

(07.10.2015)

DRAFT ENVIRONMENT LAWS (AMENDMENT) BILL, 2015

It is a draft of the proposed amendment in Environment (Protection) Act, 1986 and National Green Tribunal Act, 2010. Comments are invited for next 15 days. The proposed amendments are with the objective of providing for an effective deterrent penal provisions and introducing the concept of monetary penalty for violation and contraventions. Substantial damage will continue to attract penal provisions besides stiff monetary penalty besides ensuring compliance to environmental norms due to deterrent provision. The amount collected as penalty could be used for remediation and reclamation of polluted sites and improvement of environment. It is proposed that the detail of categorization of violations into minor, non-substantial and substantial, the process of quantification and assessment and corresponding provisions of penalty will be given through the rules to minimise the exercise of discretion and make an unambiguous framework.

Any person interested in making any objections or suggestions on the proposal contained in the draft Bill may forward the same in writing, for consideration of the Central Government within the period so specified, to the Secretary, Ministry of Environment, Forest and Climate Change, Indira Paryavaran Bhawan, Jor Bagh Road, Aliganj, New Delhi-110 003, or at e-mail address:- mk.singh65@ias.nic.in and satish.garkoti@nic.in.

THE ENVIRONMENT LAWS (AMENDMENT) BILL, 2015

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Bill

	<i>further to amend the Environment (Protection) Act, 1986 and the National Green Tribunal Act, 2010.</i>	
	BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—	
	CHAPTER I	
	PRELIMINARY	
Short title and commencement.	1. (1) This Act may be called the Environment Laws (Amendment) Act, 2015.	
	(2) 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 the Act and for different areas.	
	CHAPTER II	
	AMENDMENTS TO THE ENVIRONMENT (PROTECTION) ACT, 1986	
Amendment of section 2.	2. In the Environment (Protection) Act, 1986 (hereafter in this Chapter referred to as the principal Act), in section 2,—	29 of 1986.
	(i) Clause (a) shall be re-numbered as clause (aa) thereof and before clause (aa) as so re-numbered, the following clause shall be inserted, namely:—	
	‘(a) “adjudicating authority” means an authority appointed under sub-section (1) of section 14D, by the Central Government, or, as the case may be, by the authority duly constituted by the Central Government under sub-section (3) of section 3 including the State Level Environment Impact Assessment Authority or other authority constituted before the commencement of the Environment Laws (Amendment) Act, 2015, to adjudicate and impose penalty relating to violation of provisions of this Act or the rules or the orders or directions made or issued thereunder, in respect of projects or activities or operation or process falling under their respective jurisdictions;’;	
	(ii) after clause (e), the following clauses shall be inserted, namely:—	
	‘(ea) “micro-organisms” shall include all types of bacteria, viruses, fungi, mycoplasma, cell lines, algae, protozoans and nematodes and shall also include those organisms which have	

		<p>not been presently known to exist, or not have been discovered so far, in India;</p> <p>(eb) “minor violation” shall mean and include an act or omission or commission by a person causing damage to environment due to failure of compliance of the provisions of this Act or rules made or order or direction issued thereunder in the manner as may be prescribed and is not a substantial damage or non-substantial damage to the environment.</p> <p>(ec) “non-substantial damage” means damage to environment which is neither a minor violation or a substantial damage and shall be determined in the manner as may be prescribed;”;</p>	
		(iii) after clause (g), the following clauses shall be inserted, namely:—	
		‘(h) “Selection Committee” means a Selection Committee referred to in section 14G;	
		(i) “substantial damage” means damage to environment whether by release of environment pollutant or environment pollution or handling of hazardous substance or any other substance or otherwise determined in the manner as may be prescribed, by which the environment is affected or likely to be adversely affected by such damage or by its consequences due to—	
		(A) direct violation of a specific statutory environmental obligation of the occupier; or	
		(B) any act or omission of the occupier or negligence on his part (whether by an accident or otherwise); or	
		(C) carrying out any project or activity or operation or process by the occupier;	
		(j) “Tribunal” means the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.’.	19 of 2010.
Amendment of section 6.	of	3. In section 6 of the principal Act, in sub-section (2), after clause (f), the following clause shall be inserted, namely:—	
		“(g) levy of fee for matters falling under clauses (viii) to (xiv) of sub-section (2) of section 3.”.	
Amendment of section 11.	of	4. In section 11 of the principal Act, after sub-section (4), the following shall be inserted, namely:-	
		‘(5) Nothing contained in sub-sections (3) and (4) shall apply to any sample taken in electronic form from any equipment installed by the occupier and authenticated by the Central Government or State Government or any officer empowered in this behalf, to be	

	<p>electronic record, in such manner as may be prescribed.</p> <p><i>Explanation.</i>- For the purposes of this section, the expressions “electronic form” and “electronic record” shall have the same meanings as assigned to them in clauses (r) and (t) respectively of sub-section (1) of section 2 of the Information Technology Act, 2000.’.</p>	21 of 2000.
Insertion of new sections 14A to 14M.	5. After section 14 of the principal Act, the following sections shall be inserted, namely:—	
“Penalty for causing substantial damage to environment.	14A. (1) Whoever causes substantial damage to the environment within an area not exceeding five kilometres radial distance from the outer boundary of the project area shall, without prejudice to the provisions of section 15 or any other law for the time being in force, be liable to a penalty which shall not be less than five crore rupees but which may extend to ten crore rupees and in case of continuing damage, with additional penalty which may extend to fifty lakh rupees for every day during which the damage continues.	
	(2) Whoever causes substantial damage to the environment beyond the area of five kilometres but within ten kilometres radial distance from the outer boundary of the project area shall, without prejudice to the provisions of section 15 or any other law for the time being in force, be liable to penalty which shall not be less than ten crore rupees but which may extend to fifteen crore rupees and in case of continuing damage, with additional penalty which may extend to seventy five lakh rupees for every day during which the damage continues.	
	(3) Whoever causes substantial damage to the environment beyond the area of ten kilometres radial distance from the outer boundary of the project area shall, without prejudice to the provisions of section 15 or any other law for the time being in force, be liable to a penalty which shall not be less than fifteen crore rupees but which may extend to twenty crore rupees and in case of continuing damage, with additional penalty which may extend to one crore rupees for every day during which the damage continues.	
Penalty for causing minor violations.	14B. (1) Every officer or other authority referred to in section 23 may impose penalty on the spot, on any person who causes any minor violation under this Act, which shall not be less than one thousand rupees but which may extend to ten thousand rupees and in case of continuing violation, with an additional penalty which may extend to five thousand rupees for every day during which the violation continues.	

	(2) Any penalty which a person is liable to pay under sub-section (1) shall be recovered together with simple interest due thereon from the date of failure to pay such penalty till the date of recovery of the penalty, as an arrear of land revenue.	
Penalty for non-substantial damage.	14C. Whoever fails to comply with any provision of this Act or rules made or any order or direction issued thereunder or terms and conditions of the clearance, approval, authorisation, permission, registration made, given or granted to him in pursuance of this Act and the failure does not cause substantial damage or is not a minor violation, be liable to a penalty which shall not be less than one lakh rupees but which may extend to five crore rupees and in case of continuing damage, with additional penalty which may extend to one lakh rupees for every day during which the damage continues.	
Adjudicating authorities.	14D. (1) In cases where the Central Government or any authority or officer of the Central Government or any authority constituted under sub-section (3) of section 3 is empowered to give or grant clearance, approval, authorisation, permission, registration under this Act or rules made or any direction issued thereunder, the Central Government may, for the purpose of adjudicating under sections 14A and 14C, by notification in the Official Gazette, appoint, on the recommendations of the Selection Committee, an adjudicating authority consisting of at least two members for holding an inquiry in the prescribed manner after giving the person concerned a reasonable opportunity of being heard for the purpose of imposing any penalty.	
	(2) While holding an inquiry, the adjudicating authority shall have the power to summon and enforce the attendance of any person acquainted with the facts and circumstances of the case to give evidence or to produce any document which in the opinion of the adjudicating authority, may be useful for or relevant to the subject-matter of the inquiry and if, on such inquiry, it is satisfied that the person has failed to comply with the provisions of sections 14A or 14C, it may impose such penalty as it thinks fit in accordance with the provisions of any of those sections.	
	(3) The procedure for making an application before the adjudicating authority and procedure including fees payable along with the application for adjudicating penalty under this Act shall be such as may be prescribed.	
	(4) The application, before the adjudicating authority under this Act shall be disposed of within a period of six months from the date of filing of the application, after providing the parties concerned an opportunity of being heard.	
	(5) The adjudicating authority may, having regard to the factors	

	specified in section 14E, by an order, impose penalty on the occupier or any other person who is in default stating any non-compliance or default under the relevant provisions of the Act or rules or any order or direction made or issued thereunder or clearance or approval, authorisation, permission, or registration given or granted, under this Act.	
	(6) Any person or authority or board or State Government or Central Government shall be entitled to make application before the adjudicating authority for imposition of penalties under this Act.	
	(7) The penalty imposed on any occupier under sections 14A or 14C shall be paid within a period of ninety days from the date of receipt of the order.	
Factors to be considered by adjudicating authority.	14E. While adjudicating the quantum of penalty under sections 14A or 14C, the adjudicating authority shall have due regard to the following factors, namely:—	
	(a) the amount of damage caused to the environment;	
	(b) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of damage;	
	(c) the repetitive nature of the damage;	
	(d) the continuance of default; and	
	(e) the extent of injury caused or likely to be caused to the public or other living creatures or plants and micro-organisms or property or public health.	
Qualifications for appointment as adjudicating authority and term of office.	14F. (1) A person shall not be qualified for appointment as a member of the adjudicating authority unless—	
	(a) he is, or has been, or is qualified to be, a District Judge; or	
	(b) he is holding the post not below the rank of Director or equivalent under the Central Government and possessing degree in law and having adequate experience of handling the matters relating to environment or who has exercised any quasi-judicial functions and having adequate experience of handling the matters relating to environment or an officer in the rank of Scientist F in the Ministry or Department of the Central Government dealing with environment; or	
	(c) he is an officer holding the post not below the rank of Joint Secretary or equivalent under the State Government and possessing degree in law and having adequate experience of handling the matters relating to environment.	
	(2) A member of the adjudicating authority shall hold office for a term of five years from the date on which he enters upon his office or until he attains the age of sixty-years, whichever is earlier.	

Selection Committee.	14G. (1) The Central Government shall, for recommending persons to be appointed as members of the adjudicating authority under this Act, by notification, constitute a Selection Committee.	
	(2) The composition of the Selection Committee and procedure to be followed by it for recommending the persons to be appointed as members of the adjudicating authority shall be such as may be prescribed.	
Salary, allowances, other terms and conditions of service of adjudicating authorities.	<p>14H. The salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the members of the adjudicating authority shall be such as may be prescribed:</p> <p style="padding-left: 40px;">Provided that neither the salary and allowances nor the other terms and conditions of service of the members of the adjudicating authority shall be varied to their disadvantage after appointment.</p>	
Filling up of vacancies.	14-I. If, for any reason other than temporary absence, any vacancy occurs in the office of the adjudicating authority, then, the Central Government or the authority constituted under sub-section (3) of section 3, as the case may be, shall appoint another person in accordance with the provisions of this Act to fill the vacancy and the proceedings may be continued before the adjudicating authority from the stage at which the vacancy is filled.	
Resignation and removal.	14J. A member of the adjudicating authority may, by notice in writing addressed to the Central Government or the authority constituted under sub-section (3) of section 3, as the case may be, resign from his office:	
	<p style="padding-left: 40px;">Provided that a member of the adjudicating authority shall, unless permitted by the Central Government or the authority constituted under sub-section (3) of section 3, as the case may be, to relinquish the office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as the successor enters upon the office or until the expiry of the term of office, whichever is earlier.</p>	
	(2) A member of the adjudicating authority shall not be removed from the office except by an order made by the Central Government or the authority constituted under sub-section (3) of section 3, as the case may be, on the ground of proved misbehaviour or incapacity after an inquiry made by a Judge of a High Court, or an officer senior by two ranks in which the member of the adjudicating authority has been informed of the charges and given a reasonable opportunity of being heard in respect of the charges.	

	(3) The Central Government may, by rules, regulate the procedure for investigation of misbehaviour or incapacity of the member of the adjudicating authority:	
	Provided that the Central Government or the authority constituted under sub-section (3) of section 3, as the case may be, during the pendency of the inquiry against the member of the adjudicating authority, after consulting the Chairperson of the Selection Committee constituted under sub-section (1) of section 14G, pass an order suspending the member, if it is satisfied that the member should cease to discharge his functions.	
Appeal to National Green Tribunal.	14K. Any person aggrieved by an order made by the adjudicating authority under sub-section (5) of section 14D may prefer an appeal, within a period of ninety days from the date of receipt of the order imposing penalty, to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.	19 of 2010.
Crediting sums realised by way of certain penalties.	14L. All sums realised by way of penalties, imposed by the adjudicating authority shall be credited to such fund as may be created by the Central Government and all such sums shall be utilised for the protection, improvement and management of the environment.	
Crediting sums realised by way of certain penalties to notified account.	14M. All sums realised by way of penalty under sub-section (1) of section 14B shall be credited to such account, as may, in consultation with the concerned State Government be, specified, by notification, by the Central Government and all such sums shall be utilised for the purposes of protection, improvement and management of environment.”.	
Substitution of new sections for section 15.	6. For section 15 of the principal Act, the following sections shall be substituted, namely:—	
‘Punishment for causing substantial damage to environment or failure to pay penalty.	15. Without prejudice to any penalty imposed by the adjudicating authority under sub-section (5) of section 14D, whoever causes substantial damage, shall be punished with imprisonment for a term which shall not be less than seven years but which may extend to imprisonment for life and with fine which shall not be less than ten crore rupees, and in case of continuing damage, with additional fine which may extend to fifty lakh rupees for every day during which the damage continues.	
Punishment for failure to pay penalty imposed under the Act.	15A. (1) Whoever fails to pay the penalty imposed by the adjudicating authority within the time specified in sub-section (7) of section 14D shall be punished with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than five crore rupees and in case of such failure to pay the penalty continues, with	

	additional fine which may extend to fifty lakh rupees for every day during which such failure continues after the first such failure or contravention.	
	(2) Where a company fails to pay the penalty imposed by the adjudicating authority within the time specified in sub-section (7) of section 14D, the company shall be punished with fine which shall not be less than five crore rupees and in case such failure to pay the penalty continues, with additional fine which may extend to fifty lakh rupees for every day during which such failure continues after the first such failure or contravention.	
	(3) Where a company fails to pay the penalty imposed by the adjudicating authority, within the time specified under sub-section (7) of section 14D, every officer of such company (who at the time when damage to environment was committed and in respect of which such penalty has been imposed) was directly in charge of and was responsible to the company for the conduct of the business of the company, such officer shall be punished with imprisonment for a term which shall not be less than one month but which may extend to three years, or with fine which shall not be less than five crore rupees and in case of such failure to pay the penalty continues, with additional fine which may extend to fifty lakh rupees for every day during which such failure continues after the first failure or contravention.	
	<i>Explanation.</i> — For the purposes of sub-sections (2) and (3), “company” shall have the same meaning as assigned to it in clause (20) of section 2 of the Companies Act, 2013.’.	18 of 2013.
Insertion of new sections 20A, 20B and 20C.	7. After section 20 of the principal Act, the following sections shall be inserted, namely:—	
“Power to levy fee in respect of matters for which no levy of fee provided.	20A.(1) Any rule which the Central Government is empowered to make under this Act may, notwithstanding the absence of any express provision to that effect, provide for the levy of such fees in respect of any application, amendment of document, issue of certificate, test, inspection, endorsement, giving of clearance of approval, grant of registration or authorisation, supply of statistics or copies of documents or orders, preparation and for any other purpose or matters involving the rendering of any service by the officers of the Central Government or authorities constituted under sub-section (3) of section 3 or officer of the State Government under this Act or any rule made thereunder, as may be considered necessary.	
	(2) Without prejudice to the provisions contained in sub-section (1),	

		the Central Government may by rules, provide for levy of fees for preparation and use of national data base on environment:	
		Provided that the Central Government may, if it considers necessary so to do, in the public interest, by general or special order, exempt any class or classes of persons from the payment of such fee either in part or full.	
Fee, etc., to be credited into public account in certain cases.		20B. All fees in respect of matters involving the rendering of any service by the officers of the Central Government including clearance given, approval, registration or authorisation granted by it in pursuance of any provision of this Act or rules made thereunder and for preparation and use of national data base on environment shall be paid into the public account of India in the Reserve Bank of India.	
Fees to be credited into notified account in certain cases.		20C. All fees in respect of matters involving the rendering of any service by the officers or the authorities constituted by the Central Government under sub-section (3) of section 3 including clearance or approval given, registration or authorisation granted by it, and for use of national data base on environment in pursuance of any provision of this Act or rules made thereunder shall be paid into such account, in consultation with the concerned State Government as may be, specified by notification in the Official Gazette, by the Central Government.”.	
Amendment of section 21.		8. In section 21 of the principal Act, for the words and figure “constituted, if any, under section 3”, the words, figures and letter “constituted under section 3 or appointed under section 14D” shall be substituted.	
Amendment of section 22.		9. In section 22 of the principal Act, for the words “or officer”, the words “or adjudicating authority or other officer” shall be substituted.	
Amendment of section 24.		10. In section 24 of the principal Act, for sub-section (2), the following sub-section shall be substituted, namely:—	
		“(2) Where any act or omission constitutes an offence punishable under this Act and the rules or orders or direction made or issued thereunder and also under any other relevant Act, then the offender found guilty of such offence shall be liable to be punished under that Act which imposes a greater punishment.”.	
Amendment of section 25.		11. In section 25 of the principal Act, in sub-section (2),—	
		(i) clause (a) shall be re-numbered as clause (ac) thereof and before clause (ac) as so re-numbered, the following clauses shall be inserted, namely:—	
		“(a) the manner of determining minor violation under clause	

	(eb) of section 2; (aa) the manner of determining non-substantial damage under clause (ec) of section 2; (ab) the manner of determining substantial damage under clause (i) of section 2;”;	
	(ii) after clause (e), the following clause shall be inserted, namely:- “(ea) the manner of authentication of electronic record by the Central or State Governments or any officer empowered under sub-section (5) of section 11;”;	
	(iii) after clause (g), the following clauses shall be inserted, namely:—	
	“(ga) the manner of holding inquiry by the adjudicating authority under sub-section (1) of section 14D;	
	(gb) the procedure for making an application before the adjudicating authority and procedure including fees payable along with the application for adjudicating penalty under sub-section (3) of section 14D;	
	(gc) the composition of the Selection Committee and procedure to be followed by it under sub-section (2) of section 14G;	
	(gd) the salary and allowances payable to, and the other terms and conditions of service including pension, gratuity and other retirement benefits of, the members of the adjudicating authority under section 14H;	
	(ge) the procedure for investigation of misbehaviour or incapacity of the member of the adjudicating authority under sub-section (3) of section 14J;	
	(gf) levy of fees for preparation and use of national database on environment under sub-section (2) of section 20A;”.	
	CHAPTER III	
	AMENDMENTS TO THE NATIONAL GREEN TRIBUNAL ACT, 2010	
Amendment of section 16.	12. In the National Green Tribunal Act, 2010, (hereafter in this Chapter referred to as the principal Act), in section 16, after clause (i), the following clause shall be inserted, namely:—	19 of 2010.
	“(ia) an order made by the adjudicating authority under sub-section (3) of section 14D of the Environment (Protection) Act, 1986;”.	29 of 1986.
Insertion of new section 16A.	13. After section 16 of the principal Act, the following section shall be inserted, namely:-	

<p>“Condition to entertain appeal by Tribunal.</p>	<p>16A. Where an appeal is preferred by any person on whom the amount of penalty has been imposed by an adjudicating authority under the Environment (Protection) Act, 1986, such appeal shall not be entertained by the Tribunal unless such person has deposited with the Tribunal seventy-five per cent. of the amount of penalty imposed upon him by the adjudicating authority.”.</p>	<p>29 of 1986.</p>
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