

SUBJECT: GEOGRAPHY

SEMESTER: 4th (PG)

PAPER: GEOPG-401(ENVIRONMENT: ISSUES AND REGULATIONS)

TOPICS: ENVIRONMENTAL LAWS IN INDIA: WILDLIFE ACT, FOREST ACT, ENVIRONMENTAL PROTECTION ACT, NATIONAL TRIBUNAL ACT

ENVIRONMENTAL LAWS IN INDIA

Environmental protection is a fundamental duty of every citizen of this country under Article 51-A (g) of our Constitution which reads as follows: "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures." The State's responsibility with regard to environmental protection has been laid down under Article 48-A of our Constitution, which reads as follows: "The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country". Article 21 of the Constitution is a fundamental right which reads as follows: "No person shall be deprived of his life or personal liberty except according to procedure established by law." Article 48-A of the Constitution comes under Directive Principles of State Policy and Article 51 A (g) of the Constitution comes under Fundamental Duties. The 42nd amendment to the Constitution was brought about in the year 1974 makes it the responsibility of the State Government to protect and improve the environment and to safeguard the forests and wildlife of the country. The latter, under Fundamental Duties, makes it the fundamental duty of every citizen to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. The major environmental laws are:

The Electricity Act, 2003

This Act seeks to create a framework for the power sector development by measures conducive to the industry. Electricity Act does not explicitly deal with environmental implications of activities related to power transmission. The applicable legal provisions under this Act are as follows: Section 68(1) - sanction from the Ministry of Power (MOP) is a mandatory requirement for taking up any new project. The sanction authorizes SJVN to plan and coordinate activities to commission new projects.

The Forest (conservation) Act, 1980

This Act provides for the conservation of forests and regulating diversion of forestlands for non-forestry purposes. When projects fall within forestlands, prior clearance is required from relevant authorities under the Forest (Conservation) Act, 1980. State governments cannot de-reserve any forestland or authorise its use for any non-forest purposes without approval from the Central government.

Environmental (protection) Act, 1986

The Environment (Protection) Act, 1986 was introduced as an umbrella legislation that provides a holistic framework for the protection and improvement to the environment. In terms of responsibilities, the Act and the associated Rules requires for obtaining environmental clearances for specific types of new / expansion projects (addressed under Environmental Impact Assessment Notification, 1994) and for submission of an environmental statement to the State Pollution Control Board annually. Environmental clearance is not applicable to hydro projects also.

Air (prevention and control of pollution) Act, 1981

The objective of this Act is to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Water (prevention & control) Act 1974

The objectives of the Water (Prevention and Control of Pollution) Act are to provide for the Prevention and Control of Water Pollution and the maintenance or restoration of the wholesomeness of water for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith.

Wildlife Protection Act, 1972

According to the Wildlife Protection Act, 1972 "wildlife" includes any animal, bees, butterflies, fish and moths; and aquatic or land vegetation which forms part of any habitat. In accordance with Wildlife (Protection) Amendment Act, 2002 "no alternation of boundaries / National Park / Sanctuary shall be made by the State Govt. except on recommendation of the National Board for Wildlife (NBWL)".

The Biological Diversity Act, 2002

The Ministry of Environment and Forests has enacted the Biological Diversity Act, 2002 under the United Nations Convention on Biological Diversity signed at Rio de Janeiro on the 5th day of June, 1992 of which India is also a party. This Act is to "provide for the conservation of biological diversity, sustainable use of its components, and fair and equitable sharing of the benefits arising out of the sued of biological resources, knowledge and for matters connected therewith or incidental thereto."

Hazardous wastes (management and handling) amendment rules, 2003

These Rules classify used mineral oil as hazardous waste under the Hazardous Waste (Management & Handling) Rules, 2003 that requires proper handling and disposal. Organisation will seek authorisation for disposal of hazardous waste from concerned State Pollution Control Boards (SPCB) as and when required.

Ozone depleting substances (regulation and control) rules, 2000

MoEF vide its notification dt. 17th July, 2000 under the section of 6, 8 and 25 of the Environment (Protection) Act, 1986 has notified rules for regulation/ control of Ozone Depleting Substances (ODS) under Montreal Protocol. As per the notification certain control and regulation has been imposed on manufacturing, import, export, and use of these compounds.

Other environment – related laws

The Shore Nuisance (Bombay and Kolaba) Act, 1853

This is the earliest Act on the statue book concerning control of water pollution in India.

The Serais Act, 1867

The Act enjoined upon a keeper of Serai or an inn to keep a certain quality of water fit for consumption by "persons and animals use it" to the satisfaction of the District magistrate or his nominees. Failure for maintaining the standard entailed a liability of rupees twenty.

The North India Canal and Drainage Act, 1873

Certain offences have been listed under the Act contained in Section 70.

Obstruction in Fairways Act, 1881

Section 8 of the Act empowered the Central Government to make Rules to regulate or prohibit the throwing of rubbish in any fairway leading to a port causing or likely to give rise to a bank or shoal.

Indian Easements Act, 1882

Illustrations (f), (h) and (j) of Section 7 of the Act deal with pollution of waters.

The Indian Fisheries Act, 1897

The Indian Fisheries Act, 1897 contains seven sections. Section 5 of the Act prohibits destruction of fish by poisoning waters.

The Indian Forest Act, 1927

Section 26(i) of the Act makes it punishable if any person, who, in contravention of the rules made by the State Government, poisons water of a forest area. The State Government has been empowered under Section 32(f) to make rules relating to poisoning of water in forests.

The Damodar Valley Corporation Act, 1948

It states that the Corporation to make regulations with the previous sanction of the Central Government for preventing “pollution of water”.

The Factories Act, 1948

Factories Act, 1948 is social welfare legislation intend to secure health, safety and welfare of the workers employed in factories. However, some of the provisions of this Act are concerned with prevention of water pollution.

The Mines Act, 1952

Chapter V of the Act deals with provisions regarding health and Safety of the employees. Section 19(i) Government upon arrangement for the quality of water for drinking purposes.

The River Boards Act, 1956

The Act provides for the creation of River Boards for regulation and development of interstate rivers and river valleys. One of the functions of the Board is to advise to the Government concerned on “prevention of pollution of the waters of the interstate rivers”.

The Merchant Shipping Act, 1958

The International Convention for the Prevention of Pollution of the Sea by Oil, 1954 is the first treaty for the reduction of oil pollution of the sea. In order to give effect to this Convention, the Merchant Shipping Act regulates and controls the discharge of oil or oil mixture by an Indian tanker or ship within any of the prohibited zones or by a foreign tanker or other ship within the prohibited zone adjoining the territories of India. Further, there is a prohibition for discharging any oil anywhere at sea from an Indian ship.

WILDLIFE PROTECTION ACT

This Act provides for the protection of the country's wild animals, birds and plant species, in order to ensure environmental and ecological security. Among other things, the Act lays down restrictions on hunting many animal species. The Act was last amended in the year 2006. An Amendment bill was introduced in the Rajya Sabha in 2013 and referred to a Standing Committee, but it was withdrawn in 2015.

Constitutional Provisions for the Wildlife Act

Article 48A of the Constitution of India directs the State to protect and improve the environment and the safeguard wildlife and forests. This article was added to the Constitution by the 42nd Amendment in 1976.

Article 51A imposes certain fundamental duties for the people of India. One of them is to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.

History of wildlife protection legislation in India

- The first such law was passed by the British Indian Government in 1887 called the Wild Birds Protection Act, 1887. The law made the possession and sale of wild birds which were either killed or captured illegal.
- A second law was enacted in 1912 called the Wild Birds and Animals Protection Act. This was amended in 1935 when the Wild Birds and Animals Protection (Amendment) Act 1935 was passed.
- During the British Raj, wildlife protection was not accorded a priority. It was only in 1960 that the issue of protection of wildlife and the prevention of certain species from becoming extinct came into the fore.

List of Amending Acts

- The constitution (Forty-second Amendment) Act, 1976.
- The Wild Life (Protection) (Amendment) Act, 1982 (23 of 1982).
- The Wild Life (Protection) (Amendment) Act, 1986 (28 of 1986)
- The Wild Life (Protection) (Amendment) Act, 1991 (44 of 1991).
- The Wild Life (Protection) (Amendment) Act, 1993 (26 of 1993).
- The Wild Life (Protection) (Amendment) Act, 2002 (16 of 2003)
- The Wild Life (Protection) (Amendment) Act, 2006

Need for the Wildlife Protection Act

Wildlife is a part of 'forests' and this was a state subject until the Parliament passed this law in 1972. Reasons for a nationwide law in the domain of environment particularly wildlife includes the following:

1. India is a treasure-trove of varied flora and fauna. Many species were seeing a rapid decline in numbers. For instance, at the turn of the 20th century, India was home to close to 40000 tigers. By the seventies, this number drastically reduced to about 1820.
2. A drastic decrease in the flora and fauna can cause ecological imbalance, which affects many aspects of climate and the ecosystem.
3. The most recent Act passed during the British era in this regard was the Wild Birds and Animals Protection, 1935. This needed to be upgraded as the punishments awarded to poachers and traders of wildlife products were disproportionate to the huge financial benefits that accrue to them.
4. There were only five national parks in India prior to the enactment of this Act.

Salient Features of Wildlife Protection Act

This Act provides for the protection of a listed species of animals, birds and plants, and also for the establishment of a network of ecologically-important protected areas in the country.

- The Act provides for the formation of wildlife advisory boards, wildlife wardens, specifies their powers and duties, etc.
- It helped India become a party to the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES).
 - CITES is a multilateral treaty with the objective of protecting endangered animals and plants.
 - It is also known as the Washington Convention and was adopted as a result of a meeting of IUCN members.
- For the first time, a comprehensive list of the endangered wildlife of the country was prepared.
- The Act prohibited the hunting of endangered species.
- Scheduled animals are prohibited from being traded as per the Act's provisions.
- The Act provides for licenses for the sale, transfer and possession of some wildlife species
- It provides for the establishment of wildlife sanctuaries, national parks, etc.
 - Its provisions paved the way for the formation of the Central Zoo Authority. This is the central body responsible for the oversight of zoos in India. It was established in 1992.
 - The Act created six schedules which gave varying degrees of protection to classes of flora and fauna.
 - Schedule I and Schedule II (Part II) get absolute protection and offences under these schedules attract the maximum penalties.
 - The schedules also include species which may be hunted.
- The National Board for Wildlife was constituted as a statutory organisation under the provisions of this Act.
 - This is an advisory board that offers advice to the central government on issues of wildlife conservation in India.
 - It is also the apex body to review and approve all matters related to wildlife, projects of national parks, sanctuaries, etc.
 - The chief function of the Board is to promote the conservation and development of wildlife and forests.
 - It is chaired by the Prime Minister.
- The Act also provided for the establishment of the National Tiger Conservation Authority.
 - It is a statutory body of the Ministry of Environment, Forest and Climate Change with an overall supervisory and coordination part, performing capacities as given in the Act.
 - Its mandate is to strengthen tiger conservation in India.
 - It gives statutory authority to Project Tiger which was launched in 1973 and has put the endangered tiger on a guaranteed path of revival by protecting it from extinction.

Protected Areas under the Wildlife Protection Act

There are five types of protected areas as provided under the Act. They are described below.

1. Sanctuaries: "Sanctuary is a place of refuge where injured, abandoned and abused wildlife is allowed to live in peace in their natural environment without any human intervention."

- i. They are naturally-occurring areas where endangered species are protected from poaching, hunting and predation.
- ii. Here, animals are not bred for commercial exploitation.

- iii. The species are protected from any sort of disturbance.
- iv. Animals are not allowed to be captured or killed inside the sanctuaries.
- v. A wildlife sanctuary is declared by the State government by a Notification. Boundaries can be altered by a Resolution of the State Legislature.
- vi. Human activities such as timber harvesting, collecting minor forest products and private ownership rights are permitted as long as they do not interfere with the animals' well-being. Limited human activity is permitted.
- vii. They are open to the general public. But people are not allowed unescorted. There are restrictions as to who can enter and/or reside within the limits of the sanctuary. Only public servants (and his/her family), persons who own immovable property inside, etc. are allowed. People using the highways which pass through sanctuaries are also allowed inside.
- viii. Boundaries of sanctuaries are not generally fixed and defined.
- ix. Biologists and researchers are permitted inside so that they can study the area and its inhabitants.
- x. The Chief Wildlife Warden (who is the authority to control, manage and maintain all sanctuaries) may grant permission to persons for entry or residence in the sanctuary for the study of wildlife, scientific research, photography, the transaction of any lawful business with persons residing inside, and tourism.
- xi. Sanctuaries can be upgraded to the status of a 'National Park'.
- xii. **Examples:** Indian Wild Ass Sanctuary (Rann of Kutch, Gujarat); Vedanthangal Bird Sanctuary in Tamil Nadu (oldest bird sanctuary in India); Dandeli Wildlife Sanctuary (Karnataka).

2. National Parks: "National Parks are the areas that are set by the government to conserve the natural environment."

- i. A national park has more restrictions as compared to a wildlife sanctuary.
- ii. National parks can be declared by the State government by Notification. No alteration of the boundaries of a national park shall be made except on a resolution passed by the State Legislature.
- iii. The main objective of a national park is to protect the natural environment of the area and biodiversity conservation.
- iv. The landscape, fauna and flora are present in their natural state in national parks.
- v. Their boundaries are fixed and defined.
- vi. Here, no human activity is allowed.
- vii. Grazing of livestock and private tenurial rights are not permitted here.
- viii. Species mentioned in the Schedules of the Wildlife Act are not allowed to be hunted or captured.
- ix. No person shall destroy, remove or exploit any wildlife from a National Park or destroy or damage the habitat of any wild animal or deprive any wild animal of its habitat within a national park.
- x. They cannot be downgraded to the status of a 'sanctuary'.
- xi. **Examples:** Bandipur National Park in Karnataka; Hemis National Park in Jammu & Kashmir; Kaziranga National Park in Assam. See more on List of National Parks in India.

3. Conservation Reserves: The State government may declare an area (particularly those adjacent to sanctuaries or parks) as conservation reserves after consulting with local communities.

4. Community Reserves: The State government may declare any private or community land as a community reserve after consultation with the local community or an individual who has volunteered to conserve the wildlife.

5. Tiger Reserves: These areas are reserved for the protection and conservation of tigers in India. They are declared on the recommendations of the National Tiger Conservation Authority.

Schedules of the Wildlife Protection Act

There are six schedules provided in the Wildlife Protection Act. They are discussed in the table below.

<p>Schedule I</p> <ul style="list-style-type: none"> • This Schedule covers endangered species. • These species need rigorous protection and therefore, the harshest penalties for violation of the law are for species under this Schedule. • Species under this Schedule are prohibited to be hunted throughout India, except under threat to human life. • Absolute protection is accorded to species in this list. • Trade of these animals is prohibited. • Examples: tiger, blackbuck, Himalayan Brown Bear, Brow-Antlered Deer, Blue whale, Common Dolphin, Cheetah, Clouded Leopard, hornbills, Indian Gazelle, etc. 	<p>Schedule II</p> <ul style="list-style-type: none"> • Animals under this list are also accorded high protection. • Their trade is prohibited. • They cannot be hunted except under threat to human life. • Examples: Kohinoor (insect), Assamese Macaque, Bengal Hanuman langur, Large Indian Civet, Indian Fox, Larger Kashmir Flying Squirrel, Kashmir Fox, etc.
<p>Schedule III & IV</p> <ul style="list-style-type: none"> • This list is for species that are not endangered. • This includes protected species but the penalty for any violation is less compared to the first two schedules. • Examples: hyena, Himalayan rat, porcupine, flying fox, Malabar tree toad, etc. 	<p>Schedule V</p> <ul style="list-style-type: none"> • This schedule contains animals which can be hunted. • Examples: mice, rat, common crow, fruit bats, etc.
<p>Schedule VI</p> <ul style="list-style-type: none"> • This list contains plants that are forbidden from cultivation. • Examples: pitcher plant, blue vanda, red vanda, kuth, etc. 	

FOREST ACT

The word forest is derived from a Latin word “Foris” means outside. Forest is one of the most important natural resources of the earth. Approximately 1/3rd of the earth’s total area is covered by forests. In India forest cover Overall, 21.02% of the country's geographical area is now under green cover (as per 2009 data) The total forest cover in India is 6,90,899 km². Forest cover in India is defined as all lands, more than one hectare in area with a tree canopy density of more than 10%.

INDIAN FOREST ACT, 1927

The Indian Forest Act, 1927 was largely based on previous Indian Forest Acts implemented under the British. The first and most famous was the Indian Forest Act of 1878. The preamble to the Indian Forest Act, 1927 states that the Act seeks to consolidate the law relating to forests, the transit of forest produce and the duty that can be levied on timber and other forest produce. It also defines the procedure to be followed for declaring an area to be a Reserved Forest, a Protected Forest or a Village Forest. It defines what is a forest offence, what are the acts prohibited inside a Reserved Forest, and penalties leviable on violation of the provisions of the Act. It has 86 Sections and it has been divided into 13 chapters relating to

- i) Preliminary,
- ii) Reserved Forests,
- iii) Village Forests,
- iv) Protected Forests,
- v) The Control Over Forests and Lands not Being the Property of Government,
- vi) The Duty on Timber and Other Forest Produce,
- vii) The Control of Timber and Other Forest Produce in Transit,
- viii) The Collection of the Drift and Stranded Timber,
- ix) Penalties and Procedure,
- x) Cattle-Trespass,
- xi) Forest Officers,
- xii) Subsidiary Rules,
- xiii) Miscellaneous.

In the Indian Forest Act, 1927, a striking feature is the absence of any definition of forest or forest land. The attempt of the Supreme Court to assign a meaning to the term ‘forest’ as per the dictionary meaning has seen a spate of interventions in the Court due to its wide ambit. Forest as per the above definition, may include private, common pasture, or cultivable land. Section 2(4) of this Act provides definitions for the forest-produce and includes: the following whether found in, or brought from a forest, that is to say ●timber, charcoal, catechu, wood-oil, resin, natural varnish, bark, lac, mahua flowers, mahua seeds, kuth and myrabolams and the following when found in, or brought from, a forest or not, that is to say ●trees and leaves, flowers and fruits, and all other parts or produce not hereinbefore mentioned, of trees, ●plants not being trees (including grass, creepers, reeds and moss), and all parts or produce of such plants, ●wild animals and skins, tusks, horns, bones, silk, cocoons, honey and wax, and all other parts or produce of animals, and ● peat, surface soil, rock and minerals (including lime-stone, laterite, mineral oils, and all products of mines or quarries). Three types of forest identified are discussed as below

Reserve forest: The most restricted category is ‘Reserved Forest’. These forests may be constituted by the State Government on any forest land or waste land which is the property of the Government or on which the Government has proprietary rights. Where the land is not

forest land or waste land, as said above, any notification issued by the Government (under Section 20 of the IFA) declaring the land as reserve forest will be without jurisdiction and a Civil Court would be competent to quash such notification.

Protected forest: The State Government is empowered to constitute any land other than reserved forests as protected forests over which the Government has proprietary rights. Under 'Protected Forests', the Government retains the power to issue rules regarding the use of such forests, but in the absence of such rules, most practices are allowed. Among other powers, the State retains a power to reserve the specific tree species in the protected forests. This power has been used to establish State control over trees, whose timber, fruit or other non-wood products have revenue-raising potential

Village forest: A third classification is 'village forests' in which the State Government may assign to 'any village community the rights of Government to or over any land which has been constituted a reserved forest'. The State Government may also make rules for regulating the management of such forests. Little use has been made of this provision. The terms 'village forest' and 'forest village' are interchangeably used - however, they must be distinguished from one another. While 'village forest' is a legal category under the Indian Forest Act, 1927, 'forest village' is an administrative category. Although the latter is recognised by the Forest Department, the revenue benefits cannot accrue to such villages as they are not technically under the revenue departments.

Procedure for the settlement of rights Indian Forest Act, 1927

The Act establishes an elaborate procedure for the settlement of rights when a reserved forest is intended to be constituted. The settlement procedures require the Forest Officer called the Forest Settlement Officer (FSO) to consider the claims of the local inhabitants to certain usage rights, but leave ample discretion for him to relocate, revise or discontinue such practices. The State is first required to issue a notification declaring its intention to reserve a certain tract of land, and appoint an FSO to inquire into the existence of any alleged rights in favour local inhabitants. The inquiry by the FSO should not be confined to merely recording evidence produced by the claimants or ascertainable from the records of the Government. The FSO may call for an examination of any person who, he may think, has the knowledge of the facts, including the evidence of any person likely to be acquainted with the same (Section 6). No new rights in the notified land may arise after such a notification has been issued, and those claiming any pre-existing right have a period of at least three months to appear and assert such a right, and to make a case for compensation. Generally, rights which are not asserted during that period are extinguished, although there are provisions in extraordinary cases for later assertions until the final reservation order is published.

The Indian Forest Act anticipates three types of claims in forests proposed to be reserved.

Firstly, A forest dweller might lay claim to ownership of land.

Secondly, A claim may be asserted for rights to pasture or forest produce.

Finally, Special provisions apply to the practice of shifting cultivation, which the Forest Settlement Officer may prohibit without any compensation.

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, recognizes the rights of forest-dwelling Scheduled Tribes and other traditional forest dwellers over the forest areas inhabited by them and provides a framework for according the same.

Offences under the Forest Act

On account of their peculiarity, differ from those under the Indian Penal Code in the sense that as a result of the former, no one is personally aggrieved or affected by the injury inflicted upon the forests, and the vast expanse of it makes the detection of offences difficult. Forest Offence has been defined under Section 2(3) of the Indian Forest Act, 1927, to mean ‘an offence punishable under the Indian Forest Act, 1927 or rules made there under. Forest offences have been classified into two broad categories. Firstly, there are trivial offences covered under Section 68, where offences may be disposed of by compounding (compromising with money). Secondly, there are offences which do not fall under the above category and they entail higher punishment, which includes imprisonment, confiscation of private forest produce, tools, vehicle and cattle, etc., and in addition, the recovery of an amount equal to the damage done to the forest as compensation in case of offences relating to reserve forest (Section 26). A third category of forest offences relates to cattle trespass. Such offences are disposed of under the Cattle Trespass Act, 1871.

INDIAN FOREST (Conservation) ACT, 1980

The Parliament has enacted the Forest (Conservation) Act, 1980, to check further deforestation and conserve forests and to provide for matters connected therewith or ancillary or incidental thereto. This Act has five Sections which deal with conservation of forests. The Act was enacted with the twin objectives under Section 2 of restricting the use of forest land for non-forest purposes, and preventing the de-reservation of forests that have been reserved under the Indian Forest Act, 1927. However, in 1988 the Act was further amended to include two new provisions under Section 2, where it sought to restrict leasing of forest land to private individuals, authority, corporations not owned by the Government, and to prevent clear felling of naturally grown trees. The Act empowers the Central Government to constitute a committee to advise the Government with a grant of approval under Section 2, as also on any other matter connected with the conservation of forest and referred to it by the Central Government. The Act provides for the punishment of imprisonment, extendable to fifteen days for the contravention of the provisions of the Act. The Act provides for punishment of offenders from the Government Departments, including Head of the Departments and authorities. However, these persons can escape criminal liabilities if they can prove that: 1. The offence was committed without their knowledge, 2. They had exercised all due diligence to prevent the committing of such offence.

ENVIRONMENTAL PROTECTION ACT

Environment Protection Act, 1986 is an Act of the Parliament of India. In the wake of the Bhopal Tragedy, the Government of India enacted the Environment Protection Act of 1986 under Article 253 of the Constitution. Passed in March 1986, it came into force on 19 November 1986. It has 26 sections and 4 chapters. The purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environment. They relate to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property. The Act is an “umbrella” legislation designed to provide a framework for central government coordination of the activities of various central and state authorities established under previous laws, such as the Water Act and the Air Act.

Sections

This act was enacted by the Parliament of India in 1986. As the introduction says, "An Act to provide for the protection and improvement of environment and for matters connected there

with: Where as the decisions were taken at the United Nations Conference on the Human Environment held at Stockholm in June, 1972, in which India participated, to take appropriate steps for the protection and improvement of human environment. Where as it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property". This was due to Bhopal Gas Tragedy which was considered as the worst industrial tragedy in India.

Sections

This act has four Chapters and 26 Sections.

Chapter 1 consists of Preliminary information such as Short Title, Extend, Date of Commencement and Definitions. The definitions are given in the second section of the Act.

1. (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 as the Central Government may, by notification in the Official Gazette, appoint and different areas.

2. In this Act, unless the context otherwise requires,- (a) "environment" includes water, air and land and the interrelationship which exists among and between water, air and land, and human beings, other living creature, plants micro organism and property; (b) "environment pollutant" means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be injurious to environment. (c) "environment pollution" means the presence in the environment of any environmental pollutant. (d) "handling" in relation to any substance, means the manufacture, the processing, 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 chemical or physicochemical properties or handling, is liable to cause harm to human beings, other living creature plants and micro-organism, property (f) "occupier" in relation to any factory or premise, means a person who has control over the affairs of the factory or the premises and includes, in relation to any substance, person in possession of the substance; (g) "prescribed" means prescribed by rules made under this Act.

Chapter 2 describes general powers of Central Government.

3. (1) Subject to the previous of this Act, the Central Government shall have 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 provision of subsection (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 Government, officer and other authorities- (a) Under this Act, or rules made there under: or (b) Under any other law for the time being in force which is reliable to the objects of this Act: (ii) Planning and extension of 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 : Provide that different standards for emission or discharge may be laid down under this clause from different sources having regard to quantity or composition of the emission or discharge of environmental pollutants from such sources: (v) restrictions of areas in which any industries, operations or process, or class of industries, operations or process shall not be carried out or shall be carried out subject to certain safeguard. (vi) laying down procedures 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, material and substance as you likely to cause environmental pollution. (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution.: (x) inspection of any premises, plants, equipment, machinery, manufacturing or other processes, materials or substances and giving by order, of such direction to such authorities officers and persons as it may consider necessary to take steps, for prevention, control and abatement of environmental pollution. (xi) establishment or recognition of environmental laboratories and institute to carry out functions entrusted to such environmental laboratories and institute under this Act; (xii) collection and dissemination of information in respect of matters relating to environmental pollution; (xiii) preparation of manual, codes or guide 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 provision of this Act (3) The Central Government may, if it consider it necessary or expedient so to do for the purposes of this Act, by the order, published in the official Gazette, constitute or authorities or authorities by such name 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 the section 5) of The Central Government under this Act and for taking measure with respect to such of the matter referred to 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 order as if such authority or authorities had been expedient by this Act to exercise those powers perform those functions of take such measures.

4. (1) Without prejudice to the previous of sub-section (3) of section 3, the Central Government may appoint officer with such directions as it think for the purpose of this Act may entrust to them such or the powers functions under this Act as it may deem fit. (2) The officers under subsection (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, constructed under sub-section (3) of section 3 or of any other authority or others. 5. Notwithstanding any thing contained in any other law but subject to the provisions of this Act, the Central Government may in exercise of its powers and performance of its functions under this Act issue directions in writing to any person officer or any such person, officer or authority shall be bound to comply with such direction. Explanation - For the avoidance of doubts it is hereby declared that the power to issue directions under the section includes the power to direct -- (a) the closer 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. (1) The Central Government may be notification in the official Gazette make rule in respect of all or any other matter referred to in section 3. (2) In particular and without prejudice to the generality of the for going power, such rule 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 the concentration of various environmental pollutants and safeguards for the handling of hazardous substances; (c) the procedures and safeguard for handling hazardous substances; (d) the prohibition and restriction on the handling of hazardous substance in different areas; (e) the prohibition and restrictions on the location of industries and the carrying on of the process and operations in different areas (f) the procedures and safeguard for the prevention of accidents which may cause environmental pollution and for providing for re-medical measures for such accidents.

Chapter 3 gives the Central Government the power to take action to protect the environment.

7. 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.

8. No person shall handle or cause to be handled any hazardous substance expert in accordance with such procedure and after complying with such safeguards may be prescribed.

9. (1) Where the discharge of any environmental pollutant is 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 person in the charge of the place at which such discharge occur or 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 call upon, to render all assistance, to such authorities or agencies as may be prescribed. (2) On receipt of information with respect to 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 subsection (1) shall, as elate as practicable, cause such remedial meanness 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 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 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. (1) subject to provision 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 consider 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 compiled with; (c) for the purpose of examining and testing any equipment, industrial plan, record, register, document or any other material object or for conducting a search of any building in witch 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 committed and for seizing any such equipment, industrial plant record, register, document or other material object if he has reason to believe that it under this Act or rules made there under or that such seizure is necessary to prevent or migrate environmental pollution. (2) Every person carrying on any industrial 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 to do so without any reasonable cause or excuse, he shall guilty of an offence under this Act. (3) If any person will fully delays or obstructs any person empowered by the Central Government under the sub-section (1) in the performance of this functions, he shall be guilty of an offence under this Act. (4) The provision of the code of Criminal Procedure, 1973, or, in relation to State of Jammu and Kashmir, or any area in which that Code is not in force the provision of any corresponding law in force in the State of area shall so far as may be apply to any search for seizure under this section as they apply to any search or seizure made under the authority of warrant issued under section 94 of the said Code or, as the case may be, under the corresponding provision of the said law.

11. (1) The Central Government or any officer empowered by it in this be half, 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 prescribed. (2) The result of any analysis of sample taken under sub-section (1) shall not be admissible in evidence in any legal proceeding unless the provision of sub-section (3) and (4) are complied with (3) Subject to the provision 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 (b) in the presence of the occupier or his agent or person collect sample for analysis. (c) cause the sample to be placed in the 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 containers to the laboratory established or recognised by The Central Government under section

12. (4) When sample is taken for analysis under sub-section (1) and the person taking sample serves on the occupier or his agent or his person will notice under clause (a) of sub-section (b) then (a) in the case where the occupier his agent or person will be fully absent himself the person taking sample shall collect the sample for analysis to be placed in a container or containers shall be marked and sealed and shall also be signed by the person taking the sample, and (b) in the case where the occupier or his agent or person present at time of taking the sample refuses to sign the mark and sealed container or containers of the sample as required under clause (c) of 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 the analysis to the laboratory established or recognised under the section 12 and such person shall inform The Central Government appointed or recognised under the section 13 writing about 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. (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 laboratory under this Act. (2) The Central Government may by notification in the Official Gazette, make rule specifying (a) the function 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 and 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. The Central Government may by notification in the official Gazette, appoint or recognise, such persons as it thinks fit and having pose of analysis of samples of air, water soil or other substance sent for analysis to any environmental laboratory established or recognised under the sub-section (1) of section 12. 14. Any document purporting a report signed by a Government analyst may be used as a evidence of the facts stated therein any proceeding under this Act. 15. (1) Whoever fails to comply with or contravenes or directions issued provision of this Act, or the rules made or order or decisions issued there under, shall, in respect of each 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 the case of 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 the term which may extend to seven years. 16. (1) Where any offence under this Act has been committed by a company, every person who at the time 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 company shall be deemed to guilty of the offence and shall be liable to be proceeded against and punished accordingly; Provided that nothing

contained in this subsection shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence. (2) Notwithstanding anything contained in this sub-section (1) where an offence under this Act has been committed by company, such director, manager secretary or other officer of the company, such director, manager secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Explanation.- For the purpose of this section,- (a) "company" means any body corporate and includes a firm and other association of individuals; (b) "director" in the relation to a firm, means a partner in the firm. 17. (1) Where an offence under this Act has been committed by any Department of Government the Head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly: Provided that nothing contained in this section shall render such Head of the Department liable to any punishment if he proves that the offence was committed without his knowledge or that he exercise 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 offence has been committed with the consent or convenience of, or is attributable to any neglect on the part of any officer other than Head of Department, such officer shall also be deemed to be guilty of that offence and shall be liable

Chapter 4 allows government to appoint officers to achieve these objectives.

It also gives the government the power to give direction to closure, prohibition or regulation of industry, pollution. The act has provisions for penalties for contravention of the provisions of the act and rules, orders and directions. It also gives detail if the offence is done by a company or government department. It says for such offence the in-charge and head of department respectively would be liable for punishment.

NATIONAL ENVIRONMENTAL TRIBUNAL ACT

National Green Tribunal Act, 2010 is an Act of the Parliament of India which enables creation of a special tribunal to handle the expeditious disposal of the cases pertaining to environmental issues. It draws inspiration from the India's constitutional provision of (Constitution of India/Part III) Article 21 Protection of life and personal liberty, which assures the citizens of India the right to a healthy environment. Delhi Pollution Control Committee (DPCC) is a department to control pollution in Delhi.

Definition

The legislature Act of Parliament defines the National Green Tribunal Act, 2010 as follows: An Act to provide for the establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, but shall be guided by principles of natural justice. The tribunal is mandated to make and endeavour for disposal of applications or appeals finally within 6 months of filing of the same. Initially, the NGT is proposed to be set up at five places of sittings and will follow circuit procedure for making itself more accessible;

New Delhi is the Principal Place of Sitting of the Tribunal and Bhopal, Pune, Kolkata and Chennai shall be the other place of sitting of the Tribunal.

Origin

During the summit of United Nations Conference on Environment and Development in June 1992, India vowed the participating states to provide judicial and administrative remedies to the victims of the pollutants and other environmental damage. There lie many reasons behind the setting up of this tribunal. After India's move with Carbon credits, such tribunal may play a vital role in ensuring the control of emissions and maintaining the desired levels. This is the first body of its kind that is required by its parent statute to apply the "polluter pays" principle and the principle of sustainable development. This court can rightly be called 'special' because India is the third country following Australia and New Zealand to have such a system. Delhi Pollution Control Committee (DPCC) works under the act of (NGT).

Structure

The Principal Bench of the NGT is in New Delhi. It has regional benches in Pune (West), Bhopal (Central), Chennai (South) and Kolkata (East). Each Bench has a specified geographical jurisdiction in a region. Further, mechanism for circuit benches is also available. For example, the Southern Zone bench, which is based in Chennai, can decide to have sittings in other places like Bangalore or Hyderabad. The Chairperson of the NGT is a retired Judge of the Supreme Court, head quartered in New Delhi. On 18 October 2010, Justice Lokeshwar Singh Panta became its first Chairman. Retired justice Adarsh Kumar Goel is the incumbent chairman. Other Judicial members are retired Judges of High Courts. Each bench of the NGT will comprise at least one Judicial Member and one Expert Member. Expert members should have a professional qualification and a minimum of 15 years experience in the field of environment/forest conservation and related subjects.

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15. Relief, compensation and restitution
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