



# **ENVIRONMENTAL LAWS OF INDIA**

## **ENVIRONMENT PROTECTION ACT, 1986**

The genesis of the Environment (Protection) Act, 1986 is in Article 48-A (Directive Principle of State Policy) and Article 51-A(g) (Fundamental Duty) of the Indian Constitution.

The Act is an “umbrella” for legislations designed to provide a framework for Central Government, coordination of the activities of various central and state authorities established under previous Acts, such as the Water Act and the Air Act.

In this Act, main emphasis is given to “Environment”, defined to include water, air and land and the inter-relationships which exist among water, air and land and human beings and other living creatures, plants, micro-organisms and property.

### **HISTORY**

In the wake of the Bhopal tragedy, the government of India enacted the Environment Act of 1986. The purpose of the Act is to implement the decisions of the United Nations Conference on the Human Environment of 1972. The decisions relate to the protection and improvement of the human environment and the prevention of hazards to human beings, other living creatures, plants and property. Finally the Environment (Protection) Act was enacted 1986.

### **The main objectives of this act are:**

- To protect and improve the environment and environmental conditions.
- To implement the decisions made at the UN Conference on Human Environment that was held at Stockholm in the year 1972.
- To take strict actions against all those who harm the environment.
- To enforce laws on environment protection in the areas that are not included by the existing laws.
- To give all the powers to the Central Government to take strict measures in favour of environment protection.

### **SALIENT FEATURES**

- The Environment (Protection) Act (EPA) contains 26 sections which are divided into four chapters relating to preliminary, general powers of the Central Government, prevention, abatement, and control of environmental pollution and miscellaneous provisions.
- “Environmental pollution” is the presence of pollutant, defined as any solid, liquid or gaseous substance present in such a concentration as may be or may tend to be injurious to the environment.

- “Hazardous substances” include any substance or preparation, which may cause harm to human beings, other living creatures, plants, microorganisms, property or the environment.
- Through this Act Central Government gets full power for the purpose of protecting and improving the quality of the environment.
- The Act empowers the centre to “take all such measures as it deems necessary”.
- By virtue of this Act, Central Government has armed itself with considerable powers which include,
  - i.coordination of action by state,
  - ii.planning and execution of nationwide programmes,
  - iii.laying down environmental quality standards, especially those governing emission or discharge
  - iv.of environmental pollutants,
  - v.placing restriction on the location of industries and so on.
  - vi.authority to issue direct orders, included orders to close, prohibit or regulate any industry.
  - vii.power of entry for examination, testing of equipment and other purposes and power to analyse
  - viii.the sample of air, water, soil or any other substance from any place.
- The Act explicitly prohibits discharges of environmental pollutants in excess of prescribed regulatory standards.
- There is also a specific prohibition against handling hazardous substances except those in compliance with regulatory procedures and standards.
- The Act provides provision for **penalties**. For each failure or contravention, the punishment included a prison term up to five years or fine up to Rs. 1 lakh, or both. The Act imposed an additional fine of up to Rs. 5,000 for every day of continuing violation. If a failure or contravention occurs for more than one year, offender may be punished with
- imprisonment which may be extended to seven years.
- Section 19 provides that any person, in addition to authorized government officials, may file a
- complaint with a court alleging an offence under the Act. This “Citizens’ Suit” provision requires that the person has to give notice of not less than 60 days of the alleged offence of pollution to the Central Government.

## **AIR (PREVENTION & CONTROL OF POLLUTION) ACT, 1981**

### **HISTORY**

India participated in the United Nations Conference on the Human Environment held in Stockholm in June 1972 to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. Based on the concluding guidelines of this conference, the Air Act was formulated by the government of India in 1981. The act was introduced and incorporated into the Constitution of India in 1981 laying down guidelines for the preservation of the quality of air and control of air pollution. In contrast to the water act of 1974 which covers only 13 states and union territories of India, the air act extends to the whole of India.

### **SALIENT FEATURES**

This is an Act to provide for the prevention and control and abatement of air pollution through various management guidelines and restrictions.

One of the prime objectives of this act is carrying out the purposes mentioned above by assigning a set of responsibilities, powers, and functions to the Boards for the prevention and control of air pollution.

The major sections and features of this Act are-

- Section 3- The Central and State Pollution Control Boards have the responsibility to exercise the
  - powers provided under this Act without prejudice.
- Section 4- In states where there is a Water Pollution Control Board established, the same shall be given the joint responsibility of controlling and monitoring air pollution, and will be called State
  - Pollution Control Board.
- Section 5- In states where there is no Water Pollution Control Board, a new Pollution Control
  - Board will be set up.
- Section 16 and 17 describes the functions of the Central Pollution Control and State Pollution Control Board respectively, some of which includes-
  - i. Advise the government on matters pertaining to air and air pollution.
  - ii. Advise and support State Boards in carrying out their functions.
  - iii. Carry out research related to air pollution.
  - iv. Through mass media, spread awareness and information about air and air pollution.
  - v. Plan and organize the training of personnel.
  - vi. Set the standards for Air Quality in India.
- Section 19- The SPCBs have the authority to declare any area as an air pollution control area, with consultation from the CPCB.

- Section 21 states that no person or entity shall establish an industry without prior permission from the Boards in an air pollution control area.
- Section 22 states that no person or industry shall emit air pollutants above the standards set by the Pollution Control Boards. Under this, the Board can even approach a court to gain restraining order on the industry that fails to meet its standards.
- Section 26 gives any officer of the Pollution Control Boards, the power to take samples from any chimney, duct, etc. for testing and seeing whether the emissions are within prescribed standards or not.
- Section 28- This allows the SPCBs to set up State Air Laboratories, either as a new establishment or by declaring an existing lab as a State Air Lab. These labs have the authority to test the air samples and air quality procedures as described by the standards, for the SPCBs of that state in their areas.
- Section 37, the law states that failure to comply with the rules of Section 21 and 22 will result in punishment that is a minimum of one year and 6 months, but extendable up to 6 years with fine. If the failure continues, an additional fine of 25,000 rupees per day is introduced till the time the offence does not stop. If the failure continues for more than a year, then the culprit is punishable by imprisonment for a minimum of 2 years and can extend up to 7 years with fine.

### **Central & State Pollution Control Boards (PCBs)**

Under this act, one Central board and numerous State boards shall be appointed by notification in the Official Gazette called Central Pollution Control Board (CPCB) and State Pollution Control Board (SPCB) respectively with effect from a date not later than six months of the commencement of this Act.

The Central Board for the Prevention and Control of Water Pollution that was formed in 1974 post the signing off the water act shall exercise the powers and perform the functions of the Central Board for the Prevention and Control of Air Pollution under this Act.

The State Boards shall investigate, assess, and monitor the issues of concern regarding the quality and pollution of the water resources available in their jurisdiction and shall report the same through quarterly and annual reports during board meetings to the Central Board. The Central Board hereby shall look into the State Board's reports and also monitor and handle major issues regarding national water resources.

The Act grants power to SPCB and to test equipment and to take the sample for the purpose of analysis from any chimney, fly ash or dust or any other. Prior to its amendment in 1988, enforcement under the Act was achieved through criminal prosecutions initiated by the Boards.

The 1988 amendment act empowered SPCB and CPCB to close a defaulting industrial plant. Notably, the 1987 amendment introduced a citizen's suit provision into the Air Act and extended the Act to include noise pollution.

## **WATER (PREVENTION & CONTROL OF POLLUTION) ACT, 1974**

### **HISTORY**

India participated in the United Nations Conference on the Human Environment held in Stockholm in June 1972 to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. Based on the concluding guidelines of this conference, the Water Act was formulated by the government of India in 1974.

According to the Clause (1) of Article 252 of the Indian Constitution, the Parliament has no power to make laws for the States with respect to any of the matters mentioned above, except as provided in articles 249 and 250 of the Constitution. The Parliament can only act on laws once resolutions have been passed by the Houses of the Legislatures of the participating states.

The act shall come into force, at once in the States mentioned above and in any other State which adopts this Act under clause (1) of article 252 of the Constitution on the date of such adoption. The act was passed in pursuance of clause (1) of article 252 of the Constitution. Resolutions have been passed by all the Houses of the Legislatures of the States. The act was introduced and incorporated into the Constitution of India in 1974.

### **THE WATER ACT (1974)**

- The Water (Prevention & Control of Pollution) Act, 1974 was adopted by the Indian Parliament with the aim of prevention and control of Water Pollution in India.
- This is an Act to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water through various management guidelines and restrictions.
- One of the prime objectives of this act is carrying out the purposes mentioned above by assigning a set of responsibilities, powers, and functions to the Boards for the prevention and control of water pollution.
- The Water Act applies in the first instance to the whole of the States of Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Karnataka, Kerala, Madhya Pradesh, Rajasthan, Tripura and West Bengal and the Union territories.
- Water (Prevention & Control of Pollution) Act, 1974 is a comprehensive legislation that regulates agencies responsible for checking on water pollution and ambit of pollution control boards both at the centre and states.
- Central & State Pollution Control Boards (PCBs)
- Under this act, one Central board and numerous State boards shall be appointed by notification in the Official Gazette called Central Pollution Control Board (CPCB) and State Pollution Control Board (SPCB) respectively with effect from a date not later than six months of the commencement of this Act.

- The State Boards shall investigate, assess, and monitor the issues of concern regarding the quality and pollution of the water resources available in their jurisdiction and shall report the same through quarterly and annual reports during board meetings to the Central Board.
- The Central Board hereby shall look into the State Board's reports and also monitor and handle major issues regarding national water resources.

- **Power to take emergency measures**

Section 32 of the Water (Prevention & Control of Pollution) Act, 1974 describes the power to take emergency measures in case of pollution of stream or well.

Under the act, State Board may issue orders to remove the matter, which is, or may cause pollution; or remedy or mitigate the pollution, or issue prohibition orders to the concerned persons from discharging any poisonous or noxious or polluting matter.

Section 24 and 43 of the Water (Prevention & Control of Pollution) Act, 1974 relate to prohibition on use of stream or well for disposal of polluting matter and penalty for contravention thereof Under the scope of the provision, no person shall knowingly cause or permit any poisonous, noxious or polluting matter as determined by the State Board to enter into any stream or sewer or on land. Anyone failing to abide by the laws of under is liable for imprisonment under Section 24 & Section 43 ranging from not less than one year and six months to six years along with monetary fines. The section further states that No person shall knowingly cause or permit to enter any other matter which may impede the flow of water of the stream causing pollution of any kind.

- **Penalties and fines**

Section 42 of the of the Water (Prevention & Control of Pollution) Act, 1974 states penalties and fines for certain acts including pulling down pillars, Obstructs any person acting under the orders or direction of the Board, Damages any works or property belonging to the Board and Failure to furnish any officer other employee of the Board any information required. The fine and penalty includes Imprisonment for a term which may extend up to three months or with fine to Rs. 10,000/- or both.

## **SCHEDULED TRIBES AND OTHER TRADITIONAL FOREST DWELLERS (RECOGNITION OF FOREST RIGHTS) ACT, 2006**

The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 is a result of the protracted struggle by the marginal and tribal communities of India to assert their rights over the forestland over which they were traditionally dependent.

### **Why the Forest Right Act was enacted?**

India's forests are governed by two main laws, the Indian Forest Act, 1927 and the Wild Life (Protection) Act, 1972. Procedure for settlement of rights was provided under the Indian Forest Act, 1927 which were

hardly followed resulting in insecurities of tribal and forest-dwelling communities.

Under the Indian Forest Act, areas were often declared to be government forests without noticing any relationship between tribal and land such as who lived in these areas, what land they were using etc. Under these laws, the rights of people living in the area to be declared as a forest area are to be settled by a forest settlement officer. This requires an officer to enquire into the claims of people to land, minor forest produce, etc., and in the case of claims found to be valid, to allow them to continue or to extinguish them by paying compensation. It is found that in many areas this process either did not take place at all or took place in a highly faulty manner. Those whose rights are not recorded during the settlement process are susceptible to eviction at any time. Hence Forest Rights Act, 2006 was enacted to protect the marginalised socio-economic class of citizens and balance the right to environment with their right to life and livelihood.

The act was passed in December 2006. It deals with the rights of forest-dwelling communities over land and other resources. The Act grants legal recognition to the rights of traditional forest dwelling communities, partially correcting the injustice caused by the forest laws.

### **What is Forest Rights Act, 2006?**

- The Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Rights) Act (or the Forest Rights Act or FRA) was enacted in 2006 and came into force in 2008.
- The Act aims at addressing the historic injustice done to the forest dwellers by recognizing forest land, resources, and resource management and conservation rights of the forest dwelling communities.
- It not only confers individuals' title to habitat, but also aims to protect their tradition and culture by recognising their collective ownership over a larger landscape within or outside their traditional village territories.
- The Act provides chiefly for two kinds of rights to tribals and other forest dwellers.
  - i. Individual rights over the dwelling and cultivation lands under their occupation.
  - ii. The community tenure/ rights over 'community forest resources' on common forest land within the traditional and customary boundaries of the village.

However, the implementation of the Act in general and especially in Protected Areas (PAs) has

been negligible.

**Objective of FRA act 2006:**

- To empower and strengthen the local self-governance.
- To address the livelihood security of the people, leading to poverty alleviation and pro poor growth.
- To address the issues of Conservation and management of the Natural Resources and conservation governance of India.
- To Protect customary rights of the forest communities.
- To Provide for basic developmental facilities for the forest villages.
- To Protect traditional knowledge and intellectual property relating to biodiversity and cultural diversity.
- Types of rights under this act:
  - i. Title rights – Ownership to land that is being farmed by tribals or forest dwellers subject to a maximum of 4 hectares; ownership is only for land that is actually being cultivated by the concerned family, meaning that no new lands are granted.
  - ii. Use rights – to minor forest produce (also including ownership), to grazing areas, to pastoralist routes, etc.
  - iii. Relief and development rights – to rehabilitation in case of illegal eviction or forced displacement; and to basic amenities, subject to restrictions for forest protection.
  - iv. Community Rights or rights over common property resources of the communities in addition to their individual rights
  - v. Rights in and over disputed land Rights of settlement and conversion of all forest villages, old habitation and un-surveyed villages
  - vi. Right to intellectual property related to biodiversity and cultural diversity
  - vii. Rights of displaced communities
  - viii. Rights over developmental activities

**Different Authorities Created Under FRA act:**

- Gram Sabha
- Forest Rights Committee
- Sub Divisional Level committee
- District Level Committee
- State Level Monitoring Committee

**Eligibility under this act:**

Eligibility to get rights under the Act is confined to those who “primarily reside in forests” and who depend on forests and forest land for a livelihood. Further, either the claimant must be a member of the Scheduled Tribes scheduled in that area or must have been residing in the forest for 75 years.

## **BIODIVERSITY ACT 2002**

Biological diversity is a national asset of a country; hence the conservation of biodiversity assumes greater significance.

The first attempt to bring the biodiversity into the legal framework was made by way of the biodiversity bill 2000 which was passed by the Lok Sabha on 2nd December 2002 and by Rajya Sabha on December 2002.

### **Objectives of the act:**

- To conserve the Biological Diversity.
- Sustainable use of the components of biodiversity.
- Fair and equitable sharing of benefits arising out of the use of the biodiversity

A national biodiversity authority has been established by the Biodiversity Act, 2002 to regulate act implementing rules 2004 has been operationalised since coming in to force.

### **Provisions of the Act:**

- Prohibition on transfer of Indian genetic material outside the country without specific approval of the Indian Government.
- Prohibition of anyone claiming an (IPR) such as a patent over biodiversity or related knowledge without permission of Indian Government.
- Regulation of collection and use of biodiversity by Indian national while exempting local communities from such restrictions.
- Measures from sharing of benefits from use of biodiversity including transfer of technology, monetary returns, joint research and development, joint IPR ownership etc.
- Measures to conserve sustainable use of biological resources including habitat and species protection (EIP) of projects, integration of biodiversity into the plans and policies of various Departments and Sectors.
- Provisions for local communities to have a say in the use of their resources and knowledge and to charge fees for this.
- Protection of indigenous or traditional laws such as registration of such knowledge.
- Regulation of the use of the genetically modified organisms.
- Setting up of National, state and local Biodiversity funds to be used to support conservation and benefit sharing.
- Setting up of Biodiversity Management committees (BMC) at local village levels. State Biodiversity Boards at state level and National Biodiversity Authority.