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## DELEGATED LEGISLATION IN ENVIRONMENTAL PROTECTION ACT, 1986

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### ABSTRACT:

In wake of the Stockholm Conference held in 1972 that supported environmental protection at the transnational position and was one of the most ruinous incidents of all time, the Bhopal Gas Tragedy<sup>273</sup> of 1984 stressed an critical need for a comprehensive law with respect to environmental protection, domestically, the need for Environment (Protection) Act, 1986 was felt. The preamble of the Act states the ideal of the Act to be the protection and enhancement of the terrain. It seeks to cover mortal beings, other living brutes, shops, and property from environmental hazards. It extends to the total of India and aims to help, control, and abate environmental pollution. Indeed, though we had the Water Act<sup>274</sup>, 1974, the Air Act<sup>275</sup>, 1981, and the Indian Forest Policy<sup>276</sup>, 1988, there was a pressing need for general legislation with strict correctional vittles in order to guard the environmental rights.



<sup>273</sup> Union Carbide Corporation Vs. Union of India, AIR 1988 SC 1531.

<sup>274</sup> An act which aims to prevent and control water pollution and restore the wholesomeness of water.

<sup>275</sup> An act to control the level of problem by setting rules for air pollution in India.

<sup>276</sup> The National Forest Policy of India sets guidelines and regulations which are established by the Indian Government.

## INTRODUCTION:

The concern for the terrain in India is nothing new. From ancient times we've believed in "Vasudhaiva Kutumbakam", i.e. the entire world is one family. Indians have believed that all the brutes on the Earth are a family, including all the shops, creatures, and microorganisms. Our present-day Constitution also provides evidence to our old principles. Some of them are as follows: – By the 42nd Amendment Act<sup>277</sup>, Article 48A was added as a part of the Directive Principles of State Policy<sup>278</sup> which stated that it was the state's responsibility to make sweats in order to "cover and ameliorate the terrain, and to guard the timbers and wildlife of the country. "Composition 51A(g) declares that it's the abecedarian duty of each and every citizen of the country to "cover and ameliorate the natural terrain including the timbers, lakes, gutters, and wildlife and to have compassion for living brutes." Our bar has outlined in a number of judgments that Article 21, which guarantees the right to life and quality, also encompasses the right to live in a healthy and safe terrain. In the case of **Subhash Kumar v. the State of Bihar**<sup>279</sup>, it was observed that the right to get pollution-free water and air is a fundamental right under Article 21. Composition 253 of the Indian Constitution empowers the Parliament to bring any legislation to give effect to any transnational convention, agreement, convention, or decision taken at a conference. It was with the help of Composition 253 that the Indian Parliament legislated the Environment(Protection) Act, 1986 to give effect to the opinions taken at the UN Conference on the mortal terrain held in Stockholm in 1972.

## DELEGATED LEGISLATION:

Delegated legislation is also known as secondary legislation, is a form of law that allows an individual or body under powers conferred to them by an Act of Parliament to

make laws. These individualities or bodies could include government ministers, original authorities, or pots.

The purpose behind this is to save legislative time, respond snappily to new developments, and allow for inflexibility and moxie. The origin of delegated legislation can be traced back to the British legal system. Historically, it evolved as a means to manage the growing executive complications during the 19th and 20th centuries. With the emergence of weal countries, the sheer volume and complexity of necessary legislations exceeded the capacity of houses, leading to the delegation of certain powers to expert bodies or individualities.

### INDIA:

In the environment of India, colorful courts, from the Privy Council to the current Supreme Court, have had to assess the constitutionality of executive regulations. In a number of opinions, the Supreme Court of India has established legal norms that now serve as a standard for assessing the constitutionality of any delegation.

The court stated in the case of **Indian Oil Corporation v. Municipal Corporation**<sup>280</sup>, Jullundhar that any delegated law must be in harmony with the parent act and should not contradict relevant legislative policies. It was made clear that a delegate should not have greater legislative authority than any other delegate.

### UK:

In UK, there was Secondary Legislation and no Judiciary control. Only Parliamentary Sovereignty, means "We rectify or question ourselves no person can question or rectify us. They formed a committee which comprises of House of lords and House of Commons to check up any changes in primary or parent legislation it is very difficult to cancel.

<sup>277</sup> The Amendment was enacted in 1976 which attempted to reduce the power of the Supreme Court and High Courts to declare the constitutional validity of laws, and Fundamental Duties for the citizens of India.

<sup>278</sup> These Principles are borrowed from Spanish Constitution. They establish economic and social democracy in the country.

<sup>279</sup>1991 AIR SC 420.

<sup>280</sup> 1991 AIR 420, 1991 SCR (1) 5.



In **Associated Provincial Pictures vs. Wednesburg**<sup>281</sup>, In 1947, granted License to operate cinema with a condition where adult above 15years of age should not attend cinemas on Sunday because they have to attend Church this was under Cinematography act, 1909. Sunday Entertainment Act, 1932., removed this condition and legalised opening on Sundays. And so, a Petition has been filed that it is unreasonable. The court observed nothing unreasonable here.

US:

In 1690, John Locke, wrote a book named "Second treaties of Civil Government" in which he said, there is no Delegated Legislation and only Separation of Powers is Important. But in 1825, in **Wayman Vs. Southard**<sup>282</sup>, CJ John Marshall accepted and layed down policy & standards to Delegate. In **Panama Refining Co. Vs. Ryan**<sup>283</sup>, in which President was given power without laying down the policy and standards and so it was not accepted in US.

#### CONCEPT OF ENVIRONMENT PROTECTION ACT:

The Environmental Protection Act 1990<sup>284</sup> is a legislation that provides for the improved control of pollution to the air, water, and land through various regulations. It sets out the legal framework for duty of care for waste, making those who produce, carry, and dispose of waste responsibly liable. The objective of the Environment Protection Act is to protect and improve the environment and environmental conditions, implementing decisions made at the UN Conference on Human Environment in 1972.

The Environment (Protection) Act, 1986 authorizes the central government to protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and operation of any industrial facility on environmental grounds.

<sup>281</sup> 1948 KB 223, 1948 1 KB 223, 1947 EWCA Civ 1, 1947 2 All ER 680.

<sup>282</sup> U.S. 1 (1825).

<sup>283</sup> 293 U.S. 388 (1935).

<sup>284</sup> It is a UK law which is related to control wastages like disposal, littering, handling of controlled waste and controls over harmful substances.

#### OBJECTIVES:

1. To apply the significant opinions taken, relating to terrain safety and protection, at the United Nations Conference on the mortal terrain held in Stockholm in June 1972.
2. India formerly had some legislation related to different aspects of the terrain but there was a need for comprehensive legislation that filled the gaps in the being laws. therefore, it was legislated to bring general legislation in terrain protection and cover other major areas of environmental hazards that were preliminarily uncovered.
3. To produce new authorities for the purpose of guarding and perfecting the terrain and also to coordinate the conditioning of formerly being authorities constituted under former laws.
4. To give for strict and truculent discipline to the malefactors of the natural terrain who jeopardize its safety and health.
5. To grease the growth of inferior and delegated legislation on ecologically sensitive motifs and terrain protection.
6. To promote sustainable development, i.e. balance the overall development with environmental protection.

#### NEED:

The first was the **Stockholm Conference** which stressed internationally, the impact mortal conditioning were having on the terrain. Development and the terrain were at crossroads with each other and the conference brought into focus the urgency of their conciliation for the benefit of humanity and the earth as a whole.

The second was the **Bhopal Gas Tragedy**. It was about the leak of **Oleum gas** from an assiduity that proved to be fatal for the people around and the terrain. This incident underscored the significance of regulating the diligence so that they don't get down fluently

from the discipline of causing detriment to the terrain.

Also, the need was felt because India had some laws for guarding the terrain like the **Air Act** and **Water Act** but there was no comprehensive law that connected them and coordinated their conditioning and functions.

#### **THE CONCEPT OF ENVIRONMENT IMPACT ASSESSMENT:**

**Environment Impact Assessment** has been defined by the International Association for Impact Assessment as, “the process of identifying, predicting, evaluating and mitigating the biophysical, social and other relevant effects of development protocols prior to major decisions being taken commitments made.”<sup>285</sup>

#### **ENVIRONMENT PROTECTION ACT IN INDIA:**

The conception of EIA reached India in 1976-77 with the Planning Commission asking the Department of Science and Technology to assess the swash vale systems for their impact on the terrain. latterly, it was expanded to include other systems as well. They were subordinated to the blessing of the Public Investment Board. But these were substantially executive opinions and had no statutory backing.

But, it got support with the coming of the Environment Protection Act, 1986. After EPA came into force, announcement was issued under the Act which made EIA mandatory for 30 specified conditioning. The responsibility for giving a concurrence has been given to the Ministry of Environment and Forest. The announcement was revised in 2006.

#### **BENEFITS OF THE ENVIRONMENT PROTECTION ACT:**

1. Protection of environment along with stable usage of resources.
2. Protection of public health as it seeks to prevent, control and abate environment

pollution which helps to keep the environment clean and safe.

3. Though there are offences on one side, but also on the other side there are strict penal provisions which lays down the liability of companies and government.
4. The Reports of EIA which is also important where it is used to define measures that the project take to contain or balance project impacts.
5. The Reports of EIA are also a grave component of Country’s environmental decision making.
6. The act provides penal provisions and various guidelines which in turn directs the Central Government take active and useful steps for environmental protection.
7. The aim of act is at preserving the ecological integrity by maintaining in unpolluted and natural form.
8. It helps in sustainable development of a Country as it prevents the misuse of natural resources and reserve them for future generations.

#### **DRAWBACKS OF ENVIRONMENTAL PROTECTION ACT:**

1. There is lack of participation by public as the act lacks provisions which makes the public to involve in environmental protection activities.
2. As the act gives immense power to the Central Government there is complete centralization where there is a chances of misuse or arbitrary use of powers.
3. The provisions under this act which charges penalty for breachness are not adequate means not stringent and deterrent. It is flexible in nature.
4. There are areas where the act fails to cover those modern pollutions like noise, radiation waves, transportation etc.

<sup>285</sup> As defined by International Association for Impact Assessment.

**IMPORTANT CASE LAWS RELATED TO ENVIRONMENTAL POLLUTION ACT:****VELLORE CITIZENS WELFARE FORUM Vs UNION OF INDIA<sup>286</sup>****FACTS:**

River Palar is a blow in the State of Tamil Nadu, which is also one of the key sources of drinking and bathing water for the girding people. The solicitation was filed against immoderate pollution caused by tanneries and other diligence in the State. The Tamil Nadu Agricultural University Research Centre also revealed that a significant portion of agrarian land had turned either incompletely or fully infelicitous for civilization.

**ISSUE:**

Whether the tanneries should be acceptable to continue working at the expense of environment and health & lives of lakhs of individuals?

**JUDGEMENT:**

The Court made the point that the main purpose of the Environment Protection Act is to produce an authority under Section 3(3) with all the necessary powers and functions to cover and upgrade the terrain. Still, it was disappointing that there were no enough authorities were appointed for the same. Therefore, it directed the Central Government to appoint an authority within one month and confer on it all the acceptable powers needed to deal with the situation created by tanneries and other contaminating diligence in Tamil Nadu.

**M.C. MEHTA Vs. UNION OF INDIA (THE GANGA POLLUTION CASE)<sup>287</sup>****FACTS:**

Kanpur has been the important place of tannery business in India for a long time. utmost of all the diligence which are located on the southern banks of the River Ganga. These, diligence have been known to have defiled the

blow. In 1985, a matchstick tossed into the swash redounded in a massive fire in the swash because of the presence of a poisonous subcaste of chemicals formed on its face. therefore, M.C. Mehta, a notorious terrain advocate, and an activist filed a suit in the Supreme Court against the tanneries and also the External Corporation of Kanpur to stop them from discharging undressed backwaters into the swash, contaminating it.

**ISSUES:**

Whether the authorities acted irresponsibly in the protection of the River Ganga from such a massive fire?

**JUDGEMENT:**

The Court held that there were several laws which has binding force in India that sought to help terrain pollution including the Environment Protection Act, 1986, and the Water (Prevention and Control of Pollution) Act, 1974. Still, the authorities had been careless in discharging their duties specified under these laws. It also observed that the fiscal capabilities of diligence are inapplicable when considering the issue of installing primary treatment shops. Therefore, each tannery was directed to at least install primary treatment shops, if not secondary shops. The court also issued guidelines, that it was the duty of the Central Government to order all the educational institutions all over India to conduct classes for atleast one hour of every week to teach lessons on protection of the environment. In addition to that, there should also be textbooks published related to environment protection and which is to be distributed among the students.

**NARULA DYEING AND PRINTING WORKS Vs UNION OF INDIA<sup>288</sup>:****FACTS:**

The Narula Dyeing and Printing workshop were allegedly discharging unprocessed adulterants into an irrigation channel performing in significant water pollution. The State

<sup>286</sup> AIR 1996 SC 2715.

<sup>287</sup> 1987 4 SCC 463.

<sup>288</sup> 9 S.C.R. 965.



Government as well as Gujarat State Pollution Control Board issued orders under Section 5 of the Environment Protection Act to close down the plant. The Pleaders challenged this order citing that no individual hail was handed to them and no time was granted to misbehave with the said directions.

ISSUE:

Whether the right of fair hearing which is not handed over to the petitioners by the State Government and the Board is found to be right?

JUDGEMENT:

The Gujarat High Court held that the government was unquestionably right in issuing the commands for closing down the plant under Section 5 of the act. In cases where there's a severe injury caused to the terrain, the government is authorized to apportion with the occasion of hail. It's intended to cover the terrain from serious damage done by discharging undressed backwaters.

### **M.C. MEHTA Vs UNION OF INDIA (THE VEHICULAR POLLUTION CASE)<sup>289</sup>:**

FACTS:

Delhi is the National Capital of India and yet is comprised as one of the most weakened metropolises of the world. Over the times, the population of Delhi has turn out to be multiplex and as one of the results of that, the pollution situations have been sky high. The main source of pollution in Delhi has been the two- wheelers. Therefore, M.C. Mehta filed the solicitation in the Apex Court to high spot the plight of the capital due to vehicular pollution and suggest practical results to the problem.

ISSUE:

What are the preventive measures can be taken to avert the pollution arising in National Capital, Delhi?

JUDGEMENT:

With reference to high-tech and other results suggested by the applicant and the literature presented, the Court passed the following interim orders:-

- It's the foremost duty of the state under the DPSPs and also as mentioned in Section 51A as a abecedarian duty, to cover the terrain, life, foliage, and fauna.
- Mindfulness is the key to reducing environmental pollution. People must be made apprehensive of the dangerous goods of vehicular pollution on environmental health.
- A commission was formed to look into vehicular pollution in the National capital and suggest practical results to control it.

**CONCLUSION:**

After the period of the Stockholm Conference and the Oleum gas leak case, the concern for the terrain has magnified. The vittles of the Environment (Protection) Act, 1986 mark a positive step towards terrain protection and enhancement. It has quested some strict regulations for the forestallment, control, and abatement of terrain pollution.

The central government has been given a wide compass of powers to frame rules and appoint authorities to foster the purposes of this Act. also, the Act has eased the coming of several announcements for terrain protection which have introduced new defensive principles like the Environment Impact Assessment.

It has also empowered the citizens to play a visionary part in terrain protection by calling out the pollution- causing diligence under EPA which has led to a string of environmentally sound judicial opinions. still, there are still some poverties present in the Act that need to be filled with posterior emendations to modernize the Act with changing times.

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