

Air Pollution and Directive Principles of State Policies

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Abstract:

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State. The Indian constitution contains specific provisions for environmental protection under the chapters of Directive Principles of the State Policy and Fundamental Duties. Keeping this in view, the Parliament of India has passed specific legislations, which are the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986 to meet certain international obligations and also to improve the quality of national environment. The absence of any specific provision in the Constitution recognising the fundamental right to (clean and wholesome) environment has been set off by judicial activism in the recent times.

This paper contains the Constitutional provisions to cure the problem of air pollution in India. Also it deals with the vital role of judiciary to overcome the air pollution through its various decisions time to time.

Introduction:

Albert Einstein once said, “The environment is everything that isn’t me”.¹ So, a clean environment is the basic necessity which is essential for the existence of life. Air pollution is the specific kind of pollution which comes in the horizon of environment pollution as a whole. It is the introduction of chemicals, particulate matter (PM), or biological materials that causes harm or discomforts to humans or other living organisms, or causes damage to the natural environment or built environment, into the atmosphere. Air contaminants include smoke, dust, dust, ashes,

¹ Giulia Parola, *Environment Democracy at the Global Level: Rights and Duties for a New Citizenship*, 30 (2013).

debris, solid particle of any kind, including dust, gases, vapors, odor and radioactive materials emitted from the combustion of fuel.

The large scale industrialization, increased transport, destruction of forests for housing and other projects; swift and reckless encroachment on the countryside to make place for cities; factories, highways and aerodromes; destruction and erosion of the soil, the continued and unending industrial discharge in the rivers; spewing of thousands of tons of disappearance of wild life; accumulation of untreated wastes and mounds of rubbish are some of the factors which have contributed to environmental deterioration the world over. While the scientific and technological progress of man has invested him with immense power over nature, it has also resulted in the unthinking use of power, encroaching endlessly over nature.² So air pollution is one of the most common form of environmental degradation.

Meaning:

Air pollution, in layman's language, can be defined as the presence of toxic chemicals or compounds (including those of biological origin) in the air, at levels that pose a health risk. In an even broader sense, air pollution means the presence of chemicals or compounds in the air which are usually not present and which lower the quality of the air or cause detrimental changes to the quality of life (such as the damaging of the ozone layer or causing global warming).

According to, Sec. 2 (b) of The *Air (Prevention and Control of Pollution) Act, 1981* "air pollution" means the presence in the atmosphere of any air pollutant; and "air pollutants" defined under Sec. 2(a) of said Act, which means 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.

Major Sources of Air Pollution:

India's urban population is today the fourth largest in the world. By the end of the century, it will be the largest. Urbanization has become an irrevocable force in environmental

² *T.N. Godavarman Thirumulpad v. Union of India*, (2002) 10 SCC 606.

problem of the country. The number of people dying in urban India due to deteriorating air quality is rising every year and very little is being done to deal with pollution in Indian cities.

Now urbanisation led to another problem of deforestation which again is one of the main cause of increasing level of air pollution. Forests provide natural habitat for many animals. Many species of birds and animals like tigers survive only in forest. For ecological balance forest should cover 30% of land, however, deforestation due to urbanization, industrialization and for fuel, furniture and building materials has reduced the forests upto 13% of landed area. Reduction in forest also causes imbalance in carbon dioxide and oxygen which are responsible for greenhouse effect. A whole series of human and environmental problems have been created by the neglect of grazing lands by the spread of ravines and by mining. The construction of large dams as well as mining and overgrazing have also further degraded India's rapidly shrinking forest land. Mining has made its own contribution to the degradation of India's land and forests.

Along with deforestation and urbanization, Industrialization is also a major source of air pollution. The industrial revolution together with materialistic approach has brought miseries to mankind. The smoke, ash, poisonous gases emitted from chimneys created havoc for environment. The ships, industries, aeroplanes, automobiles and nuclear explosions pollute air by their exhausts. There is growing problem of toxic wastes generated by industries, a problem even advanced countries have not been able to solve. Industries which are known to produce potentially toxic and hazardous wastes are pesticides, dyes, and pigments, organic chemicals, steels and chlorakali manufacturing plants, metallurgical plants and smelters, chemical plants and petroleum refineries, fertilizers and synthetic rubber manufacturers, pulp and paper mills etc.

Vehicular pollution is considered to be a major source of air pollution. The private (non-commercial) vehicles comprise 90% of the vehicles. It is estimated that more than 90% of NO_x and RSPM from vehicular exhaust is due to diesel emissions. Impairment of visibility and haze like conditions are also attributed to tiny SPM in the air, which has potential to cause cancer. It has been estimated that chronic exposure to such toxic air contaminant would lead to 300 additional cases of lung cancer per million people.

One of the other important factors for the damage of environment and consequential air pollution is rapid population growth especially when combined with certain non-demographic

factors. The increase in population would certainly exert additional pressure on the natural resources including air, water and food systems. For increasing the production of food, we will require more fertilizers. We have to expand the industrial as well as transport base in order to meet the increased demand of goods like cloth, iron, cement, steel, fertilizers, pesticides and vehicles. This would involve the use of more power and natural resources and we have to face the consequential effect of more carbon gases and photochemical oxidants. Furthermore, technological advancement in agriculture and the excessive use of pesticides is making the problem of air pollution more serious.³

Then there is one of the underestimated factor of air pollution is tobacco smoking. According to WHO, tobacco related deaths can rise up to seven million per year. Environmental Tobacco Smoke (ETS) contributes to respiratory morbidity of children. Pollutants from microorganisms, gases and odors from swamps and marshes, natural radioactivity, fog and mist, ozone from ozonosphere, large amount of gases and ash from volcanic eruptions and gases and smoke from forest, grass, swamp fires blacken the sky and increased the background pollution levels for years.⁴

Though this problem of air pollution should have been on the top of priority list in Govt.'s Policies as well as for common people on their personal level but irony is that the gravity of air pollution is still unattended by state or Govt., which has a far reaching consequence on the health of the people. Air pollution has both acute and chronic effects on human health, affecting a number of different systems and organs. The important air pollutants are mercury, lead, oil, dust, CO, SO₂, NO_x, volatile organic compounds (VOC_s), O₃, respirable PM (PM_{2.5} and PM₁₀), DDT and other pesticides. These are responsible for causing various kinds of diseases which ranges from minor respiratory irritation to chronic respiratory and heart disease, lung cancer, acute respiratory infections in children and chronic bronchitis in adults, aggravating pre-existing heart and lung disease, or asthmatic attacks. In addition to it, short and long term exposures have also been linked with premature mortality and reduced life expectancy. On vegetation also the important effects of air pollutants include physiological and bio-chemical alterations, injury to

³ Menaria Rajendra, *Environmental Conservation and Planning*, 24 (1989).

⁴ *Supra* note 3, 135.

plants, tissue collapse and loss of color, reduced yield etc.⁵ The air pollutant does not spare the property also and even the important historical monument like “Taj” is also constantly defaced by the industrial pollution caused in the area.⁶

Air pollution also results in the change of climate due to the effects of dust arising naturally from the desert, and from wood/charcoal burning and fossil-fuel combustion. The latter component is increasing as a result of the rapidly growing population. The practical implications of these changes in climate for agriculture and the effects on human health through increasing temperature are likely to be serious, and vary significantly across the regions of India.⁷

Every year, farm fires in the surrounding states raise pollutants in the Delhi’s air by over six times the permissible limit. The smoke often rises and swarms over Delhi, especially during winters, when the city is most vulnerable to toxic smog.

Apart from the outdoor pollution, indoor air pollution is also a matter of serious concern. It is due to cooking with bio-fuels is an issue that needs to be addressed through energy, environment and health policy. Many people associate air pollution only with urban outdoor environment, but some of the highest concentrations of pollutants actually occur in rural indoor environment. They come from burning bio-fuels such as wood, agriculture crop residues and dung cake, which are used by mass households in India. While there has been some attempt to reduce such exposure through the introduction of appropriately designed stoves, a better solution would be to redesign the petroleum policy. This would not only ease the pressure on forests and other bio-fuel resources but also have a positive effect on the health of women and children.⁸

Application of DPSP to cure Air Pollution:

To protect and improve the environment is a constitutional mandate. It is the commitment for a country wedded to the ideas of a welfare State. The Indian constitution contains specific

⁵ *Supra* note 6, 58.

⁶ *M.C. Mehta v. Union of India*, 1997 (2) SCC 353.

⁷ <http://www.jstor.org/stable/2409922?seq1page_scan_tab_contents> Accessed on September 16, 2017.

⁸ <http://www.jstor.org/stable/4407707?seq=1#page_scan_tab_contents> Accessed on September 16, 2017.

provisions for environmental protection under the chapters of Directive Principles of the State Policy. In the first International Conference on Human Environment at Stockholm in 1972, voiced deep concern about the degradation of the environment and eco-imbalances. She also emphasized that population and poverty are inter-related problems and there must be an integrated approach to deal with them. Based on Stockholm Conference, in 1976, the Constitution's 42nd Amendment was passed and provisions regarding the protection of environment were incorporated into it. In the chapter of DPSP(Directive Principles of State Policies) a new provision in the form of Article 48A was incorporated. The word "Environment" is a broad spectrum which brings within its sweep hygienic atmosphere and ecological balance. In *Chameli Singh v. State of Uttar Pradesh*⁹, the Supreme Court held that the need for a decent and civilized life includes the right to food, water and decent environment. In the case of *Vellore Citizens' Welfare Forum v. Union of India*¹⁰, the hon'ble Supreme Court held that in view of the constitutional provisions contained in Article 21, 47, 48-A, 51-A (g) and the statutory provisions of the Water (Control and Prevention of Pollution) Act, 1974; Air (Control and Prevention of Pollution) Act, 1986; the two salient principles of sustainable development are all parts of environmental law of India and are included in right to life under Article 21 of the Indian Constitution. Under the Air (Control and Prevention of Pollution) Act, 1986, the state board refused permission for starting a hydrated lime factory near the hospital and the government collage on the basis of air pollution the refusal was held proper and justified.

Conclusion:

India is fighting a major battle with air pollution. It is a problem that has been around since industrialization began and still remains today. The quality of air in India is a serious concern for the people of the country. The current status of India's air pollution and the laws related to it, are one of the most important topics to review as it gives information of how bad the situation really is. India is at the bottom of the charts when it comes to clean, safe air. Out of 132 countries assessed by Yale and Columbia, India ranked last, indicating that it has the world's most polluted air. The worst forms of air pollution are often found in Indian cities. PM, one of

⁹ (1996) 2 SCC 549.

¹⁰ (1996) 5SCC 647.

the most widely monitored pollutants in India, is the main cause of the increasing air pollution here. The PM build up can reach as high as five times above the safety limits for some cities in India. This creates a major health concern for the people living and breathing in the polluted air every day. The National Air Quality Monitoring Program claims that nearly half of the Indian cities monitored have reached critical levels of PM. There are sixty three cities with critical levels, thirty six cities with high levels, and nineteen cities at moderate levels.

Legislative acknowledgement of the problem of air pollution, and the need to tackle it, came more than three decades ago when the Air (Prevention and Control of Pollution) Act 1981, was passed by the Parliament. But this early acknowledgment of the problem, and regulatory mechanisms set up consequently, have not been able to restrict the sharp upward trajectory of air pollution. Besides amendments made in 1987, and then in 2010 (limited to introducing the NGT as a statutory forum for appeal), the Air Act has remained frozen in time, with its key provisions unable to cope with the nature and extent of pollution faced by the country in present times. Several issues with regard to the legal and regulatory regime governing air quality in India deserve serious and urgent consideration.

Another major issue is the ignorance and lack of awareness about laws related to air pollution as well as the seriousness of increasing levels of air pollution in general by Government and common people as well. Therefore along with these issues, the problem is also about the effective implementation of the provided legal provisions, as if the present laws would have been implemented and effectively regulated, somehow the Air Pollution be controlled upto an extent.