

DE JURE NEXUS LAW JOURNAL

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Air Pollution Control Legislation in India and Rights and Duties with Respect to Air Pollution

INTRODUCTION

A healthy environment is of utmost importance for the whole ecosystem to be in check. Humans have evolved and brought with its various problems which pose a threat to the environment. With advancement in the Industrial units and technology, there has been a rise in pollution. Pollution in any form be it air, sound or water is a threat to the environment.

Air pollution is the contamination of the air by discharge of hazardous chemicals in the atmosphere which adversely affect the health and air quality of the ecosystem. Major air pollution caused by industries and vehicle result in emission of various toxins and chemicals like carbon dioxide, sulphur dioxide, carbon monoxide, particulate matter and hydrocarbons, etc which degrade the air quality of our surroundings. Air pollution is not only a concern for the health of the public but also for the ecosystem, which ultimately leads to climate change. According to WHO, nine out of ten people in the world

inhale unhealthy or unsafe air.¹ The right to clean air is a basic human right which no person should be deprived of, thus it is important to make the government and authorities responsible for taking measures to tackle pollution. Action for curbing air pollution has to be a priority on a global level to prevent the degradation of air quality is a must.

Air pollution impacts not only the health of millions but also disturbs the food cycle production. As per the report "STATE OF GLOBAL AIR 2019" by Health Effects Institute with Institute by Health Metrics and Evaluation at the University of Texas, University of Washington and University of British Columbia; India accounted for the deaths of 1.2 million people due to indoor and outdoor air pollution in 2017.² This highlights the severity of this problem we are all facing. It is important to know about the rights and legislations about air pollution in India in order to bring about change.

BACKGROUND OF AIR POLLUTION LEGISLATION: RIGHTS & DUTIES

The need for sustainable use of resources and conservation of the environment is not a new concept, it had been in buzz in several parts of the International community. This environment consciousness had gained momentum since people started realising the significance of a healthy and nourished environment. Even before India had gained independence, legislations regarding environment were existent in some parts of the world.

¹ Available at: https://www.who.int/health-topics/air-pollution#tab=tab_1 [Last accessed on September 4, 2020].

² Available at: <https://www.thehindu.com/sci-tech/energy-and-environment/over-12m-early-deaths-in-india-in-2017-due-to-air-pollution-report/article26719117.ece> [Last accessed on September 4, 2020].

This was successfully incorporated when the UN developed a framework on it at a Conference on the Human Environment in Stockholm, 1972.

In the following conference, the member countries decided to take steps to prevent pollution and degradation of natural resources, which subsequently also included air. India, under the influence of this declaration set up a National council for Environmental Policy and planning, which later was transformed into the Ministry of Environment and Forests in 1985. This is currently, the apex body which governs regulation and safeguarding of environment in the country. Consequently, constitutional sanction was given by the 42nd amendment which were enacted under article 253 of the Constitution. These reflect on the issues of protection of environment and conservation of good air quality with certain guidelines mentioned in the Part IVA under the ambit of fundamental duties as well as part IV under Directive principles of State Policies. Article 48A of the Constitution of India directs the State to take steps to preserve and improve the condition of the forests, wildlife, and the environment of the country. Whereas, article 51 A sets out a duty on every citizen to help protect the lakes, forests, rivers, wildlife and all the living organisms by showing compassion towards them. Nowadays, through judicial interpretations, the right to clean air is associated with article 21 of the constitution which states Right to life.³

Hence, after all efforts and notifications, the Air (Prevention and Control of Pollution) Act, 1981 was brought about to prevent and regulate the air pollution in the country. This act governs the acts and protocols with relation to air pollution. Thus, being the specific legislation for preservation and control on air pollution can be considered as a step towards a sustainable and

³ Available at: <http://lexpress.in/environment/right-clean-healthy-environment-fundamental-right-india> [Last accessed on September 4, 2020].

healthy future. Another act which can be seen as a legislation for clean air can be the Environment (Protection) Act, 1986 (EPA).

AIR (POLLUTION PREVENTION AND CONTROL) ACT,

1981: A BRIEF

The Air (Pollution Prevention and Control Act), 1981 is the first and foremost act formulated for the motive of prevention, control and cutting down of air pollution. It applies to the whole of India and lays down provisions to reduce and curb air pollution by industries mainly. This act has been constituted in line with the water act, 1974. According to the Air Act, ambient air quality standards were established to counter the air pollution problems. The Air Act aims to combat air pollution by prohibiting the use of polluting fuels and substances, as well as by regulating air pollution-causing devices. The two main authorities established under the Air act are Central pollution Control Board and State Control Pollution Board. Under the Law, establishing or operating of industrial units in the pollution control areas is to be decided by the State Control Boards. It is also expected that the Boards will test air in air pollution control areas, inspect pollution control equipment and manufacturing processes.⁴ In April 1994 the CPCB notified National Ambient Air Quality Standards (NAAQS) for Major Pollutants. These are considered air quality levels that are needed with adequate safety margins to protect public health, vegetation and property. The NAAQS prescribes specific standards for sensitive industrial, residential, rural, and other areas.⁵

⁴ Available at: [https://uk.practicallaw.thomsonreuters.com/0-503-2029?transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://uk.practicallaw.thomsonreuters.com/0-503-2029?transitionType=Default&contextData=(sc.Default)&firstPage=true) [Last accessed on September 5, 2020].

⁵ Available at: <http://www.indiaenvironmentportal.org.in/files/file/Permissible%20Level%20for%20Pollutants.pdf> [Last accessed September 5, 2020].

Industry-specific emission standards for iron and steel plants, cement plants, fertiliser plants, oil refineries and the aluminium industry have also been developed. The environmental quality standards prescribed in India are similar to those that prevail in many developed and developing nations.

To empower the central and state pollution boards to deal with serious emergencies, the amendment for the Air (Prevention and Control of Pollution) Act was enacted in 1987. The boards were authorised to take immediate action to deal with such emergencies and to recover the costs incurred by the offenders. The power to cancel consent to failure to fulfil the prescribed conditions was also emphasised in the amendment to the Air Act. Whereas, the Atomic Energy Act of 1982 complements the above Acts, which was introduced to deal with radioactive waste. The Motor Vehicles Act was enacted in 1988 to regulate vehicle traffic, in addition to ensuring proper packaging, labelling and hazardous waste transportation. There were also various aspects of vehicle pollution notified under the 1986 Environmental Protection Act, 1986.

Definition of Air Pollutant:

Section 2 of the act defines the meaning of air pollutants and air pollution for the purposes of the act.

Section 2(a) defines 'air pollutant' as any solid, liquid or gaseous substance which could harm or damage the environment, humans, other living creatures, plants or even property. The noise was also included in the list of substances which are considered to be harmful to the environment through an amendment from 1987. Hence this Act also provides for noise pollution regulation.

Definition of Air Pollution:

Whereas, Section 2(b) defines “Air Pollution” as the existence of air pollutants in the air and atmosphere.

Constitution of Bodies:

Section 3 and Section 4 of the Air Act state that the Central Board and the State Boards, respectively, shall be given the appropriate powers and functions, and shall exercise those powers and not go beyond the scope of those powers.⁶

Bodies Set Up and Involved:

Section 2(f) lays down the setting up of two boards, namely the Central Board and State Board.

Section 2(g) defines 'Central Board' as the 'Central Pollution Control Board' established pursuant to Section 3 of the Water (Pollution Prevention and Control) Act 1974, which provides that the Central Government of India shall establish this Board for the purposes of the Act. The powers of this Board extend to all of India.

Section 2(o) defines 'State Board' as a board established in those States where the 1974 Water (Pollution Prevention and Control) Act is in force and where the State Governments have decided to establish those boards. This Act also applies to those states where the 1974 Water (Pollution Prevention and Control) Act is not in force. 'State Board' is identical with 'State Pollution Control Board.'

Section 6 states that the Central Board shall exercise the powers of a State Board under that Act in the case of Union Territories, or it may even delegate those powers or functions to any person or body of persons.

⁶ Available at: http://iced.cag.gov.in/?page_id=1050 [Last accessed on September 6, 2020].

FUNCTIONS OF THE BOARDS

Section 16 of the act dictates the functions of the Central Pollution Control Board i.e. the Central Board. They are as follows:

The Board shall make efforts in the country for the prevention, reduction and control of air pollution and may advise the Central Government on the same. It shall plan and implement a nationwide air pollution prevention control and reduction programme. It shall coordinate the States' activities and resolve the disputes which arise between them.

It shall provide the Boards with technical assistance, conduct investigations and conduct air pollution related research. It shall plan and implement training programmes for the individuals to participate in those programmes. It shall assist in the fight against air pollution through a mass media programme. It shall set air quality standards and perform other functions as prescribed. It shall lay down standards for the quality of air and shall perform alternative functions as prescribed. The Board shall additionally open a laboratory or multiple laboratories to modify the Board to perform its functions effectively. Section 17 lays down functions of the State Boards. The State Board shall plan and implement comprehensive pollution prevention, management or reduction programmes. It has to make sure to advise the government. It will gather and pass around data concerning pollution. It should organise mass awareness and training for industrial units to help for control, prevent and reduce pollution. It shall examine any management instrumentation, complicated or producing method at cheap times, and shall issue orders to the persons in control of the requirements of combating pollution. It shall examine and assess the air quality as a result of it should view necessary in selected pollution management areas.

It shall set standards for the emission of air pollutants from automobiles or industries, or from any other source, into the atmosphere. Nevertheless, a ship or aircraft cannot enter a source's ambit. The State Boards shall also advise the Government of the State on the suitability of any place to be used for the establishment of any industry, bearing in mind the air quality that would be affected if that industry were established. The Boards shall also establish laboratories in their Member States to enable the State Board to perform its functions effectively.

POWERS OF THE BOARD

Power of Directions

Section 18 states that the Central Board follows the direction of the Central Government while the State Boards follow the direction of the State Governments concerned. Where a Central Board decision and the direction of a State Government are in conflict, the matter shall be referred to the Central Government for resolution. Where the Central Government believes that a serious emergency has arisen due to the failure of the State Board to comply with the Central Board's orders, it can perform the State Board's functions.

Section 31A stipulates that the Central Government may issue instructions to any person, officer or authority and that party is bound to follow the instructions. These instructions should be within the Board's powers and functions, including- Closure, prohibition, regulation, process, or operation of any industry and Stopping or regulating water supply, electricity, or any other service.

Power to Declare of Air Pollution Control Areas-

Section 19 of Air Act: Under this Section of the act, an area in a state can be declared as a 'Air pollution area' by the state government in accordance with the state board. One or more areas may be coalesced into one new pollution area. Moreover, use of any fuel that may contribute to air pollution may be banned by the state. Section 20: This section states that suitable instructions may be given by the state to those responsible for vehicle registration under Motor vehicles act, 1939. This of course after consulting the state board. Any instructions by the state government are binding.

Power to Restrict Emissions of Automobiles-

Section 20 states that the State Government may issue instructions to the authority responsible for vehicle registration under the Motor Vehicles Act 1939 after consulting the State Board, and that authority shall be bound to follow such instructions. This is done to ensure compliance with emission standards set out in section 17(1)(g).

Power to restrict working of Industrial Plants-

Section 21 deals with the establishment of industrial plants in compliance with the respective state board and with the consent. It prescribes the procedure for submitting a request to the Board for which a decision must be made and intimated to the applicant as to whether or not he has the permission to establish the plant. The conditions for installing the plant are also given. These should be adhered to, otherwise permission can be revoked for the plant. The conditions laid down in Article 21(5) are-

The necessary control equipment has to be installed in the plant, as stipulated by the State Board. This equipment has to be altered in accordance with state board decisions and instructions. Maintaining the equipment in good running condition. When and where the Board so directs, chimneys should be erected.

Power to limit the emissions of Industry if found to be in excess of the prescribed limit-

Section 22 states that no person heading an industry shall emit any excess emissions than those set by the State Board.

Power of moving to court if a person or entity causes Air pollution-

Under Section 22A, when the Board believes that there's excess emission being caused by an individual running a plant in any pollution area, then the Board can make an application before the Court to restrain him from doing an equivalent.

Furnishing of information to State Board and other agencies in certain cases-

Under Section 23, where any emission exceeding the prescribed limit occurs due to an accident or unforeseen event, the person operating the industrial plant shall report the facts of the same to the State Board and other relevant authorities, to whom remedial action shall be taken as soon as possible.

Power of entry and inspection whenever needed –

Under Section 24, an individual authorised by the State Board shall have the facility to enter into any place for completing the performance of any of the functions assigned to him. He may examine and inspect any control equipment, plant, record, register or the other document or object or anywhere which he has reason to believe was used for the commission of any offence under this Act. The person responsible of those equipment, plants, record etc shall assist the person from the State Board to perform the functions.

Power to extract information-

It is stated in Section 25 that the State Board or any person empowered under it shall have the power to call the person operating such plant or control equipment on any information concerning the type of air pollutant and the amount of emissions released by such plant or device. It shall also undertake inspections to verify the same.

Power to accumulate samples of air and emissions –

Section 26(1) states that air or emission samples may be taken from any chimney, flue, duct or outlet as prescribed. In legal proceedings, the samples are admissible only on the basis of compliance with the conditions set out in Sections 26(3) and 26(4). The person taking the sample shall notify such occupant's occupant or agent of the location from which the sample was taken. The sample shall be collected with the occupant or his agent present. The sample shall be placed in a marked, sealed container. Both the person taking the sample and the occupant, or his agent, must sign the container.

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PENALTIES

Under Section 37, whoever fails to suits the provisions of Section 21, 22 and therefore the directions issued under Section 31A, are often sentenced to imprisonment for a term of 1 year and 6 months. These sentences are often extended to 6 years and with fine, if the requisite compliances under the aforesaid sections are still not administered, with a further fine of 5 thousand rupees a day.

Under section 38, punishments for certain actions are given;

The destruction, defacing, removal, etc. of any pillar, post, stake or notice fixed in the ground under the Board 's authority. Obstruction of any person acting on the Board's orders from exercising his or her powers and duties under the Act. Damages any property that belongs to the Board. Failure to provide information to an officer or any Board employee required by that officer or employee. Failure to report excess emission release than the state board set standard. The State Board should be informed even of an apprehension of releasing excess emissions. Giving false statements when furnishing information to Board authorities. Giving the Board false information to obtain permission under Section 21, i.e. authorisation to set up industrial plants. These are crimes that are punishable by imprisonment that can extend with fine to three months, which can extend to ten thousand or both rupees.

Under Section 39, any order or direction that has been flouted and for which there is no punishment in any part of the Act is punishable by three months' imprisonment or a fine of three thousand or both rupees. Failure of payment leads to a charge of 5000 per day.

Section 40 of this Act speaks of corporate offences. If a company commits an offence, each such person shall be deemed guilty, who is directly in charge of the company, who was responsible to the company for the conduct of its business as well as to the company itself. He shall be punished as provided for in this Law. However, where such an offence has been committed without such person's knowledge, or where he has made every effort and due diligence to stop such offences, that person shall not be held liable.

Section 41 discusses the offences committed by departments of government. Where an offence has been committed by any government department under this Act, the head of that department shall be liable to proceed and be punished accordingly. However, if the Head of Department had no knowledge of the

perpetration of these offences or had exercised due diligence to prevent them from occurring, he should not be deemed to be liable.

Furthermore, as provided for in Section 41(2), if such Head of Department has consented to or neglected to prevent the commission of such offences, then such person shall be liable for the prosecution and punishment thereof.

PROCEDURES

The procedures are covered under sections 42 to 46. Section 42 states that no lawsuit, prosecution or other legal proceedings shall be brought against the government, any officer of the government or any member, employee or officer of the board if the actions are carried out by such body or persons in good faith pursuant to this Act.

Section 43 states that only those offences where the complaint is made by a board or official shall be recognised by the Court. Any person who has given notice of the alleged offence and his intention to lodge a complaint with the Board or an officer authorised by it, of not less than sixty days.

Section 44 states that according to Section 21 of the Indian Penal Code 1860, all members, officers and other employees shall be deemed to be acting as public servants.

Section 45 states that the Central Board shall provide the Central Government with information in the form of data, statistics, reports or other forms of information, etc.

Section 46 involves a bar of jurisdiction. It states that in any matter which an Appellate Authority formed under this Act is empowered to decide under this

Act, no civil court shall have jurisdiction, nor should an injunction be granted in respect of any action taken under the powers of this Act.⁷

CONCLUSION

India consists of cities with the most degraded air quality in the world and thus it is the need of the hour to have a better mechanism to deal with Air Pollution. There is a need for the government to come up with a mechanism and publicly display data on air quality for awareness. Thus, liability of people and industries violating the act should be absolute. There being other complementary acts with the Air (Prevention and Control of Pollution) Act, 1981 leads to a sustainable and promising future if all these legislations are run effectively. Hence, these were the main legal framework dealing with the Air pollution control in India.

⁷ Available at: <http://legislative.gov.in/sites/default/files/A1981-14.pdf> [Last accessed on September 6, 2020].



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