

# Amendments in Environment Protection Act

July 15, 2022

## Manifest Pedagogy

Criminal liability for certain offenses under environmental protection laws could be replaced with financial penalties, the central government has proposed in consultation papers released recently. These proposals seek to decriminalize violations of certain provisions in the Environment (Protection) Act, 1986, the Water (Prevention and Control of Pollution) Act, 1974, and the Air (Prevention and Control of Pollution) Act, 1981. Experts say criminal liability hasn't been effective in curbing violations under these three laws, but also that more clarity is needed on the final shape the proposed changes will take.

In News—MoEF proposes amendments in Environment Protection Act, to decriminalize provisions.

Placing it in Syllabus— Environment

## Static Dimensions

- About Environment Protection act 1986
- Constitutional Provisions related to environment

## Current Dimensions

- Changes proposed in EPA 1986
- Significance of these amendments
- Issues associated with these changes
- Wayforward.

## Content

### About EPA 1986

- The EPA came into force on November 19, 1986. The Act establishes “the framework for studying, planning, and implementing long-term requirements of environmental safety and laying down a system of speedy and adequate response to situations threatening the environment.”
- It authorizes the central government:
  - To protect and improve environmental quality, control and reduce pollution from all sources, and prohibit or restrict the setting and /or operation of any industrial facility on environmental grounds.
  - To establish authorities charged with the mandate of preventing environmental pollution in all its forms and to tackle specific environmental problems that are peculiar to different parts of the country.
- In case of any non-compliance or contravention of the current provisions of the EPA, or of the rules under this Act, the violator can be punished with imprisonment up to five years or with a fine up to Rs 1,00,000, or with both.
- In case of continuation of such violation, an additional fine of up to Rs 5,000 for every day during which such failure or contravention continues after the conviction for the first such contravention can be levied.
- Further, if the violation continues beyond a period of one year after the date of conviction, the offender can be punished with imprisonment for a term which may extend to seven years.

### **Constitutional Provisions related to environment**

- The EPA Act was enacted under **Article 253** of the Indian Constitution which provides for the enactment of legislation for giving effect to international agreements.
- **Article 48A** of the Constitution specifies that the State

shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

- **Article 51A** further provides that every citizen shall protect the environment.

### Changes proposed in EPA 1986

- The ministry has proposed the removal of imprisonment as a penalty for the “less severe” contraventions. Incidentally, the EPA provisions will be in force for penal provisions of the single use plastic ban which has come into force from 1st July.
  - Proposed to replace imprisonment with monetary penalty for the “less severe” contraventions under the EPA.
- Serious violations of EPA which lead to grievous injury or loss of life shall be covered under the provision of Indian Penal Code.
- The penalty amount for repeated offense would be equivalent to the damage caused. There is imprisonment only after a defaulter fails to pay penalty and additional penalty.
- The Centre has increased the penalty amount to Rs 5 lakh extended up to Rs 5 crore but has removed the provision of jail term from the first default
- The government proposes appointing an adjudicating officer who will impose these penalties, the proceeds of which will be forwarded to an ‘Environmental Protection Fund’ set up for the purpose.
- Creation of an “Environmental Protection Fund” in which the amount of penalty will be remitted.
  - This would be utilized for remittance to the affected parties. The amendment said the Centre would prescribe the way the Fund would be administered and the manner in which the money shall be drawn.

- The MoEFCC has introduced provision in the Acts that any aggrieved party can now approach the National Green Tribunal to appeal against the order passed by any adjudicating officer.

### **Significance of these amendments**

- Move aimed at reducing fear of imprisonment among industries.
- Decriminalization' is not a dilution and makes no difference since very few criminal cases are filed under these Acts.
  - According to the National Crime Records Bureau (NCRB), 992 cases were registered under the Environment (Protection) Act in 2020
- Criminal provisions of the Environment, Air and Water Acts have never worked because the Code of Criminal Procedure is too complicated to deal with environmental matters. It takes years or even decades until someone is finally persecuted.
  - An analysis by the Centre for Science and Environment (CSE) found that Indian courts took between 9-33 years to clear a backlog of cases for environmental violations.
  - Civil cases under the NGT, for example, have met with resolution, companies have been held liable, been told to cough up compensation for restoration.
- Criminal prosecution under these laws is extremely difficult, because it involves complaining to the judicial magistrate, who will set up a trial, after which a judgment will be announced.
  - Practically, those suffering because of pollution want its source to be removed, for the resource to be restored, and compensation for whatever damage has occurred. Not necessarily to try and arrest the polluter.

## Issues associated with these amendments

- Series of dilutions come in just two years after of controversy over EIA
- Doing away with imprisonment could affect the implementation of these Acts and encourage a pollute-and-pay attitude.
- The concept of compensatory penalties being directed to specific funds does not ensure that the money reaches aggrieved parties as some existing remedial funds have shown.
  - There are numerous funds that are not really effective – such as the Compensatory Afforestation Fund and Environment Relief Fund (ERF).
- Penalties will be increased is a good thing but even these amounts may not be enough to capture the losses to both people and the environment.
- Penalties alone are no deterrent for big corporates and industries.
- The factors listed for compensation do not include the assessment of losses that the ecosystem and biodiversity would have borne, or the costs involved in offsetting these losses such as through restoration activities.
- Proposed amendments don't adequately outline how the funds will be used, or the reasoning behind the revised penalty figures.
- The Act does not address modern concepts of pollution such as noise, overburdened transport systems and radiation waves which are also an important cause for the deteriorating environment.
- Union government didn't provide a longer timeframe for public comments (currently, comments on these Acts are open till July 21).

## Way Forward

- Viewing these proposals as the government's acknowledgement that pollution control and liability is

an issue that needs attention.

- It is also important to debate these proposals by asking first, how it will address the long legacy of pollution, livelihood loss and loss of life arising out of past illegalities.
- Asking whether changing liability from criminal to civil will necessarily change the deliberate and conscious nature of violations that have been in practice for decades.
- There is a need to involve the citizens in environmental protection to check arbitrariness and raise awareness and empathy towards the environment.

### **Mould your thoughts**

Q: The proposed changes in EPA, 1986 run the risk of reinforcing the assumption that the environmental losses can be compensated for with money. Discuss (250 words).

### **Approach to the answer.**

- Introduce about EPA Act 1986
- Changes proposed
- Significance of these changes
- Issues associated with these changes
- Way forward and conclusion.