

BACKGROUND

1. There was need for comprehensive legislation for environment. Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 were not that much comprehensive.
2. The constitutional genesis of act lies in Article 21, 48A and 51(A) (g). Supreme Court in M.C. Mehta judgement has said that right to environment is a part of Right to life and personal liberty guaranteed

under Article 21. Article 48A and Article 51(A)(g) are fundamental duties and DPSP with respect to environment.

3. The act was passed by Parliament under Article 253. India had signed Stockholm Convention of 1972 on environment. Article 253 gives Parliament the right to legislate on any issue covered by international treaty which is signed by India.

- India's first serious attempt regarding environmental legislation was through the 42nd amendment to the constitution in 1976 which incorporated Fundamental Rights and Duties and Directive Principles of State Policy concerning protection for environment and protection of forests and wildlife of the country.
- Article 51 A of the Indian constitution states that "It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures."
- Article 48-A of Directive Principles of State Policy under the Indian Constitution says that "The

- In 1980, Department of Environment came into existence. Later on, in 1985 Department of Environment was elevated to Ministry of Environment, Forest and Climate Change.
- The Ministry of Environment, Forest and Climate Change (MoEFCC) being the central agency started working with prime objectives of
 - Protection of the environment & Ensuring the welfare of animals
 - Prevention and abatement of pollution
 - Afforestation and regeneration of degraded areas
 - Conservation and survey of flora, fauna, forests and wildlife
- Bhopal Gas tragedy actuates the Indian Government to enact the Environment (Protection)

- Environment (Protection) Act, 1986 was designed to act as an "umbrella" legislation as it enable the Central Government to coordinate the activities of various central and state authorities set up for preservation, conservation and protection of the environment under previous Acts such as
 - Wildlife (Protection) Act,1972
 - Water (Prevention and Control of pollution) Act,1974
 - Forest Conservation Act,1980
 - Air (Prevention and Control of pollution) Act.1981

The Environment (Protection) Act, 1986 contains Chapters I to IV. Chapters include Section numbered from 1 to 26.

- Chapter I (Section 1-2) provide reference to the Act which extends to whole of India and outlines definitions.
- Chapter II (Section 3-6) deals with the general powers of the Central Government.
- Chapter III (Section 7-17) lays down the detail procedure followed for the prevention, control and abatement of environmental pollution.



- An Act to provide for the protection and improvement of environment and for matters connected there with
- WHEREAS the decisions were taken at the United Nations Conference on the Human Environment held Stockholm in June, 1972, in which India participated, take appropriate steps for the protection and improvement of human environment;
- AND WHEREAS it is considered necessary further to implement the decisions aforesaid in so far as they relate to the protection and improvement of environment and the prevention of hazards to human beings, other living creatures, plants and property;
- BE it enacted by Parliament in the Thirty-seventh Year of the Republic of India as follows:-

- CHAPTER I
- PRELIMINARY
- 1.SHORT TITLE, EXTEND AND COMMENCEMENT
- (1) This Act may be called the Environment (Protection) Act, 1986.
- (2) It extends to the whole of India.
- (3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act and for different areas

- 2. DEFINITIONS

- In this Act, unless the context otherwise requires,--

- (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 substance 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;

- (d) "handling", in relation to any substance, means the manufacture, processing, treatment, package, storage, transportation, use, collection, destruction, conversion, offering for sale, transfer or the like of such substance;

- (e) "hazardous substance" 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, plant, micro-organism, property or the environment;
- (f) "occupier", in relation to any factory or premises, means a person who has, control over the affairs of the factory or the premises and includes in relation to any substance, the person in possession of the substance;
- (g) "prescribed" means prescribed by rules made under this Act.

- CHAPTER II
- GENERAL POWERS OF THE CENTRAL GOVERNMENT
- 3. POWER OF CENTRAL GOVERNMENT TO TAKE MEASURES TO PROTECT AND IMPROVE ENVIRONMENT
- (1) Subject to the provisions of this Act, the Central Government, shall have the power to take all such measures as it deems necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environmental pollution.
- (2) In particular, and without prejudice to the generality of the provisions of sub-section (1), such measures may include measures with respect to all or any of the following matters, namely:--
- (i) co-ordination of actions by the State Governments, officers and other authorities--
- (a) under this Act, or the rules made thereunder, or
- (b) under any other law for the time being in force which is related to the objects of this Act;

- 4. APPOINTMENT OF OFFICERS AND THEIR POWERS AND FUNCTIONS
- (1) Without prejudice to the provisions of sub-section (3) of section 3, the Central Government may appoint officers with such designation as it thinks fit for the purposes of this Act and may entrust to them such of the powers and functions under this Act as it may deem fit.
- (2) The officers appointed under sub-section (1) shall be subject to the general control and direction of the Central Government or, if so directed by the Government, also of the authority or authorities, any, constituted under sub-section (3) of section or of any other authority or officer.

- **5. POWER TO GIVE DIRECTIONS**

- Notwithstanding anything contained in any other law but subject to the provisions of this Act, the Central Government may, in the exercise of its powers and performance of its functions under this Act, issue directions in writing to any person, officer or any authority and such person, officer or authority shall be bound to comply with such directions.

- 6. RULES TO REGULATE ENVIRONMENTAL POLLUTION
- (1) The Central Government may, by notification in the Official Gazette, make rules in respect of all or any of the matters referred to in section 3.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:--
- (a) the standards of quality of air, water or soil for various areas and purposes;

- (b) the maximum allowable limits of concentration of various environmental pollutants (including noise) for different areas;
- (c) the procedures and safeguards for the handling of hazardous substances;
- (d) the prohibition and restrictions on the handling of hazardous substances in different areas;
- (e) the prohibition and restriction on the location of industries and the carrying on process and operations in different areas;
- (f) the procedures and safeguards for the prevention of accidents which may cause environmental pollution and for providing for remedial measures for such accidents.

- CHAPTER III
- PREVENTION, CONTROL, AND ABATEMENT OF ENVIRONMENTAL POLLUTION
- 7. PERSONS CARRYING ON INDUSTRY OPERATION, ETC., NOT TO ALLOW EMISSION OR DISCHARGE OF ENVIRONMENTAL POLLUTANTS IN EXCESS OF THE STANDARDS
- 8. PERSONS HANDLING HAZARDOUS SUBSTANCES TO COMPLY WITH PROCEDURAL SAFEGUARDS
- 9. FURNISHING OF INFORMATION TO AUTHORITIES AND AGENCIES IN CERTAIN CASES
- 10. POWERS OF ENTRY AND INSPECTION

- 11. POWER TO TAKE SAMPLE AND PROCEDURE TO BE FOLLOWED IN CONNECTION THEREWITH
- 12. ENVIRONMENTAL LABORATORIES
- 13. GOVERNMENT ANALYSTS
- 14. REPORTS OF GOVERNMENT ANALYSTS
- 15. PENALTY FOR CONTRAVENTION OF THE PROVISIONS OF THE ACT AND THE RULES, ORDERS AND DIRECTIONS

- 16. OFFENCES BY COMPANIES
- 17. OFFENCES BY GOVERNMENT DEPARTMENTS
- 18. PROTECTION OF ACTION TAKEN IN GOOD FAITH
- 19. COGNIZANCE OF OFFENCES
- No court shall take cognizance of any offence under this Act except on a complaint made by--
- (a) the Central Government or any authority or officer authorised in this behalf by that Government,²⁰ or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint, to the Central Government or the authority or officer authorised as aforesaid.

- 20. INFORMATION, REPORTS OR RETURNS
- 21. MEMBERS, OFFICERS AND EMPLOYEES OF THE AUTHORITY CONSTITUTED UNDER SECTION 3 TO BE PUBLIC SERVANTS
- 22: BAR OF JURISDICTION
- 24. EFFECT OF OTHER LAWS
- 25. POWER TO MAKE RULES
- The Central Government may, by notification in the Official Gazette, make rules for carrying out the purposes of this Act.

- 26. RULES MADE UNDER THIS ACT TO BE LAID BEFORE PARLIAMENT
- Every rule made under this Act shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

Objectives

- **Creation of authorities** with adequate powers for environmental protection
- **Coordination of the activities** of the various regulatory agencies
- **Regulation of discharge of environmental pollutants** and handling of hazardous substances
- **Speedy response** in the event of accidents threatening the environment and Provision for deterrent punishments

- Regulatory measures taken to prevent environment deterioration are guided by the principle of sustainable development and improvement in natural environment.
- Effective implementation of Environment (Protection) Act can address the various environmental challenges.
- The Central Government issues guidelines, notifications, policies & programmes under Environment (Protection) Act 1986, from time to time, relating to protection of environment, conservation of biological diversity and for attaining high standards of environmental quality.
- Environment (Protection) Act follows the "Polluter Pay" principle that ensures polluter must pay for damage caused to environment and human health.