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INTRODUCTORY

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1.1 *The Act.*

The Environment (Protection) Act, 1986 (Central Act 29 of 1986) is the most comprehensive Act on the Indian statute book relating to environment not only because of its very wide definition of "environment", but also because of the sweeping coverage of its substantive provisions, particularly Chapter 2, dealing with general powers of the Central Government (sections 3 to 6) and the stringent provisions regarding penalties for various offences (sections 15 to 17). The declared objective of the Act, as enunciated in the long title, is to "provide for the protection and improvement of environment and for matters connected therewith". The Act does not repeal any of the earlier laws regarding pollution of the environment and allied matters. Nor does it make a specific mention of the various Boards or other Authorities constituted under other laws. Rather, it envisages the creation (if necessary) of fresh Authorities.

The Act received the assent of the President on the 23rd May, 1986 and was published in the Gazette of India in Part-II, Section 1 extraordinary, serial No. 34 dated 26th May, 1986. The Act came into force on the 19th November, 1986, that being the date notified for its commencement in terms of section 1(3) of the Act. The Act extends to the whole of India. Its international background is dealt with, in the next paragraph.

1.2 *International background.*

It is necessary, for various purposes, to refer to the background of the Act, which is evident from the Preamble, reading as under:

"WHEREAS 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;

AND WHEREAS 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."

Incidentally, it is worth pointing out that the Preamble does not make a specific mention of "micro organisms", though they do find a mention in section 2(a) and section 2(e), which define the expressions "environment" and "hazardous substance", respectively.

1.3. *Constitutional implications.*

The fact that the Environment Protection Act was intended to implement¹ the decisions taken at the Stockholm Conference in which India participated in June, 1972, is not of mere historical importance. It has great constitutional significance, as it overrides the normal distribution of legislative powers between the Union and the States. In the scheme of the Indian Constitution, legislation implementing a decision taken at an international conference occupies a special position. Such legislation can cover any subject, including even one specifically mentioned in the State List. Under article 253 of the Constitution, Parliament has the power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body. This provision begins with the words "Notwithstanding anything in the foregoing provisions of this Chapter". The effect of these words is that the normal distribution of legislative power between the Union and the States does not operate to restrict the power of Parliament to make laws which fall under article 253.² This position is reinforced by the Union List, entries 13 and 14, which read as under: —

- "13. Participation in international conferences, associations and other bodies and implementing of decisions made thereat.
- 14. Entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries."

The words "protection and improvement of the environment", occurring in the Preamble to the Environment (Protection) Act, 1986, are reminiscent of the wording of article 48A and article 51A of the Constitution. Article 48A, forming part of Part IV (Directive Principles of State Policy) directs

1 Paragraph 1.2, *supra*

2 *Maganbhai v. Union of India*, A.I.R. 1969 S.C. 785

the State to endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Article 51A(g) imposes on every citizen a fundamental duty to protect and improve the natural environment, including forests, lakes, rivers and wild life and to have compassion for living creatures. The Preamble, article 48A and article 51A(g) have been often referred to in judicial decisions relating to environmental controversies, both by the Supreme Court,¹⁻³ and by the High Courts.⁴⁻⁵

1.4 *Scheme of the Act*

The Environment (Protection) Act, 1986 extends over 26 sections. Section 1 gives the short title, extent and commencement of the Act. Section 2 contains the definitions, almost each of the definitions being of practical importance. The basic definitions are, of course, those of the expressions "environment", "environmental pollutant", "handling" and "hazardous substance". These expressions are important, because they are found frequently recurring in the substantive provisions of the Act, or represent the nuclear concepts underlying the Act.

Several important powers have been conferred on the Central Government by sections 3 to 6, which constitute Chapter 2 of the Act. There is, in the first place, section 3, which confers on the Central Government power to take measures for protecting the environment and improving its quality. This power is without prejudice to the power given by section 3(3), to the Central Government, to constitute appropriate authorities for the purpose of exercising and performing the powers of the Central Government. Such an authority can, if so authorised by the Central Government under section 4(2), exercise general control and direction even over the officers appointed under section 4. Section 5 of the Act gives a far-reaching power to the Central Government, "in the exercise of its powers and performance of its functions under this Act", to issue written directions to any person, officer or authority. This power, although it is declared to be subject to the provisions of the Act, can be exercised "notwithstanding anything contained in any other law". The power to issue "directions" under section 5

1 *M.C. Mehta v. Union of India*, A.I.R. 1988 S.C. 1037, 1038

2 *Rural Litigation and Entitlement Kendra v. State of U.P.*, A.I.R. 1988 S.C. 2187, 2195.

3 *Sachidananda Pandey v. State of West Bengal*, A.I.R. 1987 S.C. 1109, 1114, 1115.

4 *Kinkari Devi v. State of H.P.*, A.I.R. 1988 H.P. 4, 8.

5 *T. Damodar Rao v. Special Officer*, A.I.R. 1987 A.P. 171, 181.

can itself be delegated, by a gazetted order of the Central Government, to the authority or authorities constituted by the Central Government under section 3(3).

Then, there is the power of the Central Government, under section 6, to make rules on or any of the matters referred to in section 3; and this power is supplemented by section 25 of the Act, giving power to the Central Government to make rules on specified matters. All rules are, however, to be laid before the Parliament, as required by section 26.

Certain other substantive provisions of the Act, as also provisions relating to ancillary matters, are to be found in Chapter 3, comprising sections 7 to 17 of the Act. The main topics dealt with in this Chapter are the following: –

- Section 7 Persons carrying on industry, operation, etc. not to allow emission or discharge of environmental pollutants in excess of the prescribed standards.
- Section 8 Persons handling hazardous substances to comply with procedural safeguards.
- Section 9 Furnishing of information to authorities and agencies, in certain cases.
- Section 10 Power of entry and inspection.
- Section 11 Power to take samples and procedure to be followed in connection therewith.
- Section 12 Environmental laboratories.
- Section 13 Government analysts.
- Section 14 Reports of Government analysts.
- Section 15 Penalty for contravention of the provisions of the Act and Rules, Orders and directions.
- Section 16 Offences by companies.
- Section 17 Offences by Government Departments.

Chapter 4 of the Act, comprising sections 18 to 26, contains miscellaneous provisions. Some of these are of the usual character. But particular mention must be made of a few sections. Thus, section 19 deals with the cognizance of offences. Section 23 provides for the power of the Central Government to delegate certain powers to an officer, State Government or other authority. Section 24(1) gives overriding effect to the provisions of the Environment (Protection) Act, 1986 and the rules or orders made under it,

notwithstanding anything inconsistent therewith contained in any enactment other than this Act. This is, however, subject to section 24(2), dealing with double criminality. Section 25 deals with the general rule-making power of the Central Government. Section 26 requires that the rules must be laid before Parliament.