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DEFINITIONS : SECTION2

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2.1 *Introductory.*

Section 2 of the Environment (Protection) Act, 1986 contains seven definitions in clauses (a) to (g). Of these definitions, the most important is "environment", defined in section 2(a). It is this definition which forms a part of the two other definitions of "environmental pollutant" defined in clause (b) and "environmental pollution" defined in clause (c). Another important group of definitions is that constituted by "handling", defined in clause (d) and "hazardous substance" defined in clause (e). Incidentally, in the definition of "hazardous substance" also, the word "environment" occurs, which shows the importance of the concept of "environment".

The definition of "occupier" in clause (f) has a relation to factory or premises and has also relation to "any substance". It may be recalled, that "substance" is important, as constituting a component of the definition of "hazardous substance". Finally, there is a formal definition of the expression "prescribed" in clause (g).

2.2 *Section 2(a): environment*

In order to understand the significance of the definition of "environment", it is necessary to bear in mind the text of three definitions, quoted below: —

- (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 substances 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."

2.3 *An inclusive definition*

Two features of the definition of "environment" need to be pointed out. In the first place, the definition is an inclusive one and therefore does not necessarily exhaust the entire universe of what is covered by the word "environment". It is well settled that where a word is defined to include certain things, the definition is not restrictive, but is *prima facie* extensive. In any case, it does not necessarily exhaust the whole meaning or ambit of the expression "purporting to be defined".¹

As was observed² by Mr. Justice Gajendragadkar, while dealing with the definition of "industry" in the Industrial Disputes Act, 1947 – an inclusive definition – words used in an inclusive definition denote extension and cannot, in any sense, be treated as restrictive. In exceptional cases, the position may be different and "include" may, for special reasons, be construed as "means".³

2.4 *Implementation of U.N. Decision*

Another important point to be noted is, that as stated in the preamble to the Environment (Protection) Act, 1986, the declared object of the Act is to implement the decisions taken at the U.N. Conference on the Human Environment held at Stockholm in June, 1972 "in so far as they (that is to say, those decisions) relate to the protection and improvement of environment and the prevention of hazard to human beings, other living creatures, plants and property". Therefore, in a conceivable case, where there may be some ambiguity, it is likely that the courts will take assistance from the meaning attributed in general practice throughout the world to such expressions. On the one hand, the meaning is clear, then the treaty (or international decision) may not be resorted to.⁴ On the other hand, if there is ambiguity in the internal statute, the treaty may be referred to by the courts, to resolve the ambiguity.⁵ This aspect is of considerable practical importance because,

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- 1 *State of Bombay v. Hospital Mazdoor Sabha*, A.I.R. 1960 S.C. 610, 614; *Ardeshir H. Bhiwandiwala v. State of Bombay*, A.I.R. 1962 S.C. 29, 30; *Sanu Ram v. Labh Singh*, A.I.R. 1965 S.C.314, 316; *C.I.T. v. Taj Mahal Hotel, Secunderabad*, A.I.R. 1972 S.C. 168, 170; *Inland Revenue Commissioner v. Joinder*, (1975) 3 All E.R. 1050, 1061 (H.L.).
 - 2 *State of Bombay v. Hospital Mazdoor Sabha*, A.I.R. 1960 S.C. 610, 614.
 - 3 *South Gujarat Roofing Tile Manufacturers Association v. State of Gujarat*, A.I.R. 1977 S.C. 90, 93, 94.
 - 4 *V.O.Tractoroexport Moscow v. Tarapore & Co.*, A.I.R. 1971 S.C. 1, 9.
 - 5 *Saloman v. Commr. of Customs & Excise*, (1966) 3 All E.R. 871, 875 (C.A.); *Benin v. Whimster*, (1975) 3 All E.R. 706, 712 (C.A)

in the course of time, there are bound to arise controversies, discussions and conclusions which will throw light on what is meant by "environment" as envisaged by the international decision taken in June 1972.

2.5. Definition of "environment" analysed

With these preliminary observations, one can proceed to analyse the definition of "environment" in section 2(a). The definition, really speaking, gives us two propositions: —

- (a) The expression "environment" includes water, air and land. That is the first proposition.
- (b) Further, the expression includes the interrelationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organisms and property. That is the second proposition.

The first part of the definition looks apparently simple, but one must remember that it uses the crucial expression "water", "air" and "land", and each of these three expressions can have a very wide coverage. For example "water" may not be confined to waters running in defined channels, but may cover water running in non — defined channels. It will not be confined to inland waterways, but will cover such extra-territorial waters as are within the legislative jurisdiction of Parliament. The expression will, presumably, cover underground water also. Again, the expression "air" can conceivably take on a wide meaning so as to cover many layers of the atmosphere. Finally, the expression "land" is also an elastic one, as is evident, *inter alia*, from the meaning given to that expression (for example), in the various legislative entries in the Constitution.

2.6 Section 2(a): the aspect of inter-relationship

The second part of the definition of "environment" which speaks of the "inter-relationship" existing among and between the named elements, is much more comprehensive than may appear at the first sight. The inter-relationship included by this part is described by existing "among and between", eight elements, enumerated therein. These cover, on the one hand, natural resources (water, air and lands and also plants). But they also cover man-made articles (property). So far as the *animate* world is concerned, almost the whole of it is exhausted by the mention of human beings, other living creatures, and micro-organisms. What is more important to note is, that the inter-relationship is not confined only to two elements standing in immediate juxtaposition to each other. Any element enumerated amongst

the eight, if it has an "inter-relationship" with any other element so enumerated, would be covered in regard to the inter relationship, within the definition of "environment". For example, while the relationship between water and air, or the relationship between air and land, or the relationship between land and human beings, will be covered because these elements stand in juxtaposition to each other in the definition, the relationship between water and human beings, or air and non-human living creatures or land and plants, or plants and micro-organisms or human beings and property (in the physical sense) is not left out, even though, in the definition of "environment", these elements do not stand in immediate juxtaposition to each other, but are textually removed from each other. Of course, it is not intended at this place to work out all the permutations and combinations resulting from the connection between one or the other eight enumerated elements, since that would require a regular mathematical exercise.

2.7 *Importance of the definition of environment*

In order to appreciate the importance of the definition of environment, it may be desirable to mention at least two important aspects. In the first place, this expression occurs as a part of the definitions of "environmental pollutant" and "environmental pollution", — which are themselves of considerable importance. Secondly, the word "environment" occurs by itself in some of the important substantive provisions of the Act. As examples of such provisions, one can mention the following: —

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| Section 3(1) | Power of the Central Government to take all such measures (<i>inter alia</i>), as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment. |
| Section 3(2)(iii) | Power of the Central Government to take all such measures as it deems necessary or expedient for laying down standards for the quality of environment in its various aspects. |
| Section 3(2)(xi) | Power of the Central Government in regard to the establishment or recognition of environmental laboratories and institutes. |

Section 3(2)(xib) Power of the Central Government to take measures regarding "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".

2.8 Section 2(b): "environmental pollutant"

In section 2(b), the Act defines "environmental pollutant" as meaning any solid, liquid or gaseous substance "present in such concentration as may be, or tend to be, injurious to environment". The presence contemplated by this definition will, of course, be the presence in the environment — a point dealt with explicitly in the analogous definition of "environmental pollution" in section 2(c). The definition in section 2(b) is confined to "substances", and, presumably, the legislature did not consider it necessary to also mention "preparations", which are mentioned in section 2(e) which defines "hazardous substance".

The expression "environmental pollutant" is of significance for two reasons. In the first place, it occurs in the equally important definition of "environmental pollution" in section 2(c). Secondly, it also occurs in some of the important substantive provisions of the Act. As examples of such provisions, the following may be mentioned:—

Section 3(2)(iv) Power of the Central Government to lay down standards for emission or discharge of environmental pollutants "from various sources whatsoever". By virtue of the proviso, it is made clear 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".

Section 6(2)(b) Power of the Central Government to make rules in respect of the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas.

Section 7 Prohibition against the discharge or emission etc. of any environmental pollutant (in excess of the

prescribed standard) by any person carrying out any industry, process or operation.

Section 9(1) Furnishing of information where the discharge of any environmental pollutant in excess of the prescribed standard occurs or is apprehended to occur due to any accident or other unforeseen act or event. (Under section 7(2), the authorities concerned have to take remedial measures).

Section 25(2)(a), Rules on certain matters concerning environmental
(c) pollutants.

2.9 Section 2(c): "environmental pollution"

Section 2(c) defines "environmental pollution" as meaning the presence in the environment of any environmental pollutant. The definition, of course, hinges upon the scope of the two crucial words used in the definition, namely, "environment" and "environmental pollutant", both of which have been already discussed above. As regards the importance of the definition of "environmental pollution" itself, it is enough to cite the following examples of the important substantive provisions of the Act, wherein the expression occurs: —

Section 3(1) Power of the Central Government, *inter alia*, to take measures for preventing, controlling and abating environmental pollution.

Section 3(2)(ii) planning and execution of a nationwide programme for the prevention, control and abatement of environmental pollution.

Section 3(2)(vi) Power of the Central Government to lay down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents.

Section 3(2)(viii), Power of the Central Government to take several
(ix), (x), (xii), other measures concerning environmental pollu-
(xiii) tion, such as, examination of manufacturing proces-
ses etc., investigations and research, inspection of
premises and plant etc. and giving of directions for

- the prevention, control and abatement of environmental pollution, collection and dissemination of information and preparation of manuals and
- Section 6(2)(f) Power of the Central Government to lay down rules for the prevention of accidents which may cause environmental pollution and for providing remedial measures for such accidents.
- Section 9(2) Duty of the concerned authorities or agencies, who receive information of environmental accidents, to take such remedial measures as are necessary to prevent environmental pollution.

2.10 Section 2(d): "handling"

In section 2(d) of the Environment (Protection) Act, 1986, the expression "handling" is defined, in relation to any substance, as meaning the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like, of such substance.

Although this may appear to be a routine definition, its importance lies in the fact that the expression "handling" occurs in several other provisions of the Act, which are of very great practical importance. In particular, the definition of "hazardous substance" in section 2(e) provides that that expression means, *inter alia*, any substance or preparation which, by reason of its handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment. As regards the substantive provisions of the Act which contain the expression "handling", it is sufficient, by way of example, to refer to the following: –

- Section 3(2)(vii) Power of the Central Government to lay down procedures and safeguards for the handling of hazardous substances.
- Section 6(2)(c) Power of the Central Government to make rules regarding the procedures and safeguards for the handling of hazardous substances.
- Section 6(2)(d) Power of the Central Government to make rules as to the prohibition and restrictions on the handling of hazardous substances in different areas.

- Section 8 Under section 8, no person shall handle or cause to be handled any hazardous substance except in accordance with the prescribed procedure and after complying with the prescribed safeguards.
- Section 10(2) Every person carrying on any industry etc. or handling any hazardous substance must render all assistance to the empowered person for carrying out the functions of that person regarding entry and inspection.
- Section 25(2)(b) Power of the Central Government to make rules regarding the procedure and the safeguards for handling or causing to be handled hazardous substances with reference to section 8.

2.11 *Meaning of "to handle"*

Incidentally, it is worth pointing out that while "handling" is defined in section 2(d), the verb "handle" is not separately defined. Presumably, the verb will also be construed in harmony with the statutory definition of the verbal noun "handling". It may be mentioned that while the marginal note to section 8 speaks of persons handling hazardous substances, the actual text of section 8 reads as under: –

"8. 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."

2.12 *Comparison with Public Liability Insurance Act*

The definition of "handling" in the Public Liability Insurance Act closely follows that in section 2(d), Environment (Protection) Act, 1986, with two differences.¹

(i) In the Environment (Protection) Act, the definition is expressed in relation to "any substance". In the Public Liability Insurance Act, the definition is expressed in relation to "any hazardous substance".

(ii) In the Environment Protection Act, "transportation" is mentioned *simpliciter*. In the Public Liability Insurance Act, this part of the definition

¹ See P.M. Bakshi, *Public Liability Insurance Act (I.L.I.)* (1992), page 13, para 2.9.

is confined to "transportation by vehicle". In the Public Liability Insurance Act, section 2(j), "vehicle" is defined as meaning any mode of surface transport other than railways. This would mean, *inter alia*, that so far as the Public Liability Insurance Act is concerned, at least air transport and rail transport are outside the scope of the Act and "no fault" liability under section 3 or duty to insure under section 4 would not apply to such transport under the Public Liability Insurance Act.

2.13 Section 2(e): "hazardous substance"

Section 2(e) contains a very important definition of the expression "hazardous substance". This expression occurs at several places in conjunction with the expression "handling", which has been already dealt with. In the scheme of the Act, the expression "hazardous substance" appears to occupy a central place. In fact in so far as the Act gives importance to this expression and uses it in various substantive sections, it seems to supplement the aspect of environmental pollution. The definition of "hazardous substance" provides that it 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".

The first thing to be noted is, that this definition covers not only the substance, but also its preparation — whatever that may indicate. In some of the other definitions, such as those contained in section 2(b), 2(d) and 2(f), which define "environmental pollutant", "handling" and "occupier", as also in certain other provisions, such as section 3(2)(viii), section 10(2), section 11(1), section 25(2)(d) and section 25(2)(f), the expression "substance" is not coupled with the expression "preparation".

2.14 Section 2(e): "hazardous substance" analysed

The definition of "hazardous substance" in section 2(e) needs to be analysed, not as a mere theoretical exercise, but in order to understand its scope and also in order to enable one to appreciate the possibility of certain problems arising from the manner in which the definition has been formulated. The first point to be noted is, that the definition speaks of a substance or preparation which, by reason of its chemical or physico-chemical properties or handling, is liable to cause the specified type of harm. Here, the emphasis is on the properties of the substance or preparation etc. or, in the alternative, on its handling. The second point which arises from the latter part of the definition of "hazardous substance" is that the substance or preparation to be liable to cause harm to human beings, other living crea-

tures, plants, micro-organism, properties or the environment. This part of the definition is likely to create certain problems, both of form and of substance, as dealt with in the next paragraph.

2.15 *The scope of "hazardous substance" defined in section 2(e)*

The type of harm envisaged by defining "hazardous substance" in section 2(e) is specified as "harm to human beings, other living creatures, plants, micro-organisms, property or the environment". It is worth pointing out that this part itself consists of two sub-divisions: –

- (i) It covers harm to human beings, other living creatures, plants, micro-organisms and property.
- (ii) It also covers harm to the environment.

The first problem that arises out of this part of the definition of "hazardous substance" is one of form. The expression "environment" as defined in section 2(a) includes, *inter alia*, at least the inter-relationship existing among and between "human beings, other living creatures, plants, micro-organisms and property". It is not clear why, in the definition of hazardous substance, human beings etc. were specifically mentioned when, at least to the extent mentioned above, they form part of the environment. Of course, it can be argued that harm to human beings etc., apart from the harm to the inter-relationship amongst the elements enumerated in the definition of "environment", would not be covered by merely mentioning harm to the environment and therefore needed to be covered specifically.

However, if that be the intended interpretation of the words "harm to human beings, other living creatures, plants, micro-organisms, property", then there arises a question of substance. Such a harm (which is not harm to the environment), would not fall within the general scheme of the Environment (Protection) Act and presumably it would be outside the process of implementation of the international decisions taken in June, 1972. In that case, some legal difficulties may arise and there may be some constitutional problems also. The legal difficulty would arise because provisions of the Act relating to hazardous substances – such as, section 3(2)(vii), section 8 and so on – would go beyond the scope of "environment", if "hazardous substance" is interpreted in a wide manner to cover what may be called "non-environmental harm".

2.16 *Comparison with Public Liability Insurance Act.*

The etymology of the word "hazardous" is interesting. Originally, it had something to do with chance in gambling. The word came into English from the old French word "hazard", which itself was derived from a Spanish

word, meaning a chance in the game of dice. The Spanish word, in its turn, owed its origin to an Arabic word *Al-zār*, having the same meaning. Thus, the word seems to have travelled from the narrow world of games of chance to a much wider sphere of life.¹

2.17 *No scope for statutory instrument*

The Environment (Protection) Act does not seem to leave any scope for the definition of hazardous substance being dealt with by rules or other statutory instruments issued thereunder.² Although very vast powers of making delegated legislation are conferred by several sections of the Act, particularly sections 6, 8 and 25, the Act does not, in so many words, authorise the Government to add to, or amend, the definition of "hazardous substance" for the purpose of the parent Act. List of substances whose descriptions or quantities are given in various rules may be useful in ascertaining what is the official understanding on the subject. But these lists cannot have a binding effect on the interpretation of words and expressions used in the parent Act.³

2.18 *Section 2(f): "occupier"*

The Act defines "occupier", in relation to any factory or premises, as meaning "a person who has control over the affairs of the factory or the premises" and further provides that in relation to any substance, it "includes the person in possession of the substance". It is worth noting, that, by section 11(3), when the authorised officer takes samples of air, water, soil or other substance from any factory, premises or other place in the prescribed manner for analysis, then the person taking the sample, *inter alia*, has to serve on the occupier or his agent or person in charge of the place a statutory notice, in the prescribed form, and has to observe certain other formalities. Another point worth mentioning is that the definition of "occupier" does not refer to a "preparation", though the latter expression is referred to in section 2(e), which defines "hazardous substance".

1 See P.M. Bakshi, *Public Liability Insurance Act (I.L.I.)* (1992), page 14, para 2.10.

2 See *Id.* at 15, para 2.12.

3 Cf. *Hales v. Bolton Leathers Ltd.*, (1951) 1 All E.R. 643, 646, 651 (H.L.); *Halon v. Law Society*, (1980) 2 All E.R. 199, 219 (H.L.); *Jackson v. Hall*, (1980) 1 All E.R. 177 (H.L.); *J.K. Steel (India) Ltd. v. Union of India*, A.I.R. 1970 S.C. 1173, 1184, 1185, 1186.

It will also be noticed that in regard to a factory or premises, it is the *control* over the affairs of the factory etc. which matters. In contrast, in relation to a substance, it is the *possession* thereof, that matters.

2.19 Section 2(g): "Prescribed"

Section 2(g) contains the definition of "prescribed", as meaning prescribed by rules made under the Act. Reference to rules or to the expression "prescribed" occurs, *inter alia*, in section 3(2)(a), section 6(1), section 6(2), section 7, section 8, section 9(1), section 11(3)(a), section 12(2), section 15(1), section 20, section 24(1), section 25 and section 26.

