



Air Pollution and Preventive Measures : A Study of Indian Laws

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AIR POLLUTION AND PREVENTIVE MEASURES: A STUDY OF INDIAN LAWS ABSTRACT
India is the country which is witnessing rapid growth major economies of the world, with it are growing its need of energy and the pollutions among which most severely effecting one is the Air Pollution. The Air Pollution is phenomena in which impure substance gets mixed with air thus degrading the air quality which in turn is harmful for living beings.

ABSTRACT

India is the country which is witnessing rapid growth among major economies of the world. With the growth the other drawback is that the pollutions which is most severely effecting is the Air Pollution. The Air Pollution is phenomena in which impure substance gets mixed with air thus degrading the air quality which in turn is harmful for living beings. In this study it has concluded that since the beginning of Industrial era in India various laws have enacted with the objective as to prevent and keep a check over air pollution. The study is focused upon the Indian Perspective and Laws related to Air Pollution and its preventive legislatives.

KEY WORDS

Environmental Law, Preventions from Air pollution, Air pollution, Air pollutants.

INTRODUCTION

Air Pollution is ever growing problem in India since the beginning of Industrial era. Air Pollution is getting sever in urban areas day by day which is not only effecting our environment but the air as it resulting in bad Air Quality Index of many metropolitan cities while in most of the rural areas the air quality is better but degrading with time yet their Air Quality Index is safer for now. However, tourists from major cities are visiting places with natural scenery and better AQI but in turn are polluting these places.

The presence of pollutant in air degrading air quality is called Air Pollution and pollutant is impure substance resulting into pollution. The Articles 39, 42, 47, 48 and 49 are indirectly dealing with the issues of environmental pollution and its protection in the Constitutional Law of India. However, there are many Judicial Interpretations

by the court regarding cleaner and safer environment as well which are related to protection and rights of citizens regarding air which are under Article 21 of Indian constitution. Also the Directive Principles of the state policy states that it requires not only a protectionist stance by the state but also compels the State to look for the conservation of the healthier environment. The major sources of Air Pollution are Coal, Fuels and Petroleum.¹

Air Pollution

Air pollution is caused by the substance present in the atmosphere which are harmful for the environment and health of living beings; the air pollution also severely effects harm to the climate.

There are various gases which badly effects the climate as well environment some of them are (Carbon dioxide, Sulphur dioxide, Methane, Chlorofluorocarbon, Ammonia, Carbon monoxide), and other biological molecules. Air pollution causes different allergic disease which can spread from one to another person and cases results in death of infected.

The Air Pollution can be caused by both human as well natural phenomena's. The Air pollution can be mild to severely harmful for living beings and the crops in the field alike.

The Air pollution can also be classified as:²

- **Smog:** These are pollutions by combustion of fuel and its reaction with Sunlight.
- **Soot:** These are pollution due to particles of chemicals, dust, soil or other gas or solids.

Historical Background

Air pollution is no new phenomena in India as in ancient period the Prime Minister of MAGADH and during regime of Chandra Gupt Maurya there is mention of environmental cleanliness in 300 BC and environment protection in his Arthashashtra. However, the modern history of Air Pollution legislatives in India can be classified as:

Pre Independence

1. The Oriental Gas Company Act, 1857

The Oriental Gas Company Act, 1857, enacted to regulate pollution produced by Oriental Gas Company, by imposing fines (Rosencranz, 1991). If after imposition of fine anyone violates the laws or repeats it then sanctions under The Indian Penal Code, 1860 were imposed upon him. The Penal code states punishments for various kinds of pollutions including Air Pollution, nuisance, and adulteration of food, drinks, drugs and water.³

2. Indian Penal Code, 1860

There are various provisions under Indian Penal Code, 1860 stating sanctions against the person engaged in polluting activities. These provisions were applied against violators to prevent pollution in the environment and any harm to environment. Chapter XIV of IPC, under Section 268-294-A, deals with the offences that are related to safety, public health, etc. In case of violation, the violator is punished under these aforesaid provisions.⁴

3. Indian Explosive Act, 1884

The act was enacted to regulate import, export and the manufacturing of explosive items, as these explosive items were severely harmful for the environment.

4. The Bengal Smoke Nuisance Act, 1905

This Act was enacted to regulate the Air pollution caused by the major pollution emitting factories of Industrial town of Howrah and other major industrial cities of Bengal. This factory caused nuisances and disturbance to the environment.⁵

5. **The Indian Boilers Act, 1923**

The Indian Boilers Act, 1923 came into force with the motive to ensure safety of life and Property of any person of society from the danger of explosions of steam boilers and to achieve this they have to register and inspect it during the operation and maintenance of boilers in India by which they had the information regarding the condition of boilers.⁶

Post Independence

1. **The Factories Act, 1948**

This act was enacted after the Independence with the objective to provide proper ventilation and humidity to the labours. This act was to indirectly control the Air pollution provided under Sec.13, 14, 15 of this Act.

2. **The Industrial (Development and Regulation) Act, 1957**

The act was enforced to empower the Central Government for investigation to be made into scheduled industries or industrial undertakings, as it was the first act for the industrial area. This extent was limited to the purpose of conserving any resources as sustainable development which are utilized in the industry also with the regulation imposed upon them regarding production and industrial development.

3. **The Mines Act, 1952**

The act was enacted as while working in mines the workers were openly exposed to dust and fumes of coal any other harmful substances which could affect the health of the workers as well equally degrade the environment, thus the act ensures the safety measures to be taken and safety gears to be provided to the workers.

4. **The Atomic Energy Act, 1962**

The act enacted to address the health impact and safety against radioactive substances which are severely harmful for the environment with the sole purpose of controlling them.

5. **The Air (Prevention and Control of Pollution) Act, 1981**

The act was enforced to control and prevent the air pollution within society for which the State boards and Central boards were constituted to regulate and control pollution as per the rules and regulations of the act. Both these boards work under the Central government but if there is conflict between the State Boards than the Central board has to mediate and resolve the conflict.

6. **The Environment (Protection) act, 1986**

This act was enacted on 23rd May, 1986 to protect the environment from pollutions like Air, Water and other. This act also speaks to improve the environmental condition.

7. **Motor Vehicle Act, 1988**

The act was enacted to control the pollution of vehicles as vehicles forms major portion in pollution, the act also enforces obligation over the citizens to maintain their vehicles. Also in case of violation the authorities are empowered to impose fines or even arrest.

8. **The Municipal Solid Waste (Management and Handling) Rules, 2000**

This act was enforced to manage the social waste which constitutes pollutants thus pollute the air and environment. For ambient air quality monitoring has been made compulsory at the landfill sites like installation of landfill gas control system.

Status of air pollution in INDIA

The condition of air pollution in India is very critical as it is not only environmental but grave health issue as 22 out of 30 most polluted cities are Indian and Delhi being most polluted capital city in the world as per the report of IQAir for the year 2019-2020.⁷

The air is among most essential component for all life forms thus air pollution possess sever threat to their survival, ergo air quality is needed to be kept in check therefore Air quality index is the measurement for this purpose. The Central Air Pollution board is the body that provides daily as well hourly data for air quality for various major cities, as per the same data the average AQI of most polluted cities in India for 2015-2019 was:⁸

Air Pollution in India

| City | AQI |
|-----------|-----|
| Ahmedabad | 484 |
| Delhi | 267 |
| Patna | 252 |
| Gurugram | 234 |
| Lucknow | 224 |

(Source: https://earth.org/data_visualization/air-pollution-in-india/)

As per the data for 2016, more than 135 million people in India breathe air that is 10 times or more than the WHO safe limit and out of 20 world's cities 13 with the highest annual levels of air pollution are in India. The 51% of pollution is caused by the industrial pollution, 27% by vehicles, 17% by crop burning and 5% by fireworks.⁹

Preventive Measures

The first of its kind of act in India enacted to tackle and prevent air pollution, enforced in entire country. The Air (Prevention and Control of pollution) Act, 1981 (also called the Air Act) was enacted by the Parliament of India under Article 253 of the Constitution of India to implement rules which are stated by the United Nations Conference on the Human Environment held at Stockholm in June, 1972 of which India was also the participant.

The objectives for the prevention and control of air pollution are:

The Air Act, 1981 has specialized legal preventive measures to control and prevent the environmental pollution. The Air Act also provides for the prevention and control of Air Pollutants. This Act requires for the formation of Central and State Boards, so that the aforesaid purpose of the act can be implemented. The Act requires the Central Pollution Control Board to maintain the Air quality Index hourly and on daily basis. The Air Act also empowers to the Central and State boards to work on controlling the Air pollution.

The Scope and Application of the prevention and control of Air pollution:

The Air Act was enacted in late 20th century on 16th May, 1981 and it extends to all of the India. Under Sec.2 of this Act, major terms have been defined like Air pollutant, Air pollution, Occupier, Emission, Control Equipment, Industrial Plant, Central Board and State Board.

The Preventive measures to control Air pollution are implemented by the Central board and State board which are constituted for this purpose.

Central Boards

The Central board is to maintain the Air pollution by imposing rules and also it regulates various State Boards across the country. These boards are empowered with various powers and functions to regulate the Air pollution under the act. The powers vested upon this Board are not applied on other Central Boards which are to prevent and control from Air pollution. The powers and functions in the act are mentioned under Section 16, 17 and 18. The main function Central board is to improve the Quality of air, to control or prevent air pollution within the country along with maintaining data of AQI at daily and hourly basis of major Indian cities. The Central board also advices and take suggestions

from the Central government regarding how they to manage and control the Air pollution across the country. If there is any conflict that arises between the State boards than its Central board duty to resolve their dispute.

State Boards

In each State where Water Act is enacted there should be regulations for prevention of air pollution also. The State Government constitutes the State Board to regulate the water pollution and take necessary preventive measures to prevent and control the water pollution which constituted is under Sec.5 of Water Act. The State Board control the regulations for prevention and control of Air pollution. Every state has different regulations and laws in this regards. The State Board so constituted shall consist of the members which are¹⁰:

1. A chairman to manage all the members and regulate the State Board.
2. Officials, not more than 5, to represent the State Government who are nominated by the State Government itself.
3. Officials, not more than 5 where these members are selected from the local authorities functioning within the state and are recruit by the State Government.
4. Unofficial members not more than 3, which are also nominated by the State Government. These non-officials works to represent the fishery, agriculture, industry and others sectors which are likely of the opinion of State Government.
5. There are also 2 members who work to represent the Government owned companies and corporations, which are also nominated by the Government itself.

Legislative Control

The act was enacted to with the objective as to prevent air pollution in nature as well establish rules for industries both existing and new once so to prevent pollution emitted by them. The act was brought so as to:

- Establish standards of air quality
- lessen and control air pollution
- establish Central as well State air pollution control boards
- Delegate these boards with powers and functions stated in this act to meet the aforesaid objectives.

Landmark Case

1. **V.S. Damodaran Nair v. State of Kerela¹¹**: In this case the Hon'ble Court held that there are many major air pollutants named Ammonia, Sulphur dioxide, Carbon smoke, Fly-ash, fume, dust, etc., to prevent the environment from all these pollutants the court made the policies, rules and regulations on using these gases if relevant.
2. **K.Ramakrishnan v. State of Kerela¹²**: In this case the Hon'ble Court held that the smokers who smoke and pollutants the air by smoking not only harms their health but also of the non-smokers as they also breathes the same polluted air.
3. **Murli S.Deora v. Union of India¹³**: In this case the court held that it must be ensured that there should be no smoking in the public places as it may disturb other persons who are non-smokers. The court directed to Central government as well the State government and the Union territories to take the effective steps and impose fine over the smokers in public places.
4. **State of Manipur v. ChandanManihar Singh¹⁴**: In this case the Hon'ble Court held that if any vacancy is available in the court or the authority is not available that doesn't mean that the board

will not perform its duties as they have to perform their duties properly and also follow all the guidelines without any looseness.

5. **M.C. Mehta v. Union of India¹⁵**: In this case the Hon'ble Court held that it is the function of the board to keep a check, prevent and abate the Air pollution within the country.
6. **K.Muniswamy Gowda v. State of Karnataka¹⁶**: In this case the Hon'ble court held that the husk and dust emitted by the rice mills pollutes the atmosphere causing the health hazards to the nearby residents is the violation of the fundamental rights to these citizens under Article 21 of the Indian constitution.
7. **Orissa State (Prevention and control of Pollution) Board v. Orient Paper Mills¹⁷**: In this case the Hon'ble Supreme Court held that the State Government has the authority to declare any area as an air pollutant area by giving a notification in the official gazette in case it is not mentioned in the act.
8. **VardhamanKaushik v Union of India and Others¹⁸**: The National Green Tribunal (NGT) stated ban on use of vehicles older than 15 years within NCR and directed Transport Commission to ensure no registration of such vehicles within NCR Region.

Suggestions

The problem of Air pollution is ever growing thus urgent effective measures are the need of hour so to deal with it, thus following amendments can be made in existing laws:

1. The Air (Prevention and control of Pollution) Act, 1981 is the most important law for air pollution but is 40 years old law where many new major pollutants are missing which must be added.
2. Tribunals must be set up at different levels to deal with polluting behavior.
3. Sanctions must be imposed over appropriate authorities in case of incompetence or negligence.
4. Citizens must be made aware of laws and pollutants especially those related to agriculture and industries.
5. Strict administration and implementation of rules and laws over major air pollution discharge industries.
6. Uniform standards of emission for vehicles and industries across the country.
7. A multistep sanctioning system along with strict penalty to be imposed on violators and repeaters.

CONCLUSION

Air forms most basic component of life but when certain impure compounds gets mixed with air it causes air pollution which may be due to human and natural cause and it is harmful to living beings. So to measure the air quality Central pollution Control Board uses Air Quality Index is used to rate the quality from safe to severely harmful.

Since the arrival of Industrial revolution with British, various legislations have been passed by them and after independence Indian legislations to prevent and keep a check on air pollution among which Air (Prevention and Control of Pollution) Act, 1981 was most effective.

However, in today's context when problem of Air pollution is ever growing thus urgent effective measures are the need of hour so to deal with it, existing laws are needed to be amended.

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