutions. (h) people should be made aware of the environmental problems; M.C. Mehta v. Union of India, AIR 1988 SC 1115.

## 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.

### COMMENTS

#### Absolute liability

It has been held that there is an absolute liability on the part of those who are engaged in construction work, particularly of multi-storeyed structures, not to commit nuisance by letting out effluent from their drainage system; Ajay Constructions v. Kakateeya Nagar Cooperative Housing Society Ltd., AIR 1991 AP 294.

#### Oleum gas leakage

Upon leakage of Oleum gas from Caustic Chlorine plant affecting several persons the Supreme Court allowed it to be restarted by the management subject to certain stringent conditions that were specified; M.C. Mehta v. Union of India, AIR 1987 SC 965.

#### Primary treatment plant

It has been held by the Supreme Court that a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect on the public at large which is likely to ensue by the discharging of the trade effluents from the tannery to the river Ganga would be immense and it will outweigh any inconvenience that may be caused to the management and the labour employed by it on account of its closure; M.C. Mehta v. Union of India, AIR 1988 SC 1037.

#### When need of judicial remedy may not arise

It has been held that to ensure the attainment of the constitutional goal of the protection and improvement of the natural wealth and environment and of the safeguarding of the forests, lakes, rivers and wildlife and to protect the people inhabiting the vulnerable areas from the hazardous consequences of the arbitrary exercise of granting mining leases and of indiscriminate operation of the mines on the strength of such leases without property, the court will be left with effectively by issuing appropriate writs, orders and directions including the direction as to the closure of the mines the operation whereof is proving to be hazardous and the total prohibition of the grant or renewal of mining leases till the Government evolves a long-term plan based on a scientific study with a view to regulating the exploitation of the minerals in the State without detriments to the environment, ecology, the natural wealth and resources and the local



population. However, the need for judicial intervention may not arise even in those cases where the court's jurisdiction is invoked if the administration takes preventive remedial and curative measures meanwhile; *Kinkri Devi v. State of Himachal Pradesh*, AIR 1988 HP 4.

## 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.

(2) 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.

(3) 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.



## 10. POWER OF ENTRY AND INSPECTION.

(1) 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 –

(a) for the purpose of performing any of the functions of the Central Government entrusted to him;

(b) 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 authorisation served, made, given or granted under this Act is being or has been complied with;

(c) 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.

(2) 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.

(3) If any person willfully 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.

(4) 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 provisions of the said law.

**COMMENTS**

## Dispute for adjudication

In a writ petition filed in 1983, i.e., more than 3 years before the commencement of the Environment Protection Act, 1986 the Supreme Court has held that the Act does not purport to/or perhaps could not take away the jurisdiction of the Supreme Court to deal with such case. Ordinarily the court would not entertain a dispute for the adjudication of which a special provision has been made by law but the rule is not attracted in the instant case. Besides it is a rule of practice and prudence and not one of jurisdiction; *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*, AIR 1988 SC 2187.

## Inspection of factory premises

It is open to the authority empowered by the Central Government, to inspect the premises of the factory, call for documents from the parties or any other body or authority or from the State Government or Union Government and to examine witnesses, if needed. It also have power to obtain data or technical advice from any source; *A.P. Pollution Control Board v. Prof. M.V. Nayudu*, AIR 1999 SC 812.

## 11. POWER TO TAKE SAMPLE AND PROCEDURE TO BE FOLLOWED IN CONNECTION THEREWITH.

(1) 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.

(2) 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.

(3) Subject to the provisions of sub-section (4), the person taking the sample under sub-section (1) shall –

(a) 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;

(b) in the presence of the occupier or his agent or person, collect a sample for analysis;



(c) 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;

(d) send without delay, the container or the containers to the laboratory established or recognised by the Central Government under section 12.

(4) 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, –

(a) 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, and

(b) 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 (c) 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 recognised under section 12 and such person shall inform the Government Analyst appointed or recognised 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.

## 12. ENVIRONMENTAL LABORATORIES.

(1) The Central Government may, by notification in the Official Gazette, –

(a) establish one or more environmental laboratories;

(b) recognise one or more laboratories or institutes as environmental laboratories to carry out the functions entrusted to an environmental laboratory under this Act.

(2) The Central Government may, by notification in the Official Gazette, make rules specifying –

(a) the functions of the environmental laboratory;

(b) 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 the fees payable for such report;

(c) such other matters as may be necessary or expedient to enable that laboratory to carry out its functions.

## 13. GOVERNMENT ANALYSTS.

The Central Government may, by notification in the Official Gazette, appoint or recognise such persons as it thinks fit and having the prescribed qualifications to be Government Analysts for the purpose of analysis of sample of air, water, soil or other substance sent for analysis to any environmental laboratory established or recognised under sub-section (1) of section 12.

## 14. 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.

## 15. PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT AND THE RULES, ORDERS AND DIRECTIONS.

(1) 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.

(2) 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.

## 16. OFFENCES BY COMPANIES.

(1) 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 provide 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.

(2) 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.

**EXPLANATION :** For the purposes of this section –

(a) "company" means any body corporate and includes a firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm.

### COMMENTS

Vicarious criminal liability

It is well settled principle of law that vicarious criminal liability cannot be attached unless all the conditions for fastening such liability are proved; *Municipal Corporation of India v. Dev Raj*, 1985 FAJ 156 Del DB.

## 17. OFFENCES BY GOVERNMENT DEPARTMENTS.



(1) Where an offence under this Act has been committed by the 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.

(2) 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.

## 18. PROTECTION OF ACTION TAKEN IN GOOD FAITH.

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.

## 19. COGNIZANCE OF OFFENCES.

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 authorised in this behalf by that Government; or

(b) 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.

## 20. 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.

## 21. 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.

## 22. 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 authority or officer in pursuance of any power conferred by or in relation to its or his functions under this Act.

## 23. 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 section 25] as it may deem necessary or expedient, to any officer, State Government or other authority.

## 24. EFFECT OF OTHER LAWS.

(1) 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.

(2) 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.

## 25. POWER TO MAKE RULES.

(1) The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

(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 in excess of which environmental pollutants shall not be discharged or emitted under section 7;

(b) the procedure in accordance with and the safeguards in compliance with which hazardous substances shall be handled or caused to be handled under section 8;

(c) the authorities or agencies to which intimation of the fact of occurrence or apprehension of occurrence of the discharge of any environmental pollutant in excess of the prescribed standards shall be given and to whom all assistance shall be bound to be rendered under sub-section (1) of section 9;

(d) the manner in which samples of air, water, soil or other substance for the purpose of analysis shall be taken under sub-section (1) of section 11;

(e) the form in which notice of intention to have a sample analysed shall be served under clause (a) of sub-section (3) of section 11;

(f) the functions of the environmental laboratories, the procedure for the submission to such laboratories of samples of air, water, soil and other substances for analysis or test; the form of laboratory report; the fees payable for such report and other matters to enable such laboratories to carry out their functions under sub-section (2) of section 12;



(g) the qualifications of Government Analyst, appointed or recognised for the purpose of analysis of samples of air, water, soil or other substances under section 13;

(h) the manner in which notice of the offence and of the intention to make a complaint to the Central Government shall be given under clause (b) of section 19;

(i) the authority or officer to whom any reports, returns, statistics, accounts and other information shall be furnished under section 20;

(j) any other matter which is required to be, or may be, prescribed.

## **26. RULES MADE UNDER THIS ACT TO BE LAID BEFORE PARLIAMENT.**

Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both House agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

