

Subject: **Law**

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Paper : **Environmental Law**

Module : **Law Relating to Air Pollution**



ज्ञान-विज्ञान विमुक्तये

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QUADRANT-I (A) – PERSONAL DETAILS

Role	Name	Affiliation
Principal Investigator	Prof (Dr) Ranbir Singh	Vice Chancellor, National Law University Delhi
Co-Principal Investigator	Prof (Dr) GS Bajpai	Registrar, National Law University Delhi
Paper Coordinator, if any	Ms Lovleen Bhullar	School of Oriental and African Studies, University of London
Content Writer/Author	Ms Lovleen Bhullar	School of Oriental and African Studies, University of London
Content Reviewer	Ms Shibani Ghosh	Advocate; Consultant, Centre for Policy Research, New Delhi
Language Editor	Ms Lovleen Bhullar	School of Oriental and African Studies, University of London

QUADRANT-I (B) – DESCRIPTION OF MODULE

Items	Description of Module
Subject Name	Law
Paper Name	Environmental Law
Module Name/Title	Law Relating to Air Pollution
Module Id	9
Pre-requisites	Environmental studies in any discipline
Objectives	To introduce the legal framework in India to prevent and control air pollution
Keywords	Air Act, Environment (Protection) Act, MoEF



QUADRANT-I – E-TEXT

1. Introduction

Air pollution refers to the presence of a pollutant in the air or the atmosphere. There are two types of air pollution: indoor and outdoor. The sources of indoor air pollution include smoking, inefficient burning of inferior fuels and poor ventilation. The sources of outdoor air pollution include vehicles, industries, power plants, mining activities, construction activities, firecrackers, cigarettes and crop burning etc. The urgent need to regulate air pollution is borne out by the finding of a 2010 report of the Central Pollution Control Board that particulate matter in the air of 180 Indian cities was six times higher than World Health Organization standards. Recently, the Yale Environmental Performance Index has ranked India 174 out of 178 countries on air pollution.

2. Learning Outcomes

This unit will introduce the students to the legal framework relating to the prevention and control of air pollution in India. After studying this unit, they will be able to provide an overview of the laws concerning air pollution in the country and their scope and limits.

3. Legislative Framework

3.1. Constitution of India

The Constitution of India does not include any specific provision on environmental pollution generally or air pollution specifically. However, the judiciary has interpreted the fundamental right to life guaranteed under Article 21 of the Constitution to include the right to enjoyment of pollution-free air (*See, for example, Subhash Kumar v State of Bihar, AIR 1990 SC 420*).

3.2. Relevant legislation: General Provisions

Two of the important environmental legislation in India with respect to air pollution are the Air (Prevention and Control of Pollution) Act, 1981 (amended in 1987) and the Environmental (Protection) Act, 1986. Provisions concerning public nuisance under tort law, the Indian Penal Code (section 268), the Code of Criminal Procedure, 1898 (section 133) and the Code of Civil Procedure, 1908 (section 91) may also be applicable to cases of air pollution. However, the length and expense of the judicial proceedings and the difficulty of establishing liability etc. have discouraged their application. Since its establishment under the National Green Tribunal Act, 2010, the National Green Tribunal (NGT) has adjudicated cases concerning air pollution in the exercise of its original as well as appellate jurisdiction.

3.2.1. Air (Prevention and Control of Pollution) Act, 1981

One of the decisions taken at the United Nations Conference on the Human Environment 1972 (or the Stockholm Conference) was to take appropriate measures to preserve air quality and control air pollution. In order to implement this decision, the Ministry of Environment and Forests, Government of India (MoEF) enacted the Air (Prevention and Control of Pollution) Act, 1981 (the Air Act) in exercise of the power vested in it by Article 253 of the Constitution of India.



The primary objective of the Air Act is to prevent, control and abate air pollution or 'the presence in the atmosphere of any air pollutant'. An 'air pollutant' is defined in section 2(a) of the Act to mean:

any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

The Central Pollution Control Board (CPCB) and the State Pollution Control Boards (SPCB), established under the Water (Prevention and Control of Pollution) Act, 1974, are responsible for prevention and control of air pollution. In performance of its function to lay down air quality standards (section 16(2)(h)), the CPCB has notified the National Ambient Air Quality Standards, 2009 for industrial, residential, rural and other areas, and ecologically sensitive areas. Similarly, one of the functions of the SPCB is to lay down, in consultation with the CPCB, and having regard to the air quality standards laid down by the CPCB, standards for:

- (i) emission of air pollutants from industrial plants and automobiles into the atmosphere; or
- (ii) discharge of any air pollutant into the atmosphere from any other source (but not a ship or an aircraft) (section 17(1)(g)).

3.2.2. *Environment (Protection) Act, 1986*

Definitions under the Act

Environment	<ul style="list-style-type: none">water, air, land and the inter-relationship, which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism and property
Environmental pollutant	<ul style="list-style-type: none">any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment
Environmental pollution	<ul style="list-style-type: none">presence in the environment of any environmental pollutant

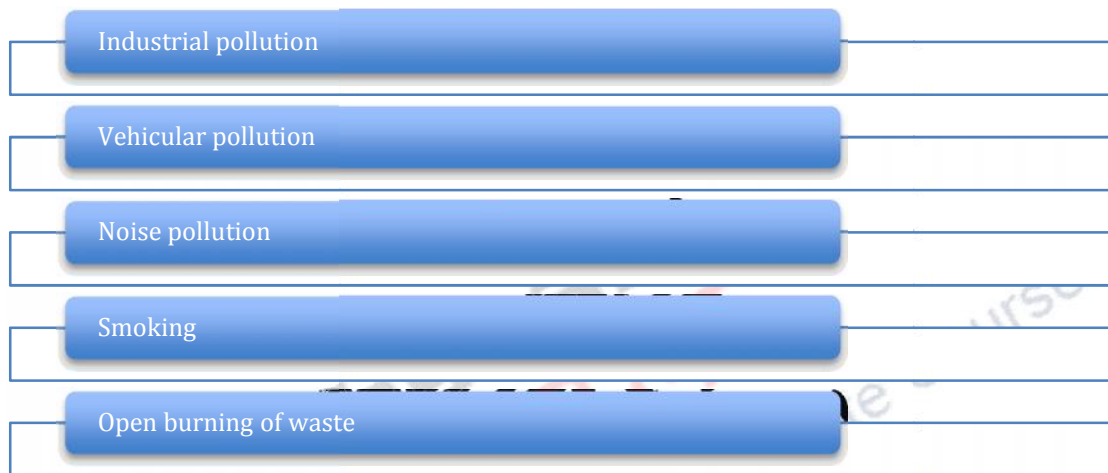
Like the Air Act empowers the SPCBs to lay down standards for emission/discharge of air pollutants into the atmosphere, under the Environment (Protection) Act, the Central Government, through the MoEF, may take measures to protect and improve the environment. This includes laying down emission/discharge standards for air pollutants, air quality standards for various areas and purposes, maximum allowable limits of concentration of air pollutants for different areas, etc. This has led to the inclusion of certain standards in the Environment (Protection) Rules, 1986, which take precedence over the standards laid down under the Air Act. However, in case an offence is punishable under both the Acts, the Air Act will apply.



In exercise of its power to take measures to protect and improve the environment, the Central Government, through the MoEF, has issued the EIA notification of 2006, which requires that the impact of the proposed project on air (among other aspects) must be taken into consideration. Similarly, the Central Government has declared certain areas as eco-sensitive zones and restricted activities resulting in noise pollution and air pollution in such areas.

4. Specific Causes of Air Pollution: Legislation and Judicial Decisions

This section highlights the relevant statutory provisions and judicial decisions concerning certain specific causes of air pollution.



4.1. Industrial pollution

Under section 19 of the Air Act, the State Government has the power to notify certain areas within the State as air pollution control area(s) after consultation with the SPCB. The use of non-approved fuel(s) or appliance(s) and/or the burning of any material (which is not a fuel) in such areas may be prohibited if it may cause or is likely to cause air pollution.

Previous consent of the SPCB is required in order to establish or operate an industrial plant in an air pollution control area. The SPCB shall either grant or refuse to grant consent within a period of four months from the date of receipt of the application. The decision shall be in writing and the SPCB is required to record reasons for its decision. The consent is granted subject to compliance with certain conditions, such as installation and operation of specified control equipment. If the conditions subject to which consent is granted are not fulfilled, the SPCB may cancel the consent but after providing a reasonable opportunity to be heard.

Further, an industrial plant operating in an air pollution control area cannot discharge any air pollutant in excess of the standards laid down by the SPCB. The Air Act *inter alia* penalizes emission of air pollutants in the air pollution control area(s) in excess of the standards laid down by the SPCB with imprisonment and/or fine (section 22). A person may also be restrained from emitting an air pollutant in an air pollution control area (section 22A). However, the SPCB does not have the power to impose the penalty or restrain a potential air polluter unilaterally; it has to make a complaint/application before a court, which will take cognizance of the same in accordance with the rules of criminal procedure (sections 22A & 37). But the Air Act does empower the SPCB to direct the closure, prohibition or regulation



of any industry, operation or process, or stop or regulate supply of electricity, water or any other service (section 31A).

The Supreme Court and High Courts have considered the effects of industrial pollution on human health and/or the environment in a number of cases. In *MC Mehta v Union of India and Others* (Taj Trapezium case), (1997) 2 SCC 353: AIR 1997 SC 734, the petitioner was concerned about the effects of air pollution on the Taj Mahal in Agra. A number of sources, including foundries, chemical/hazardous industries and the Mathura refinery, brick kilns, vehicular traffic and generator sets, were contributing to the air pollution. The Supreme Court applied the precautionary principle, that is, environmental measures must anticipate, prevent and attack the causes of environmental degradation. The burden of proof is on the industry to show that its operation with the aid of coke/coal is environmentally benign. The other observations/directions of the Court include:

- The emissions generated by the coke/coal consuming industries are air pollutants and have damaging effect on the Taj and the people living in the TTZ.
- The atmospheric pollution in the TTZ has to be eliminated at any cost. Not even one per cent chance can be taken when human life and the preservation of a prestigious monument is involved.
- The identified industries shall change over to natural gas as an industrial-fuel.
- The industries, which cannot obtain natural gas connections, shall stop functioning with the aid of coke/coal in the TTZ. Such industries may relocate.

4.2. *Vehicular pollution*

The increasing number of vehicles plying on the roads, both public transport and private vehicles, are a major source of air pollution in India. While gasoline-run vehicles emit carbon monoxide (CO), hydrocarbons (HC) and lead (Pb), diesel vehicles are responsible for the release of suspended particulate matter (SPM) and sulphur dioxide (SO₂).

The Air Act empowers the SPCBs to lay down standards for emission of air pollutants from automobiles in consultation with the CPCB (section 17(1)(g)). This has led to the Standard for Emission of Smoke, Vapour, etc. from Motor Vehicles. In order to ensure compliance with these standards, the State Government is required to give the necessary instructions to the vehicle registration authority under the Motor Vehicles Act, 1989 (MVA) (section 20). In addition, the MVA empowers the Central Government to prescribe emission standards for vehicles and to frame rules to regulate the construction, equipment and maintenance of motor vehicles in relation to the emission of smoke, visible vapour, sparks, ashes, grit or oil. The Central Motor Vehicles Rules, 1989 prescribes nationwide emission levels for old and new, diesel and petrol engine vehicles, which are identical to the emission standards for motor vehicles under the Environment (Protection) Rules.

In addition, or as an alternative, to the command-and-control approach prescribed by the Air Act and the Environment (Protection) Act, the government is also using market-based instruments, such as pollution and road taxes, in order to reduce and/or prevent air pollution resulting from vehicles.

During the late 1980s and 1990s, Mr MC Mehta, a lawyer, filed several public interest litigations before the Supreme Court with respect to vehicular pollution. This led the Court to pass a number of orders, inter alia, relating to:

- Mandatory use of catalytic converters for specific types of vehicles;
- Introduction and use of unleaded petrol for motor vehicles;



- Conversion of vehicles from the use of petrol/diesel to Compressed Natural Gas (CNG);
- Setting-up of a timeframe for the gradual phasing out and banning of old commercial/transport vehicles from Delhi roads;
- Conformity of certain vehicles, depending upon date of registration in the National Capital Region, to Euro-I and Euro-II norms.

On 10 February 2014, the Supreme Court acknowledged air pollution as a serious concern with severe public health consequences and issued notices to the Central government and the state governments of Delhi, Haryana, Rajasthan and Uttar Pradesh on actions such as uniform Bharat Stage IV standards nation-wide and tighter emissions standards, effective gap between diesel and CNG prices, lower taxes on buses, immediate introduction of daily health alerts on air quality, uniform vehicle tax measures across NCR, effective increase in parking pricing and enforcement to cut car usage.

4.3. Noise pollution

The definition of 'pollutant' in the Air Act includes noise (sections 2(a)). The sources of noise pollution in India include microphones and loudspeakers used in religious ceremonies and public meetings, electric and air horns used in buses and trucks, fireworks.

The Environment (Protection) Rules empower the Central Government to provide maximum allowable noise limits for different areas. Accordingly, the MoEF has laid down Ambient Air Quality Standards in respect of Noise (Schedule III). The Central Government has also notified the Noise Pollution (Regulation and Control) Rules, 2000 (amended in 2010) for 'regulation and control of noise producing and generating sources'. The Rules specify Ambient Air Quality Standards in Respect of Noise for industrial, commercial, residential or silence areas/zones. Some of the other important features are:

- The use of loud speakers/public address system and sound producing instruments is subject to written permission.
- The permissible noise level at the boundary of a public place or a private place, where a noise source is used, is prescribed.
- The use of horns, sound emitting construction equipment and bursting of firecrackers is prohibited in silence zones or during night time (i.e. between 10.00 pm and 6.00 am) in residential areas.

The Environment (Protection) Rules also include noise standards for fire-crackers, noise level standards for coal mines, as well as noise limits for automobiles and domestic appliances and construction equipment at the manufacturing stage and for generator sets run with petrol or kerosene or diesel. Any violation of a rule issued under the Environment (Protection) Act is a punishable offence (section 12). Provisions concerning noise pollution are also included in local municipal laws and state-level police laws.

The issue of noise pollution has formed the subject matter of a number of cases before the Supreme Court of India as well as High Courts. In *In re Noise Pollution– Implementation of Laws for Restricting Use of Loudspeakers and High Volume Producing Sound Systems with Forum, Prevention of Environment and Sound Pollution v Union of India*, (2005) 5 SCC 733, the Supreme Court observed:

...Any one who wishes to live with peace, comfort and quiet within his house has a right to prevent the noise as pollutant reaching him. No one can claim a right to create noise even in his own premises which would travel beyond his precincts and cause nuisance to neighbours and others...If any one increases his volume of speech and



that too with the assistance of artificial devices so as to compulsorily expose unwilling persons to hear a noise raised to unpleasant and obnoxious levels, then the person speaking is violating the right of others to a peaceful, comfortable and pollution free, life guaranteed by Article 21.

The Court then issued a number of directions, which include the division of firecrackers into light-emitting and sound-emitting categories. The Court also imposed a complete ban on bursting sound-emitting firecrackers and beating of drum or tom-tom or flow of trumpet or beat or sound of any instrument of use of any sound amplifier between 10.00 pm and 6.00 am. In addition, the Court directed the State Government to:

- Seize loudspeakers and amplifiers making noise beyond permissible limit
- Specify ambient air quality standards in different areas
- Add a chapter in textbooks regarding ill-effects of noise pollution

4.4. *Smoking*

Cigarette smoke is also one of the causes of air pollution. The Cigarettes and Other Tobacco Products (Prohibition of Advertisement and Regulation of Trade and Commerce, Production, Supply and Distribution) Act, 2003 read with the Prohibition of Smoking in Public Places Rules, 2008 prohibits smoking in public places (where the public has access and includes workplaces, shopping malls and cinema halls) and open places that are visited by the public (such as open auditoriums, stadiums, railways stations and bus stops). However, hotels with more than 30 rooms, restaurants with more than 30 seats and airports are allowed to have a separate smoking area or space.

4.5. *Open burning of waste*

The improper disposal of different types of waste (including municipal solid waste, plastic waste, hospital waste, etc.) generated in urban areas is a major problem and the illegal burning of such waste contributes to air pollution. Different types of waste are governed by different rules framed by the MoEF in exercise of the power conferred on it by the Environment (Protection) Act. The Plastic Waste (Management & Handling) Rules, 2011, prohibit the open burning of plastic waste. Further, in response to a petition alleging illegal burning of plastic, rubber and related waste, which releases deadly dioxins and furans, in various villages in north and north-west Delhi, the National Green Tribunal imposed a nationwide ban on 'unregulated open burning of plastic/rubber or such other articles' on 12 December 2013. The Draft Municipal Solid Waste (Management & Handling) Rules, 2013 also prohibit the open burning of municipal solid waste.

5. **Summary**

The extent and effects of air pollution on public health and the environment are well recognised in India. A number of legal measures have been introduced at the Central level as well as within states, either in exercise of the powers conferred by the applicable legislation or as a response to directions issued by the Supreme Court or High Courts. However, the command-and-control approach adopted by the existing environmental legislation and the inadequacy of some of the emission standards undermines their ability to arrest the problem. Further, while some of the measures contribute to alleviating the problem, their implementation is not always satisfactory. Nevertheless, concerned members of the public continue to increase awareness about the adverse effects of different activities on air pollution. They are also exerting pressure on the government, either through lobbying or judicial proceedings, to improve the air quality.



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