

## **CHAPTER 8**

### **PROSECUTIONS UNDER SPECIAL LAW : ENVIRONMENT PROTECTION ACT**

#### **8.1. Scope of the Act**

The Environment (Protection) Act, 1986 is a general measure for the protection of the environment and operates side by side with the legislation relating to prevention and control of air pollution and water pollution.

The preamble to the Act expressly states that the Act is intended to implement the decisions taken at the U. N. Conference on Human Environment held at Stockholm in 1972. The declared objective of the Act (see the long title) is to provide for the protection and improvement of (the) environment and for matters connected therewith. However, the Act does not repeal the other legislation on the environment.

#### **8.2. Scheme of the Act : definitions**

The Act extends over 26 sections. The definitions contained in section 2 are important of which the basic definitions are those of the expression "environment", "environmental pollutant", "handling" and "hazardous substances".

"Environment" is defined as including water, air and land and the inter-relationship with, among and between water, air and land and human beings, other living creatures, plants, micro-organisms and property. The expression "environmental pollutant" is defined as meaning the presence in the environment of any environmental pollutant.

The expression "environmental pollutant" is defined as meaning any solid, liquid or gaseous substances present in such concentration as may be, or tend to be, injurious to the environment. All these three are basic expressions.

Then there are two other important definitions, namely, those of the expressions "handling" and "hazardous substances". These expressions occur in two important sections of the Act, namely, sections 7 and 8, to be noted presently. 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-organisms, property or the environment". Thus, the hazard may arise either from the properties of the substance or from its handling. The type of harm which renders a substance or its handling "hazardous" is harm to the animate world (human beings etc.) or the inanimate world (property) or the environment in general - which itself, is widely defined in the Act. Taken literally, the definition may cover non-environmental harm, since it covers harm to property.

The expression "handling" is defined in relation to any substance, as meaning (any of) the following processes:-

- (i) manufacture,
- (ii) processing,
- (iii) treatment,
- (iv) package,
- (v) storage,
- (vi) transportation,
- (vii) use,
- (viii) collection,
- (ix) destruction,
- (x) conversion,
- (xi) offering for sale,
- (xii) transfer, or
- (xiii) the like.

It is worth noting that in the Public Liability Insurance Act, the definition of "handling" is expressed in relation to "hazardous substance". In the Environment Protection Act, the definition is expressed in relation to "any substance". Again, in the

Public Liability Insurance Act, “transportation” is confined to transportation by vehicle. In the Environment (Protection) Act, it is not so confined.

### **8.3. Scheme of the Act : powers of the Government**

By the Environment Protection Act, important powers are conferred by section 3 to 6. There is a general power to take measures for protecting the environment. Secondly, the Central Government can appoint appropriate authorities for exercising its powers. This authority can be authorised to exercise control and supervision over officers appointed by the Central Government. Thirdly, by section 5, the Central Government is authorised to give directions in writing to any person, officer or authority and this power can be exercised “notwithstanding anything contained in any other law”. Fourthly, by sections 6 and 25, extensive power is conferred on the Government to make rules.

### **8.4. Offences**

A number of penal provisions are contained in the Act. By section 15, contravention of the provisions of the Act or the rules made or orders or directions issued thereunder is punishable with imprisonment upto five years or fine upto rupees one lakh or both. Section 16 contains the usual provision relating to offences by companies. Section 17 of the Act contains a provision making the Heads of the Department criminally responsible, where an offence under the Act is committed by a Department of the Government. Exceptions are provided for certain cases.