

# Laws

Environmental laws and legal provisions

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# Intro

## Environment

Not listed as a subject of Union or state in the seventh schedule of constitution of India

Schedules are lists in the Constitution that categorise and tabulate bureaucratic activity and policy of the Government.

Art 248: Central govt. has powers to enact laws on environment.

# Intro

## 42<sup>nd</sup> amendment (1976)

Art48A: The State shall endeavour to protect and improve environment and to safeguard the forests and wildlife of the country.  
(Part IV A – Directive Principles of State Policy)

Art51A: It is the duty of the citizen to protect and improve the natural environment including forests, lakes rivers and wildlife and to have compassion for all living creatures  
(Part IV A – Fundamental Responsibilities of Citizen)

These cannot be implemented by a court of law, but quoted in many PILs.

# Intro

## Art 21

Art21: Guarantees fundamental rights to life and personal liberties to all citizens.

“No person shall be deprived of his life or personal liberty except according to the procedure established by law”

Enforceable by a court of law

Supreme court interpreted this to include the right of a living environment.

Anything that damages the environment amounts to violation of Art 21!

# Intro

## Art 47 & 19G

Art 47: State has a duty to raise the level of nutrition and standard of living and to improve public health to remove insanitary conditions.

Failure is a violation.

Art 19G (Right to profession) Noise pollution is a violation of right to profession, a fundamental right. Increased noise affects one's work (Calcutta high court, even fined noise polluters)

Art 39A (1976) – Equal Justice and free legal aid, PILs - no court fee

Art 372 – Applicability of Law of Tort , when specific law is absent. LoT : A tort, in common law jurisdictions, is a civil wrong that unfairly causes someone else to suffer loss or harm resulting in legal liability for the person who commits the tortious act.

# Intro

## IPC & CrPC (1983)

### Indian Penal Code

IPC (Chapter 16) : mentions various activities in the nature of public nuisance. But many acts are not cognizable offences.

### Code of Criminal Procedure

CrPC (Chapter 10) Pollution is also included in public nuisance. Section 133 directs how to take care of public nuisances. Allows district magistrate (or persons of similar capacities) to take necessary actions.

# The General Acts

## Stockholm Convention 1972

The Water Prevention and Control of Pollution Act 1974  
(Amended in 1978 & 1988)

The Water Prevention and Control of Pollution Act 1977  
(Amended in 1991)

The Air Prevention and Control of Pollution Act 1981  
(Amended in 1987)

## Bhopal gas tragedy

The Environment Protection Act 1986

The Public Liability Insurance Act 1991

The Natural Environment Tribunal Act 1995

The Environment Appellate Authority Act 1997

# The Air and Water Acts

Both were passed by parliament.

All states adopted this by their own legislative resolutions

Air: In pursuance of UN Conference on Human Environment (1972)

Objectives:

(i) Provide for prevention and control of water pollution and maintaining/restoring of wholesomeness of water

(ii) For the establishment of boards with the above mentioned goals and giving them with necessary powers

CPCB and SPCB came into existence due to these acts



# The Air and Water Acts

Jurisdiction:

(i) Water Act: Applies to entire State/Union Territory (Could be limited by SPCB, if needed)

(ii) Air Act: Only in specific air pollution control areas defined by SPCB

Over the years many states declared entire areas under their jurisdiction as Air Pollution Control Areas.

# The Air and Water Acts

## Functions of SPCB:

Advise the government in matters of water and air pollution prevention, control and mitigation

R&D, training etc. in matters of water and air pollution

Regulatory functions (examples given below)

- i. Giving/refusing of consents (for an industry, for example)
- ii. Regular inspection of effluent/air emissions samples by industries
- iii. Make complaints against noncompliant industries in the appropriate courts

# The Air and Water Acts

Powers / functions of state government:

Administrative powers: nomination of members of SPCB

Making of rules: subject to Air/Water acts

About areas of jurisdiction: Can restrict the application of Air/Water acts to specific geographic areas in consultation with SPCB, if needed.

Restriction of fuels: Can restrict (even prohibit) the use (by amount) or fuel (by type) for any applications, if needed, in consultation with SPCB.

# The Air and Water Acts

Powers / functions of CPCB:

Same as that of SPCB

Delegated all regulatory powers to Pollution Control Committees formed for different UT

Additionally it will guide and co-ordinate the activities of SPCBs .

Restriction of fuels: Can restrict (even prohibit) the use (by amount) or fuel (by type) for any applications, if needed, in consultation with SPCB.

# The Air and Water Acts

Powers / functions of Central Govt:

Same as that of S Govt. over SPCB

It makes final decisions when there is any inconsistency between decisions of CPCB and SPCB.

# The Air and Water Acts

Prosecutions:

Violation of Water/Air act is a cognizable offence.

The complaint has to be made by PCB or its authorized officer to a relevant court.

The defendant can be a company / organisation etc. The top person in charge or the company itself may be prosecuted.

Punishments: 3 months – 6 years imprisonment and/or fine of Rs. 10,000.

# The Air and Water Acts

Special Provisions:

Provisions of Air/Water acts overrides that of other acts.

Members of PCBs to be considered as public servants.

# The Water Cess Act

Established by Parliament in 1977 (amended in 1991)

Objective:

To provide levy and collection of cess on water consumed by certain industries and local authorities to find resources for PCBs. It is implemented pan India (except J&K).



# The Water Cess Act

Which industries are liable to pay?

Ferrous metallurgical

Mining

Pteroleum

Chemical

Cement

Paper

Coal

Power (thermal,hydel etc.)

Animal/vegetable processing

Engineering

# The Water Cess Act

Which industries are liable to pay?

Ferrous metallurgical

Mining

Pteroleum

Chemical

Cement

Paper

Coal

Power (thermal,hydel etc.)

Animal/vegetable processing

Engineering

How much ?

5 paise per 1000 liters for spraying

SPCB assesses the cess to be charged

# The Water Cess Act

Which industries are liable to pay?

Ferrous metallurgical

Mining

Pteroleum

Chemical

Cement

Paper

Coal

Power (thermal,hydel etc.)

Animal/vegetable processing

Engineering

How much ?

10 paise per 1000 liters,

Pollutants: easily treatable water

SPCB assesses the cess to be charged

# The Water Cess Act

Which industries are liable to pay?

Ferrous metallurgical

Mining

Pteroleum

Chemical

Cement

Paper

Coal

Power (thermal,hydel etc.)

Animal/vegetable processing

Engineering

How much ?

15 paise per 1000 liters,

Pollutants: not easily treatable water

SPCB assesses the cess to be charged

# The Water Cess Act

All industries are required to install water meters

Returns to be files monthly

Rebate permissible in a water treatment plant is installed

Cess paid goes to Central Govt. which distributes it to PCBs.

# The Environment Protection Act

Why?

In the wake of Bhopal tragedy

Existing laws addressed on specific pollution

Major areas of hazard (like disposal) were not covered

A control mechanism for handling of waste was required

Also an emergency response system was lacking

The Act is applicable to whole territory of India

# The Environment Protection Act

## Powers of Central Govt.

Plan & execute measures to prevent, control and deal with pollution

Laying down quality standards

Restriction of areas for industrial purposes

Laying down safeguards for prevention of accidents

Laying down safeguards to deal with hazardous substances

Inspect plants, which could cause pollution

Establishment of environmental laboratories and institutes

Provisions same as Water/Air act, except grant /cancellation of consent

Read parallel provisions and important rules of EPA

## SCHEDULE I

List of projects requiring environmental clearance from the Central Government

1. Atomic Power
2. Thermal Power
3. Multi-purpose River Valley Projects
4. Ports, Harbours and Airports
5. Railway lines (involving acquisition of non-railway land)
6. Refineries
7. Fertilizers
8. Pesticides and Insecticides
9. Petrochemicals
10. Explosives and Accessories
11. Drugs and Pharmaceuticals (except formulations)
12. Production of Plastics
13. Rubber-Synthetic
14. Asbestos and asbestos products
15. Sodium or Potassium Cyanide
16. Primary metallurgical industries (Zinc, Lead, Copper, Aluminium and Steel)
17. Integrated Steel Plants
18. Tyres/tubes of trucks, jeeps, cars and other heavy vehicles
19. Alkalis (NaOH)
20. Integrated Paint Complex
21. Man-made fibres (Synthetics and semi-Synthetics, Rayon, Nylon and Polyester)
22. Storage batteries with lead processing
23. Incineration plants for hazardous waste and chlorinated hydro-carbons
24. All projects with threshold criteria above those specified in Schedule II.



Application to SLEIA or GOI or MoEF

Clearance also required for expansion/modernization of existing facilities.

Four stages: Screening, Scoping, Public Consultation and Appraisal  
These are undertaken by SLEIA or GOI or MoEF

Clearance is given for 10 years (river valley projects), 30 years (mining) and 5 years (others)

Half yearly report to be submitted after getting clearance.

**Thank you**