

## INDIA'S LEGAL REGIME FOR THE PROTECTION AND PROMOTION OF ENVIRONMENT

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The Constitution of India by way of an amendment in 1976, created provisions for the protection and improvement of environment.<sup>1</sup> Thus, “[T]he State shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.”<sup>2</sup> Also, it became a fundamental duty of citizens “to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures.”<sup>3</sup>

Legislative activity in the field of environment was limited until 1970. There were a few central and some state legislation but they did not address the issue of environment comprehensively. The Factories Act, 1948 requires all factories to make effective arrangements for waste disposal.<sup>4</sup> The River Boards Act, 1956 establishes river boards to prevent pollution of inter-state rivers. The Atomic Energy Act, 1962 along with the Radiation Protection Rules, 1971 seek to regulate nuclear energy and radioactive substances in India. The Insecticides Act, 1968 establishes a Central Insecticide Board to advise the Centre and state governments.<sup>5</sup> The Insecticides Rules, 1971 prescribe the procedures for licensing, packaging, labeling and transporting of insecticides as well as workers’ safety standards.

Some states also took legislative measures for environmental protection. State of Orissa enacted the Orissa River Pollution Prevention Act, 1953 for prevention of river pollution. State of Maharashtra came up with the Maharashtra Prevention of Water Pollution Act, 1969 for prevention of pollution of not only rivers but watercourses, whether flowing or dry, inland water both natural and artificial and subterranean streams.

The Stockholm Declaration of 1972<sup>6</sup> surfaced the realities of environment degradation and highlighted the immediate need to address the issue of environment protection. Since then, several important environmental laws have been enacted in India. They include:

- The Wildlife (Protection) Act, 1972;<sup>7</sup>
- The Water (Prevention and Control of Pollution) Act, 1974;<sup>8</sup>

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<sup>1</sup> The 42nd amendment to the Constitution of India, 1976.

<sup>2</sup> The Constitution of India, Article 48 A.

<sup>3</sup> *Ibid.*, Article 51 A (g).

<sup>4</sup> In 1987, amendments were made to the Factories Act to introduce special provisions on hazardous industrial activities.

<sup>5</sup> This law empowers the government with emergency provisions that can be relied upon prohibit the sale, distribution and use of dangerous pesticides. The manufacture and distribution of insecticides is regulated through licensing. Any violation of the provisions of the Act attracts prosecution and penalties.

<sup>6</sup> Declaration of the United Nations Conference on the Human Environment, available at <http://www.unep.org/Documents.Multilingual/Default.asp?documentid=97&articleid=1503> (accessed October 15, 2013).

<sup>7</sup> The Wildlife (Protection) Act, 1972 (no. 53 of 1972), provides for the protection of wild animals, birds and plants.

<sup>8</sup> The Water (Prevention and Control of Pollution) Act, 1974 (no. 6 of 1974), provides for the prevention and control of water pollution, maintenance of wholesomeness of water, and establishes pollution control boards for prevention and control of water pollution.

- The Forest (Conservation) Act, 1980;<sup>9</sup>
- The Air (Prevention and Control of Pollution) Act, 1981;<sup>10</sup>
- The Environment (Protection) Act, 1986;<sup>11</sup>
- The Public Liability Insurance Act, 1991;<sup>12</sup>
- The National Environment Tribunals Act, 1995;<sup>13</sup>
- The National Environment Appellate Authority Act, 1997;<sup>14</sup>
- The Biological Diversity Act, 2002;<sup>15</sup> and
- The National Green Tribunal Act, 2010.<sup>16</sup>

This article briefly discusses some of the aforementioned legislations and some judicial pronouncements that have strengthened India's legal regime to protect and promote environment.

### **(i) The Environment (Protection) Act, 1986**

The Environment (Protection) Act, 1986<sup>17</sup> (hereinafter, EPA) was enacted “for the protection and improvement of environment” and to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in 1972. The Act is an “enabling” legislation that delegates extensive power to the executive to frame necessary rules and regulations.

#### Violations and Penalties under the Act

The Act explicitly states that the persons responsible for discharges of pollutants in excess of prescribed standards must prevent or mitigate the pollution and must report the discharge to governmental authorities.<sup>18</sup> For any contravention of the designated standards and prescribed limits, the Act provides for a prison term of upto 5 years or fine of upto Rs.100,000 or both and an additional fine of Rs.5000 per day for continued violation.<sup>19</sup> Further, if the

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<sup>9</sup> The Forest Conservation Act, 1980 (no. 69 of 1980), aims to check deforestation.

<sup>10</sup> The Air (Prevention and Control of Pollution) Act, 1981 (no. 14 of 1981), aims to prevent, control and abate air pollution.

<sup>11</sup> The Environment Protection Act, 1986 (no. 29 of 1986), provides a single focus for the protection and improvement of environment.

<sup>12</sup> The Public Liability Insurance Act, 1991 (no. 6 of 1991), provides for mandatory insurance for the purpose of immediate relief of the victims of accidents occurring while handling any hazardous substance.

<sup>13</sup> The National Environment Tribunals Act, 1995 (no. 27 of 1995), provides for strict liability for damages arising out of any accident occurring while handling any hazardous substance and for relief and compensation for damages to persons, property and environment.

<sup>14</sup> The National Environment Appellate Authority Act, 1997 (no. 22 of 1997), establishes the National Environment Appellate Authority (NEAA) that hears appeals with respect to restriction of areas in which any industries, operations or processes etc. shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986.

<sup>15</sup> The Biological Diversity Act, 2002 (no. 18 of 2003), provides for conservation of biological diversity, sustainable use of its components and fair and equitable sharing of the benefits arising out of the use of biological resources and knowledge.

<sup>16</sup> The National Green Tribunal Act, 2010 (no. 19 of 2010), provides 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.

<sup>17</sup> The EPA, *supra n.* 11.

<sup>18</sup> *Ibid.*, Section 9(1).

<sup>19</sup> *Ibid.* Section 15 (1).

contravention occurs for more than one year after the date of conviction an offender may be punished with imprisonment which may extend to 10 years.<sup>20</sup>

### Corporate Liability

Section 16 of EPA's provision on corporate liability states, "where any offence under this Act has been committed by a company, *every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company*, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly."<sup>21</sup> This liability can be avoided by the corporate official if he/she "proves that the offence was committed *without his knowledge* or that he *exercised all due diligence* to prevent the commission of such offence."<sup>22</sup>

If an "offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly."<sup>23</sup> Similarly, the heads of departments of government are also to be held liable.<sup>24</sup>

### Furnishing of Information under EPA

The Act allows the Central Government, to obtain any reports, returns, statistics, accounts and other information from any person, officer, State Government or other authority.<sup>25</sup> This, not being a mandatory requirement, the Environment (Protection) Rules, 1989 (hereinafter, EPR) require every polluter to file an annual environment statement containing the prescribed particulars (Rule 14).<sup>26</sup>

### DELEGATED LEGISLATION UNDER EPA

Various rules, including the Environment (Protection) Rules, 1986, have been framed under EPA. These rules can be broadly classified into four categories: pollution control, hazardous substance regulation, environment impact assessment and the protection of the coast and the other ecologically fragile areas.

#### **A. Pollution Control**

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<sup>20</sup> Ibid. Section 15 (2).

<sup>21</sup> Ibid., Section 16 (1).

<sup>22</sup> Ibid.

<sup>23</sup> Ibid., Section 16 (2).

<sup>24</sup> Ibid., Section 17.

<sup>25</sup> Ibid., Section 20.

<sup>26</sup> **Rule 14 reads: Submission of environmental Statement:**

Every person carrying on an industry, operation or process requiring consent under Section 25 of the Water (Prevention and Control of Pollution) Act, 1974 (6 of 1974) or under section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981) or both or authorization under the Hazardous Wastes (Management and Handling) Rules, 1989 issued under the Environment (Protection) Act, 1986 (29 of 1986) shall submit an environmental audit report for the financial year ending the 31st March in Form V to the concerned State Pollution Control Board on or before the thirtieth day of September every year, beginning 1993.

Section 7 of EPA prohibits the discharge or emission of environmental pollution in excess of the prescribed standards. The standards are laid down in the schedules appended to the EPR. These can be categorised into- source standards, product standards and ambient standards.<sup>27</sup>

**Schedule I** lays down industry specific standards for effluent discharge and emission in respect of 89 designated industries.<sup>28</sup> If the maximum limit provided by the schedule is exceeded by the industrial or other activity, it would amount environmental pollution calling for penalty. The standards of emission include temperature limit for discharge of condenser cooling water from thermal power plant, emission standards from brick kiln, pesticide industry, boilers, organic chemical manufacturing industry, dye and paint industry effluents, fertilizer industry effluents, noise standards for firecrackers etc. Every industrial unit must comply with the norms within one year of their publication (Rule 3(3) of EPR) or such shorter period that may be ordered by the pollution control board (Rule 3(4) of EPR). The Central government is also empowered to extend the time for compliance beyond one year in respect of any specific industry (Rule 3(4)).

Where the polluter is not covered by Schedule I, the unit must comply with *the general standards for discharge of environmental pollutants* prescribed in **Schedule VI**. The general standards (also referred to as the “minimum standards” since every industry is required to meet these at the very least) elaborate the prescribed limits for effluents, waste-water generation standards, local based standards, general emission standards (concentration based, equipment based, load/ mass based, for oil refineries) and noise standards for automobiles. It may be noted that the pollution boards have the power to specify stricter standards than those published in any industry, operation of process wherever it is necessary (Rules 3(2) and 3A).

For new motor vehicles, product standards are specified as emission limits (**Schedule IV** lays down the standards for emission of smoke, vapour etc from motor vehicles) and noise limits (Schedule VI). Air conditioners, refrigerators, air coolers, generators for domestic purposes, compactors (rollers), front loaders, concrete mixers, vibrators and saws etc. are also required to meet the prescribed noise levels (Schedule VI).

**Schedules III and VII** prescribe the *ambient air quality standards in respect of noise and national ambient air quality standards (NAAQS)* respectively. The Noise Pollution (Regulation and Control) Rules, 2000 also prescribe ambient air quality standards in respect of noise for industrial, commercial and residential areas as well as designated “silence zones”.

### **B. Hazardous Substance Regulation**

Various rules have been passed by the Central government in exercise of its powers under sections 6, 8 and 25<sup>29</sup> to regulate the hazardous wastes and toxic substances:

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<sup>27</sup> Source standards require the polluter to restrict the discharge and emission of pollutants at source, product standards restrict the pollution norms for new manufactured products such as cars and ambient standards act as a guide to the regulators on the environmental quality that should be maintained for healthy living.

<sup>28</sup> Rule 3 (2) provides that the Central Board or a State Board may specify more stringent standards from those provided in Schedule I to IV in respect of any industry, operation or process depending upon the quality of the recipient system and after recording reasons therefore in writing.

<sup>29</sup>Section 8 of EPA states that “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.” Section 6 of EPA empowers the Central government to make rules on various items including *the procedures and safeguards for the handling of hazardous substances and the prohibition and restrictions on the handling of hazardous substances in different areas*. Section 25 also confers the rule making power on the Central government.

1. Hazardous Wastes (Management and Handling) Rules, 1989
2. Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
3. Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro organisms, Genetically-engineered organisms or Cells, 1989
4. Chemical Accidents (Emergency, Planning, Preparedness and Response) Rules, 1996
5. Bio-Medical Waste (Management and Handling) Rules, 1998
6. Recycled Plastics Manufacture and User Rules, 1999
7. Municipal Solid Waste (Management and Handling) Rules, 2000
8. Batteries (Manufacture and Handling) Rules, 2001

**The Hazardous Wastes (Management and Handling) Rules, 1989** consist of 18 Rules and 4 Schedules. Hazardous Waste is defined as the wastes which are generated in the processes indicated in the Schedule. Schedule I provides a list of processes generating hazardous wastes which consists of 44 processes. Schedule II consists of a list of waste substances with concentration limits which are divided into 5 categories and Schedule III consists of the list of wastes to be applicable for imports and exports.

Rule 4 fixes the responsibility of the occupier and operator of the facility for proper collection, reception, treatment, storage and disposal of hazardous wastes without any adverse effect on the environment. Rule 4A describes the duties of the occupier and operator of a facility as follows: (a) contain contaminants and prevent accidents and limit their consequences on humans and the environment, and (b) provide persons working on the site with information, training and equipment necessary to ensure their safety. Rule 16 fixes the liability of the occupier for (i) the damage caused to the environment resulting from improper handling and disposal of hazardous wastes, and (ii) liable to reinstate or restore damaged or destroyed elements of the environment.

The rules have generated a “permit system” to regulate the handling and disposal of hazardous wastes. The control mechanism under these rules is the ‘proper authorization’ issued by the State Pollution Control Board (Rule 5) and the mandates of packaging and labelling of hazardous substances (Rule 7). In case of an accident, the occupier is under an obligation to report to the State Pollution Control Board about the accident immediately, furnishing complete details including the steps taken to prevent, contain, alleviate the effects of accident (Rule 10).

#### Transboundary Movement of Hazardous Wastes

Import and export of hazardous wastes is completely prohibited for dumping or disposal by the Rules. The only exception is when such waste is permitted to be imported only as raw material for recycling or reuse. This can be done *only after* procurement of a proper permit from the State Pollution Control Board and when the exporting country has informed and seek the permission from the Central government (which may be granted or refused). If the movement of hazardous wastes is done without the prior permission of the Central government, it shall be considered illegal.

The occupier exporting or importing hazardous wastes is required to comply with the Articles of the Basel Convention to which India is a signatory. However, if the Indian Rules are more stringent than the guideline of the Basel Convention, the national law would prevail over the

Basel Convention. This was held in *Research Foundation for Science v. Union of India*.<sup>30</sup> In this case hazardous oil was imported under the garb of furnace oil which had the presence of polychlorinated biphenyls (PCBs) content of detectable level, which was permissible under the Basel Convention but not under the Hazardous Rules of 1989. The court held that such oil should either be re-exported or destroyed by incineration.

**Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989** lay down the responsibilities of those handling hazardous substances (other than hazardous wastes). These rules consist of 20 rules and 12 Schedules. The main provisions are as follows:

- (i) Notification of Sites: No one can undertake any industrial activity which would produce a threshold quantity or more of an additional hazardous chemical unless he submits a written detailed report about the industry in accordance with Schedule 7 of the Rules at least three months before commencing that activity.
- (ii) Safety Report: A chemical industry has to prepare a safety report containing information specifies in Schedule 8 at least 90 days before commencing that activity. The Report should be prepare with the help of experts not associated with such industrial activity.
- (iii) Preparation of on-site emergency plan by the occupier: this plan should furnish details as to how major accidents will be dealt with. It shall include the names of persons who are responsible for safety and who can take action according to the plan.
- (iv) Preparation of off-site emergency plans: the concerned authorities are required to prepare it.
- (v) Information to the persons liable to be affected: a mandatory duty is imposed on the occupier of the industry to take appropriate steps to inform persons outside the site who are likely to be affected by an accident.
- (vi) Safety data sheet: the occupier shall prepare a safety data sheet according to Schedule 9 of the rules. It shall include chemical identity, physical and chemical data, fire and explosive hazard data, preventive measures, first aid measures etc.

Under the **Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro organisms, Genetically-engineered organisms or Cells, 1989**, a Genetic Engineering Approval Committee has been established in the Ministry of Environment and Forests to license in, and field trials of the genetically engineered organisms.

The **Bio-Medical Waste (Management and Handling) Rules** are framed to regulate hospitals, clinics, veterinary institutions and other persons generating bio-medical wastes. These rules introduce a licensing and reporting system that requires the institutions to segregate<sup>31</sup> and dispose of the designated categories of bio-medical wastes in the manner prescribed by the rules.<sup>32</sup>

### **C. Environment Impact Assessment**

The Ministry of Environment and Forests has issued notifications dealing with mandatory EIA. The notification mandates public hearing and requires the project proponent to submit

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<sup>30</sup>(2005) 13 SCC 186.

<sup>31</sup> Rule 6 and Schedule III.

<sup>32</sup> Schedule I.

an EIA report, an environment management plan, details of public hearing and a project related to the impact assessment agency for clearance (MoEF) with another review by a committee of experts. EIA regulations apply to 29 projects/industries which are enumerated in Schedule I of the notification.

#### **D. Coastal Regulations and protection of Specified Areas**

The Coastal Zone Regulations issued in 1991 control the developmental activities including tourism within a strip of 500 meters from the sea shore on India's coast line.<sup>33</sup> Some activities are strictly prohibited such as setting up of new industries and expansion of existing factories, other types of commercial activities are restricted.

Region specific notifications have also been issued in some ecologically sensitive areas in response to specific environmental threats to these places. For instance, notification dated 1<sup>st</sup> February 1989 restricting location of industries, mining operations and other development activities in the Doon Valley in Uttar Pradesh;<sup>34</sup> notification dated 20<sup>th</sup> June, 1991 to protect the ecologically sensitive horticultural belt in the Dahanu region in Maharashtra;<sup>35</sup> notification dated 6<sup>th</sup> January, 1989 for the coastal Murud-Janjira area in the Raigad district of Maharashtra;<sup>36</sup> notification dated 7<sup>th</sup> May 1992 for parts of the Aravalli Range in Rajasthan and Haryana;<sup>37</sup> notification dated 3<sup>rd</sup> June, 2009 for the protection of Kalesar wildlife sanctuary;<sup>38</sup> notification dated 25<sup>th</sup> June, 2009 for Mount Abu as an eco-sensitive area<sup>39</sup> to mention a few.<sup>40</sup>

#### **The Ecomark Scheme**

This scheme encourages manufactures to introduce environment friendly products. The label "ecomark" may be used by those manufacturers of consumer goods who have met the environmental criteria notified by the Central government. The resolution dated 20<sup>th</sup> February, 1991<sup>41</sup> provides for the Certification and Licencing procedure:

- Under the scheme the manufacturers are required to apply for testing and certification of products which fall under the notified categories in terms of their compliance with published environmental criteria in the prescribed form. The terms and conditions governing operations of licences including fees shall be as per the Bureau of Indian Standards Act and the regulations framed there under.
- Testing and certification shall be carried out by the Bureau of Indian Standards. For product categories which have the Indian Standards mark, the Bureau of Indian Standards will ordinarily complete the task of certification within a period of three months. Products certified as eligible for the ECOMARK shall be licenced to carry the ECOMARK for a prescribed time period.

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<sup>33</sup> Available at <http://envfor.nic.in/legis/crz/crznew.html>.

<sup>34</sup> Available at <http://envfor.nic.in/legis/eia/doonval.html>.

<sup>35</sup> Available at <http://envfor.nic.in/divisions/iass/notif/dahanu.htm>.

<sup>36</sup> Available at <http://envfor.nic.in/legis/eia/murud.html>.

<sup>37</sup> Available at <http://envfor.nic.in/legis/eia/aravalli.html>.

<sup>38</sup> Available at <http://envfor.nic.in/legis/eia/1393-Kalesar.pdf>.

<sup>39</sup> Available at <http://envfor.nic.in/legis/eia/1545E.pdf>.

<sup>40</sup> A complete list of environmental notifications is available at [http://envfor.nic.in/legis/legis\\_all.htm](http://envfor.nic.in/legis/legis_all.htm).

<sup>41</sup> Available at <http://envfor.nic.in/legis/others/ecomark.html>.

- The product shall be reassessed after the prescribed period and the licence fee shall have to be paid again for the mark.

**(ii) The Water (Prevention and Control of Pollution) Act, 1974**

The Water Act was one of the earliest attempts that dealt with an environmental issue. The Act was revised in 1988 to bring it in consonance with the EPA.

The Act does not prescribe the standards for the discharge of effluent but enables the state boards to prescribe these standards (section 17(g)). The state boards are entrusted with various other functions under the Act such as inspection of facilities for sewage and trade effluent treatment, development of economical and reliable methods of treatment of sewage and trade effluents etc (section 17). The state board also has the power to obtain information (section 20) and take samples of effluents (section 21), power of entry and inspection (section 23), authority to take emergency measures in case of pollution of stream or well (section 32), power to make application to courts for restraining apprehended pollution of water in streams or wells (section 33) etc.

**Following provisions are of utmost importance to the industries/ potential polluters**

Prohibition On Use Of Stream Or Well For Disposal Of Polluting Matter, Etc.: **Section 24** prohibits the use of stream or well for disposal of polluting matter over and above the standard established by the state boards etc. But a person shall not be guilty of an offence if he has the right to construct, improve or maintain any stream any building, bridge, weir, dam, sluice, dock, pier, drain or sewer or other permanent works which he has a right to construct, improve or maintain; or deposit any materials on the bank or in the bed of any stream for the purpose of reclaiming land or for supporting, repairing or protecting the bank or bed of such stream provided such materials are not capable of polluting such stream; or put into any stream any sand or gravel or other natural deposit which has flowed from or been deposited by the current of such stream; or does accumulation of such material with the consent of the Board.

Restrictions On New Outlets And New Discharges : **Section 25** imposes restrictions on new outlets and new discharges. It states that no person shall:

- a) establish or take any steps to establish any industry, operation or process, or any treatment and disposal system or an extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land (such discharge being hereafter in this section referred to as discharge of sewage); or
- b) bring into use any new or altered outlets for the discharge of sewage; or
- c) begin to make any new discharge of sewage.

To carry out the aforesaid activities he/ she has to obtain the *prior consent* of the state board. The application for consent of the state board shall be made in the prescribed form with the prescribed fee. The state board may make any inquiry as it considers necessary on the receipt of the application and may either grant or refuse the consent for reasons recorded in writing. The state board is empowered to grant consent after imposing any conditions relating to the nature, composition, temperature, volume or rate of discharge of the effluent. It can even grant consent for a limited period of time. It is interesting to note that when the board fails to grant or refuse the consent for discharge within a period of four months, the consent shall be

deemed to have been given unconditionally. The state board may review the conditions imposed at the time of granting consent and may also revoke or modify them (section 27).

Right to Appeal: **Section 28** confers the right to any person to prefer an appeal against the order of the board to the appellate authority constituted by the state government. The appeal should be made within thirty days from the date on which the order is communicated to him/her.

Duty To Furnish Certain Information To State Board And Other Agencies : **Section 31** mandates the person in-charge of the industry/unit to immediately intimate the occurrence of any accident or unforeseen act that pollutes or is likely to pollute, to the State Board and such other authorities or agencies as may be prescribed.

Offences committed by Companies and Government Departments: **Section 47** provides that where an offence under this Act has been committed by a company, every person who at the time the offence was committed was in charge of, and was responsible to the company for the conduct of, the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. However no 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.

The section further establishes that where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

**Section 48** is a similar provision for the government departments.

Penalties:

<b>Non-compliance with the provisions</b>	<b>Penalties</b>
SECTION 41	
Failure to comply with directions issued by the Board under section 20	Imprisonment of three months or with fine upto 10,000 or with both. In case non-compliance continues, an additional fine uptoRs. 5,000 for every day during with failure continues.
Failure to comply with: <ul style="list-style-type: none"> <li>• any order issued by the Board under section 32(1)(c) to restrain any person(s) from discharging any poisonous, noxious or polluting matter into any water body, or</li> <li>• any direction issued by a court under section 33(2) to restrain a person, or</li> <li>• any direction issued by the Board including the direction to close, prohibit or regulate any industry,</li> </ul>	Imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine. In case the failure continues, with an additional fine which may extend to Rs. 5000 for every day during which such failure continues after the conviction for the first such failure. If the failure continues beyond a period of one year after the date of conviction, the offender shall, on conviction, be punishable

<p>operation or process, under section 33A</p>	<p>with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.</p>
<p>SECTION 42 Penalty for certain acts, viz.,</p> <ul style="list-style-type: none"> <li>• failure to intimate the occurrence of an accident or other unforeseen act under section 31 to the Board and other authorities or agencies as required by that section</li> <li>• in giving any information which he is required to give under this Act, knowingly or wilfully makes a statement which is false in any material particular</li> <li>• for the purpose of obtaining any consent under section 25 or section 26, knowingly or willfully makes a statement which is false in any material particular</li> </ul>	<p>Imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.</p>
<p>SECTION 43 Penalty for contravention of section 24</p>	<p>Imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine.</p>
<p>SECTION 44 Penalty for contravention of section 25 or section 26</p>	<p>Imprisonment for a term which shall not be less than two years but which may extend to six years and with fine.</p>
<p>SECTION 45 Enhanced penalty after previous conviction</p>	<p>Imprisonment for a term which shall not be less than one and half years but which may extend to seven years and with fine: Provided that for the purpose of this section no cognizance shall be taken of any conviction made more than two years before the commission of the offence which is being punished.</p>

<p>SECTION 45A Residuary Penalty Clause: If no penalty has been provided for the contravention or failure to comply with any provision of the Act</p>	<p>Imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both In the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure</p>
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**(iii) Air (Prevention And Control Of Pollution) Act, 1981**

The Act envisages two types of Boards- one at the Centre and others in the respective states. The Acts provides that the Central Board for the Prevention and Control of Water Pollution constituted under the Water) Act, 1974, shall also exercise the powers and perform the functions of the Central Board for the prevention and control of air pollution under this Act (section 3). Where State Pollution Control Boards have been constituted under the Water Act, 1974, such State Boards shall also exercise the powers and perform the functions of State Boards for the prevention and control of air pollution under this Act (section 4). In a state where a State Board has not been constituted under the Water Act, the State Government shall constitute a State Pollution Control Board (section 5).

The provisions of the Air Act are designed on the lines of Water Act *vis-a-vis* most functions of the State Boards<sup>42</sup> as well as the liability of the corporate officials and government officials whose are in-charge of the polluting units.<sup>43</sup>

Penalties

Non-compliance of provisions of the Act	Penalties
<p>SECTION 37</p> <ul style="list-style-type: none"> <li>• Failure to comply with the provisions of section 21 (to establish or operate an industry without consent), or</li> <li>• Failure to comply with section 22 (emission of air pollutants in excess of the standards), or</li> <li>• Non-compliance with the directions issued under section 31A</li> </ul>	<p>Imprisonment for a terms which shall not be less than one year and six months but which may extend to six years and with fine In case the failure continues an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure. If the failure continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to</p>

<sup>42</sup>Sections 18, 20, 21, 22, 22A, 23, 24, 25, 26.

<sup>43</sup>Sections 40 and 41.

	seven years and with fine.
<p>SECTION 38 Penalties for certain acts, viz,:</p> <ul style="list-style-type: none"> <li>• failure to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or</li> <li>• in giving any information which he is required to give under this Act, makes a statement which is false in any material particular, or</li> <li>• for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular.</li> </ul>	Imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both
<p>SECTION 39 Residuary Clause: Provides punishment for those acts which have not been covered by sections 37 and 38</p>	<p>Imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both In the case of continuing contravention, with an additional fine which may extend to five thousand, rupees for every day during which such contravention continues after conviction for the first such contravention</p>

**(iv) Public Liability Insurance Act, 1991**

The Act seeks to provide immediate relief to the victims of an accident involving hazardous substance. "Accident", according to the Act means "an accident involving a fortuitous, sudden or unintentional occurrence *while handling* any hazardous substance resulting in continuous, intermittent or repeated exposure to death, of or injury to, any person or damage to any property *but does not include an accident by reason only of war or radio-activity*. The expression "handling" is defined widely to manufacture, processing, treatment, package, storage, transportation by vehicle, use, collection, destruction, conversion, offering for sale, transfer or the like of such hazardous substance.

No-Fault Liability:

Section 3 establishes "no-fault" liability upon the owner<sup>44</sup> of the hazardous substance due to which injury is caused which means that he/she had to compensate the victims even in the

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<sup>44</sup> According to section 2(g), "owner" means a person who owns, or has control over handling any hazardous substance at the time of accident and includes,-  
(i) in the case of firm, any of its partners;

absence of any wrongful act, neglect or default on his/her part. The compensation payable is stipulated in the Schedule as:

- (i) Reimbursement of medical expenses incurred up to a maximum of Rs. 12,500 in each case.
- (ii) For fatal accidents the relief will be Rs. 25,000 per person in addition to reimbursement of medical expenses if any, incurred on the victim up to a maximum of Rs. 12,500.
- (iii) For permanent total or permanent partial disability or other injury or sickness, the relief will be (a) reimbursement of medical expenses incurred, if any, up to a maximum of Rs. 12,500 in each case and (b) cash relief on the basis of percentage of disablement as certified by an authorised physician. The relief for total permanent disability will be Rs. 25,000.
- (iv) For loss of wages due to temporary partial disability which reduces the earning capacity of the victim, there will be a fixed monthly relief not exceeding Rs. 1,000 per month up to a maximum of 3 months: provided the victim has been hospitalised for a period of exceeding 3 days and is above 16 years of age.
- (v) Up to Rs. 6,000 depending on the actual damage, for any damage to private property.

#### Mandatory Insurance:

Section 4 casts an obligation on every owner to take out one or more insurance policies that insure him against liability to give relief under section 3(1) and then to renew the policies from time to time.

#### Contribution to the Environmental Relief Fund:

Every owner is also mandated, together with the amount of premium, to pay to the insurer the prescribed amount for being credited to the Relief Fund (section 2A). The insurer shall remit this amount to the Relief Fund in such manner and within such period as may be prescribed (section 2C). Where the insurer fails to so remit the further amount, such amount shall be recoverable from insurer as arrears of land revenue or of public demand (section 2D).

## **JUDICIAL PRONOUNCEMENTS**

The Indian judiciary has substantially contributed to the environmental jurisprudence by both endorsing the international principles and doctrines of environmental law as well as evolving national standards. Chief Justice Bhagwati in *M.C. Mehta v. Union of India*<sup>45</sup> declared:

“We have to evolve new principles and lay down new norms, which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that in any other foreign country. We no longer need the crutches of a foreign legal order.”

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- (ii) in the case of an association, any of its members; and
  - (iii) in the case of a company, any of its directors, managers, secretaries or other officers who is directly in charge of, and is responsible to the company for the conduct of the business of the company.

<sup>45</sup>AIR 1987 SC 1086, 1089.

The judiciary has expanded the scope of right to life as conferred by article 21 to include within its ambit **right to wholesome environment**. In *Subhash Kumar v. State of Bihar*<sup>46</sup>, Justice K.N. Singh observed:

“Right to life...includes the right to enjoyment of pollution free water and air for full enjoyment of life.”

The courts have time and again reiterated the principles of strict and absolute liability, the precautionary principle, the polluter pays principle, public trust doctrine, the principle of sustainable development principle in their atavistic endeavour environment protection against unmindful industrialization and development. They are briefly discussed as under:

### **I. Precautionary Principle**

The earlier approach to environmental protection was based on the “**assimilative capacity**” rule (**Principle 6 of Stockholm Declaration, 1972**). This rule was rooted in the assumptions that (1) science could provide policy makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and, (2) relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to respond to avoid this harm. Later, with the realization of inadequacy of science, the emphasis shifted to the “**precautionary principle**” in **11<sup>th</sup> Principle of UN Resolution on World Charter for Nature, 1982**. This was again reiterated in **the Rio Conference of 1992 in its Principle 15** which clearly stated that “lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

#### Essential Ingredients Of The Precautionary Principle:

1. Environmental measures: by the state government and the statutory authorities- must anticipate, prevent and attack the causes of environmental degradation.
2. When there are threats of serious and irreversible damage, lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
3. The “onus of proof” is on the actor or the developer/ industrialist to show that his action is environmentally benign (“Reversal of burden of proof”).
4. Precautionary duties must not only be triggered by the suspicion of concrete danger but also by (justified) concern or risk potential.

To give effect to the precautionary principle, the Ministry of Environment and Forests, Government of India issued an Environment Impact Assessment Notification in 1994<sup>47</sup> which has been supplanted by the Environment Impact Assessment Notification, 2006.<sup>48</sup> This notification calls for a careful assessment of a project proposed on the basis of an Environmental Impact Assessment and also necessitates an environment management plan for the prevention, elimination or mitigation of the impact, right from the inception stage of the project.

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<sup>46</sup> AIR 1991 SC 420.

<sup>47</sup>Environment Impact Assessment Notification, 1994.

<sup>48</sup>Environment Impact Assessment Notification, 2006.

In *M.C. Mehta v. UOI*<sup>49</sup> (*CNG Vehicles Case*), the court held that the “auto policy” must adopt the precautionary principle and make informed recommendations which balance the need to protect the environment and reverse the large scale degradation that has resulted over the years, priority being given to the environment over economic issues.

## II. Polluter Pays Principle

It means that “polluter should bear the cost of pollution as the polluter is responsible for pollution.” The principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the polluting undertakings and not the government as that would shift the burden to the taxpayer. Under the principle, the absolute liability for harm to the environment extends not only to the compensation of the victims of pollution but also to the cost of restoring the environmental degradation.

The principle was promoted by **the Organization for Economic Co-operation and Development (OCED)** during the 1970s. It has now been incorporated into the **European Community Treaty**. Article 102 R(2) of the Treaty states that environmental considerations are to play a part in all the policies of the Community, and that action is to be based on three principles: the need for preventive action, the need for environmental damage to be rectified at source, and that the polluter should pay.

The Supreme Court in *M.C. Mehta v. Union of India*<sup>50</sup> has applied the polluter pays principle to deal with the problem caused by the oleum gas leakage from the Shriram Food and Fertilizer Corporation. In this case it was held that the measure of compensation must be correlated to the *magnitude and capacity* of the enterprise so that the compensation will have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it (**Deep pocket Theory** i.e. hand deeper into the pocket of the polluter).

In *Indian Council for Enviro- Legal Action v. Union of India*<sup>51</sup>, the Supreme Court for the first time applied this principle explicitly:

“the polluting industries are absolutely liable to compensate for the harm caused by them to the villagers in the affected area, to the soil and to the under- ground water and hence they are bound to take all measures to remove sludge and other pollutants lying in the affected areas.”

The court further observed that “the polluter pays principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertaking, which cause the pollution, or produce the goods, which cause the pollution. Under the principle, it is not the role of the government to meet the cost involved in either prevention of such damage, or in carrying out remedial action, because the effect of this would be to shift the financial burden of the pollution incident to the tax payee.”<sup>52</sup>

## III. Absolute Liability Principle

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<sup>49</sup>AIR 2002 SC 1696.

<sup>50</sup>AIR 1987 SC 1086.

<sup>51</sup>AIR 1996 SC 1446.

<sup>52</sup>*Id.* at 1466.

The rule of absolute liability was evolved in *M.C. Mehta v. Union of India*,<sup>53</sup> (popularly known as *Oleum Gas Leak* case or *Sriram Food & Fertilizer* case). The absolute liability doctrine is stricter than strict liability (in the sense that the exceptions of strict liability are not applicable to the rule of absolute liability) and is applicable to an industry that is engaged in hazardous and inherently dangerous activities.

The court affirmed that the principle of strict liability which evolved in England in 1860 in *Ryland v. Fletcher*<sup>54</sup> may not be well suited today in the wake of unprecedented technological and industrial advancement. The court observed that since the strict liability rule was diluted by exceptions such as act of god, default of the plaintiff, consent of the plaintiff, independent act of third party and statutory authority, in cases of determining the liability of hazardous and inherently dangerous activity (for example, in escape of toxic gas) a much stricter measure is needed. In the words of the Court:

“the rule (of strict liability) was evolved in the 19<sup>th</sup> century at a time when all these development of science and technology had not taken place, cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and needs of the present- day economic and social structure. We need not feel inhibited by this rule which was evolved in the context of a totally different kind of economy. Law has to grow in order to satisfy the needs of the fast- changing society and keep abreast of the economic developments taking place in the country...Law cannot afford to remain static.”<sup>55</sup>

The court while explaining the measure of liability observed that “the measure of compensation in the kind of cases referred to ... must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident for carrying on of the hazardous or inherently dangerous activity by the enterprise.”<sup>56</sup>

The Supreme Court reiterated the principle of absolute liability in *Indian Council for Enviro Legal Action v. Union of India*<sup>57</sup> (*sludge* case). In this case the sludge discharged from the manufacture of ‘H’ acid remained as lethal waste for a long time even after the manufacturers stopped the production which destroyed the whole village spreading disease, death and disaster. The court held that the industries are absolutely responsible not only for the remedial action of safely disposing of the sludge, but also for the loss and suffering sustained by the villages, although quantum of damages could be determined by a competent civil court. It may be noted that the rule is now statutorily recognized in Public Liability Insurance Act, 1991.

#### **IV. Public Trust Doctrine**

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<sup>53</sup>AIR 1987 SC 1086.

<sup>54</sup>1868 (19) LT 220.

<sup>55</sup> *Supra* note 29 at 1098- 99.

<sup>56</sup>*Id.* at 1099-1100.

<sup>57</sup>AIR 1996 SC 1446.

This doctrine is rooted in the inviolable idea that natural resources like air, sea, water, forests are all gifts of nature to everyone alike and thus should be made freely available to everyone despite the person's status in life. These natural gifts are so important for the existence of every human being that it is wholly unjustified to make them the subject of private ownership of a few privileged. Since there exists mutual relationship of trustee and beneficiary between the government and the public, the doctrine casts an obligation on the government to safeguard these resources such that they are available for the use and enjoyment of all and are not hoarded by selected individuals for private/ commercial purposes.

The Supreme Court has time and again explicitly recognized this doctrine as an indispensable part of environmental law in India. In *M.C. Mehta v. Kamal Nath (Span Motel Case)*<sup>58</sup> a lease was granted by the State government of riparian land for commercial purposes to a private company having a Motel located at the bank of river Beas. The company tried to interfere with the natural flow of the river in protect the motel from floods.

In response to the writ petition that was filed in this regard the Apex Court held that the actions of the Himachal Pradesh State Government were in clear violation of the doctrine of public trust. The court observed that the public trust doctrine imposes the following restrictions on governmental authority:

*Firstly*, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public;

*Secondly*, the property may not be sold even for a fair cash equivalent; and

*Thirdly*, the property must be maintained for particular type of uses.

The doctrine was invoked in another landmark decision on environmental law. In *M.I. Builders Ltd. v. Radhey Shyam Sahu*,<sup>59</sup> the Municipal Corporation of Lucknow entered into an agreement with a private builder whereby a park of historical importance that was located in a congested commercial cum residential area was handed over to the builder for the construction of an underground, air- conditioned shopping complex. The Apex Court said that the public trust doctrine would be applicable even in the absence of any statute to nullify the acts of the corporation. The Court further noted that the corporation had conducted no study in determining whether or not the complex would have any adverse impact upon the environment. Thus, the court ruled that the corporation had violated its duty as a trustee in entering into the agreement.

It may be noted that decisions that seek to preserve natural environment are not always against the commercial enterprises. If "progress and development" are carried out without damaging the surrounding environment, the courts exercise restraint in striking down the actions of the enterprises. One such instance is the decision of *S. Sachidanand Pandey v. State of West Bengal*.<sup>60</sup> In this case, the government of West Bengal leased four acres of land belonging to the Calcutta Zoological Garden for the construction of a five star hotel. This lease was challenged before the Court wherein it was argued that the hotel would disturb the ecological balance, interfere with animals in the zoo and disturb the flight of migratory birds. The Apex Court rejected these contentions and ruled that the government had taken all these factors into mind and had considered all the objections before deciding to grant the lease.

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<sup>58</sup> (1997) 1 SCC 388.

<sup>59</sup> (1999) 6 SCC 464.

<sup>60</sup> AIR 1997 SC 1109.

## V. Sustainable Development

The expression means that development should be in such a way that it does not jeopardize the environmental considerations. There should be a harmony between developmental goals and environmental imperatives. The term “sustainable development” is generally considered to have been coined by the 1987 Brundtland Report, though the “principle of sustainable development” appears to have been first referred to in the Preamble of the 1992 European Economic Area Agreement.

According to the Brundtland Report, sustainable development means “development that meets the needs of the present without compromising the ability of the future generations to meet their own needs” (see “intergenerational equity” discussed below). Herman Daly, an economist at the World Bank has suggested three rules for sustainable development as: (i) harvest renewable resources only at the speed at which they regenerate; (ii) limit wastes to assimilative capacity of the local eco- system or release those wastes elsewhere where they can be assimilated; and (iii) if you use a non- renewable resource, require that part of the profit be put aside for investment in a renewable substitute resource.

The decision of *Vellore Citizen Welfare Forum v. Union of India*<sup>61</sup> is a landmark judgment where the principle of sustainable development has been adopted by the Court to balance the economic need of development and environmental concerns. In response to the contention that the industries could not be shut down given the contribution of leather tanneries to the economy, the court held:

“while industries are vital for country’s development, but having regard to pollution caused by them, the principle of sustainable development is to be adopted as a balancing concept.... Though the leather industries are of vital importance to the country as it generates foreign exchange and provides employment avenues, it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted to expand or even to continue with the present production unless it tackles by itself the problem of pollution created by the said industry.”<sup>62</sup>

The court further pointed out:

“the traditional concept that development and ecology are opposed to each other is no longer acceptable. It has come to be accepted internationally as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- systems. Essential features of sustainable development are the polluter pays principle and the precautionary principle.”<sup>63</sup>

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<sup>61</sup> (1996) 5 SCC 647.

<sup>62</sup> *Id.* at 651.

<sup>63</sup> *Ibid.*

In *Goa Foundation v. Diksha Holding Pvt. Ltd.*,<sup>64</sup> the court held that “no activities which would ultimately lead to unscientific and unsustainable development and ecological destruction should at all be allowed and the courts must scrupulously try to protect the ecology and environment.”

## VI. Inter-Generational Equity

The principle of inter- generational equity refers to the moral obligation of the present generation to protect the earth and its resources for the future generations on one hand, and the right of each generation of human beings to be benefited from the cultural and natural inheritance from past generations on the other hand. The Stockholm Declaration in its Principle 1 states:

“man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and well- being, and he bears a solemn responsibility to protect and improve the environment for the present and future generations...”.

The Declaration further states that “the natural resources of the earth including the air, water, land, flora and fauna and especially representative samples of natural ecosystems must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.”<sup>65</sup> The Rio Declaration also states that “the right to development must be fulfilled so as to equitably meet developmental and environmental needs of the present and future generations.”<sup>66</sup>

The Supreme Court has read the right to intergenerational equity in Articles 21 and 14 of the Constitution of India. In *State of Himachal Pradesh v. Ganesh Wood Products*,<sup>67</sup> the court recognizing the obligation of the present generation to preserve natural resources for the next and future generations, held that a government department’s decision to establish forest based industry is invalid.

In *Consumer Education and Research Society v. Union of India*,<sup>68</sup> the court observed that “if an attempt is made by the state legislature and the State Government to balance the need of the environment and the need of the economic development it would not be proper to apply the “principle of prohibition” in such a case. It would, therefore, be proper and safer to apply the “principle of protection” and the “principle of polluter pays” keeping in mind “principle of sustainable development” and the “principle of intergenerational equity””.

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<sup>64</sup> AIR 2001 SC 184.

<sup>65</sup> Principle 2 of the Stockholm Declaration, 1972.

<sup>66</sup> Principle 3 of the Rio Declaration, 1992.

<sup>67</sup> AIR 1996 SC 149.

<sup>68</sup> (2002) 2 SCC 599.