

ENVIRONMENT LAWS – OPPORTUNITIES FOR COMPANY SECRETARIES*

Introduction

Protection and Conservation of environment is always on the priorities list of India. Protection and Improvement of environment and safeguarding of forest and wild life is inserted in the Constitution *vide* amendment act 1976 as Article 48A under Directive Principle of States. The Amendment Act of 1976 also added the fundamental duties in the constitution which assigned the duty to the citizens, which includes “protection and improvement of the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures”. In line with and to give effect to said Directive Principle of State Policy, our country passed various legislations for protections of environments including Air, Water etc. The Ministry of Environment, Forest and Climate Change (MoEFCC) is the nodal agency for the planning, promotion, co-ordination and overseeing the implementation of India’s environmental and forestry policies and programmes. The MoEFCC discharges the duties under various Environment Laws. Supreme Court through various Judgements also emphasized on the importance of strict enforcement of environment laws. The strict enforcement of these laws calls for the need of professional services in this domain. This has also opened a whole new area of opportunities for Company Secretaries (CS).

Opportunities for the Professionals under the Environment (Protection) Act, 1986

This Act is enacted for the protection and improvement of environment. This Act and rules made there under have prescribed various procedure including safeguards for handling hazardous substances. The Central Government or authorized officers under the act are empowered to take samples and inspect samples of air, water, soil or other substance from any factory, premises or other prescribed place. This law provides for the strict punishment for the company as well as on the person directly in charge of the company. Many rules have been prescribed under this Act which *inter-alia* includes as under:

S. No.	Rules
1.	The Manufacture, Storage and Import of Hazardous Chemicals Rules, 1989
2.	Rules for the Manufacture, use/import/export and storage of Hazardous Micro organisms / genetically engineered organisms or cells (Rules, 1989)
3.	The Chemical Accident (Emergency Planning, Preparedness and Response) Rules, 1996

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4.	Batteries (Management & Handling) Rules, 2001
5.	Plastic Waste Management Rules, 2016
6.	Bio-Medical Waste Management Rules, 2016
7.	Construction and Demolition Waste Management Rules, 2016
8.	Regulation of Poly-chlorinated Biphenyls (PCBs), 2016
9.	Solid Waste Management Rules, 2016
10.	Regulation on Lead contents in Household and Decorative Paints Rules, 2016
11.	Wetland Rules, 2017
12.	Regulation of Persistent Organic Pollutants Rules, 2018

These rules are applicable to various companies operating in different industries. The rules required correct Interpretation and implementation of the law in spirit. A Company Secretary is professional having expertise of Interpretation and is involved in almost all the compliances that may be applicable to an organization. Company Secretaries may easily explore various opportunities that are available in the Act and rules made there under and prove his acumen. This law provides for the strict punishment for the company as well as on the person directly in charge of the company, which requires the expert services of a company secretary in this domain.

Compliances w.r.t. Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016

India has enacted laws to ensure that there is no import of the hazardous wastes from any country to India for disposal. The import of hazardous waste from any country shall be permitted only for the recycling or recovery or reuse. The Company Secretary shall ensure that a company has complied with the following requirements under the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016:

- (1) The Company generates the hazardous waste in its establishment and engaged in handling of hazardous wastes as specified in the Schedules to the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2016.
- (2) The Occupier for the management of hazardous and other wastes, is required to follow the following steps, namely:-
 - (a) prevention;
 - (b) minimization;
 - (c) reuse,
 - (d) recycling;
 - (e) recovery, utilisation including co-processing;
 - (f) safe disposal

- (3) The occupier is responsible for safe and environmentally sound management of hazardous and other wastes.
- (4) The hazardous and other wastes generated in the establishment of an occupier is required to be sent or sold to an authorised actual user or shall be disposed of in an authorised disposal facility.
- (5) The hazardous and other wastes is required to be transported from an occupier's establishment to an authorised actual user or to an authorised disposal facility in accordance with the provisions of these rules.
- (6) The occupier who intends to get its hazardous and other wastes treated and disposed of by the operator of a treatment, storage and disposal facility is required to give to the operator of that facility, such specific information as may be needed for safe storage and disposal.
- (7) The occupier is required to take all the steps while managing hazardous and other wastes to
 - (a) contain contaminants and prevent accidents and limit their consequences on human beings and the environment; and
 - (b) provide persons working in the site with appropriate training, equipment and the information necessary to ensure their safety.

The non-compliances under these rules may have adverse effects on the company. Therefore, it becomes necessary that proper care shall be taken in compliance of these rules.

Opportunities for the Professionals under the Water (Prevention and Control of Pollution) Act, 1974

This Act is enacted for the prevention and control of water pollution. Under the law, the State Board or any officer empowered by it has the power to take the samples from stream, well, sewage and trade effluent passing from plant, vessel or place. A company secretary being an expert in the capacity of authorized representative may ensure that proper procedure has been followed as prescribed under section 21 of the Act. Certain prohibitions are provided under section 24 of the Act on the use of stream or well for disposal of polluting matter. A CS may devise the system through which the company can ensure the compliance with this section. He may assist in drafting the appeals to be made to the appellate authority under the Act. This law also provides for the strict punishment for the company as well as on the person directly in charge of the company. A CS can act as adviser for the company enabling it and its directors to be safe from the strict liability under the Act.

According to rule 32 of the Water (Prevention and Control of Pollution) Rules, 1975, an application is required to made Central Board for establishing any industry, which is likely to "discharge of sewage" or bringing to use any new "Discharge of sewage". This application is required in form XIII. The Central Board may depute its officer(s) for verifications and inspection. These officers are empowered to require the applicant to furnish additional information, clarifications, documents etc. A PCS or CS in employment is competent to facilitate the process and consequently, the chances of the organization to obtain the approvals will be much better.

Opportunities for the Professionals under the Air (Prevention and Control of Pollution) Act, 1981

This Act was enacted to prevention, control and abatement of air pollution. It contains the provisions related restriction on setting up of plants, discharged air pollutant in excess of prescribed standards etc. The Board under the act is empowered to take samples and inspect the premises of the organizations. A professional may draft the necessary application for obtaining consent for establishment or operation of industrial plant in an air pollution control area. He may keep a track of the standards as may be laid by the State Board and make it part of the corporate compliance framework. He can ensure that proper procedure has been followed as provided under the law for taking samples of air. He may assist in drafting the appeals to be made to the appellate authority under the Act. This law again like the above provides strict punishment for the company as well as on the person directly in charge of the company. Therefore, a CS may prove to be an asset for the company, directors and top management.

Further, he can also monitor various compliances under the Act and Air (Prevention & Control of Pollution) Rules, 1982. Few requirements under the Act and Rules is as under:

1. Prior consent should have been obtained from the State Pollution Control Board for any industrial plant in an air pollution control area.
2. The Company does not discharge or cause or permit to be discharged the emission of any air pollutants in excess of such standards laid down by the State Board under Section 17 (1) (g).
3. The Company should comply with the following conditions as may be laid down in the consent by the State Board, namely:
 - (i) Installation and operation of the control equipment;
 - (ii) Alteration or replacement of the existing control equipment, if any;
 - (iii) Proper Maintenance of the Control Equipment; and
 - (iv) Erection or re-erection of Chimney, as may be necessary.
4. The State Board or any officer authorised by it in this behalf have taken samples of air or emission from any chimney, flue or duct or any other outlet for the purpose of analysis.
5. Ensure that the company does not receive any notice / order from the State Board restraining the company from discharging or causing or permitting to be discharged the emission of any air pollutants.

Opportunities for professionals under Public Liability Insurance Act, 1991

This law is enacted to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by accident occurring while handling any hazardous substance. This law imposes strict liability on the owners. The duty of the owner is to take out insurance policies provided under the Act. Various compliances are required to be complied under this law. A CS can take the responsibilities of complying with the provisions of Act and rules made there under.

Opportunities for the Professionals under NGT Act

National Green Tribunal (NGT) was established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources. NGT is having jurisdiction over all the cases where a substantial question relating to environment and such questions have arisen out of the implementation of environmental laws prescribed in schedule 1 of the Act. NGT is the appellate authority under the laws related to Prevention and Control of Pollution of Water, Air, Environment etc. In case of Accidents, NGT is authorized to apply the principle of 'no fault' liability. Therefore, it is necessary that there shall be strict enforcement of Pollution Control Laws, which becomes the duty of a Company Secretary in Employment and Practising Company Secretaries in case of smaller companies. A CS being an expert of corporate laws may also assist in the proceedings before the tribunal. This act also fixes the liability on Company as well as on the person directly in charge of the company. The Penalties under this act may reach to 25 Crores rupees and in case the failure or contravention continues, with additional fine which may extend to 1 Lakh rupees for every day. So it becomes the duty of a company secretary to identify the Environment Laws applicable to the companies and ensure their strict enforcement.

Business responsibility and sustainability reporting

According to SEBI, in recent times, adapting to and mitigating climate change impact, inclusive growth and transitioning to a sustainable economy have emerged as major issues globally. There is an increased focus of investors and other stakeholders seeking businesses to be responsible and sustainable towards the environment and society. In view of this, it has prescribed the format of Business Responsibility Report for ESG (Environment, Social and Governance) in November, 2015. SEBI vide circular dated February 6, 2017 mandated the requirement submission of Business Responsibility Report ('BRR') for top 500 listed entities under Regulation 34(2)(f) of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015 ("SEBI LODR"). The key principles which are required to be reported by the entities pertain to areas such as environment, governance, stakeholder's relationships, etc.

Now, in May 2021 it has notified new reporting requirement on ESG parameters called the Business Responsibility and Sustainability Report (BRSR) in May, 2021. In terms of new reporting requirement, filing of BRSR is mandatory for top 1000 listed companies (by market capitalization) and the existing BRR is replaced with effect from the financial year 2022-2023. Filing of BRSR is also voluntary for the financial year 2021-22.

The Company Secretary shall ensure that the company complies with the BRSR disclosures requirements.

Environmental Care under CSR initiatives in the Companies Act, 2013

Every company covered under the criteria defined under section 135 of the Companies Act, 2013 is required to constitute a Corporate Social Responsibility Committee. This committee should formulate and recommend to the Board of Directors of the company 'a Corporate Social Responsibility Policy' in accordance with the activities in areas or subject specified in Schedule VII to the Act. Entry (iv) of said schedule provides:

"ensuring environmental sustainability, ecological balance, protection of flora and fauna, animal welfare, agroforestry, conservation of natural resources and maintaining quality of

soil, air and water including contribution to the Clean Ganga Fund set-up by the Central Government for rejuvenation of river Ganga.”

A CS can draft the policy in accordance with this entry. The expertise of the professional in this direction will improve the image of the company in society as a nature friendly business.

Judicial perspective

There are many cases in which the Supreme Court has acted in favour of environment protections. In the case of limestone quarries in the Doon Valley which caused soil erosion, deforestation and other environmental problems, the Supreme Court held that people have the right to live in a healthy environment with minimal disturbance of the ecological balance. In Bhopal Gas Leak case the Supreme Court declared that the right to a pollution-free environment is a part of the right to life under Art 21. In the Vellore Citizens Forum case, the Supreme Court held that ‘sustainable development’ as a balancing concept between ecology and development has been accepted as a part of customary International Law. Hefty fines and liabilities are always fixed by the regulators especially on organizations in environment related matters. Therefore, it has become necessary that the company secretaries (either in employment or in practice) give special emphasize on environment laws and prove to be a savior to the company and the top management.

Conclusion

The courts and administration of the country has always taken strict measures while enforcement of the environment laws. Degrading the environment is an international problem having presence in almost all the nations. The companies may be liable with hefty penalties for non-compliances of environment laws. A CS may act as savoir for the company and the top management from the strict liability under various environment Laws.

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