

SEVERE AIR POLLUTION IN NATIONAL CAPITAL TERRITORY : ISSUES AND CHALLENGES

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ABSTRACT

Air pollution is one of the most dangerous forms of pollution. A biological, chemical, and physical alteration of the air occurs when smoke, dust, and any harmful gases enter into the atmosphere and make it difficult for all living beings to survive as the air becomes contaminated. Over the past few years, Delhi and its adjoining areas have gained notoriety for having some of the most polluted air in the world. For example this winter season on November 3, 2023 the average air quality in the national capital plummeted from “very poor” to “severe” category with the air quality index (AQI) value reaching a staggering/hazardous 468. AQI values over 100 are considered unhealthy. This paper is an attempt to analyse the causes and effect of Air Pollution in National Capital Territory and methods of prevention in legal context. While being globally sensitive, the country needs an Environmental policy and planning that must be based on local needs. Finally, if sustainable development has to move from mere wishful thinking and slogan mongering I a reality, the world (developed and developing countries) as a whole has to move towards a new world order in which new economic and technological orders are dovetailed.

INTRODUCTION

Air pollution affects human health directly or indirectly, causing physical discomfort and leading to disease or even death. Studies have shown that when the human body is exposed to highly polluted air for a long time, the mortality rate increases. In recent years, there have been frequent haze weather events in many places in India where the air quality was mostly between ‘moderate’ and ‘unhealthy for sensitive groups’. Studies show that under such air conditions, the mortality rate from cardiovascular and cerebrovascular diseases and the prevalence of asthma and respiratory diseases, neurological disorders both increases. Poor understanding of this evidence breeds policy complacency and scepticism. Heavy industries emit many potentially hazardous pollutants into the air which can affect health. However, the effects of air pollution from heavy industry on lung function and respiratory symptoms have been investigated scarcely. Our aim was to investigate the associations of long-term air pollution from heavy industry with lung function and respiratory symptoms.

Air pollution is a complex mixture of different gaseous and particulate components and can cause several health effects. Both long- and short-term exposure to air pollution can cause cardiovascular diseases, neurological disorders (attention deficit, hyperactivity, lower intelligence and impaired neurodevelopment), respiratory diseases (e.g. asthma, chronic obstructive pulmonary disease) and mortality. Investigations often focus on emissions from road traffic, smog and urban or regional differences in air pollution. The influence of air pollution from heavy industry on lung function or respiratory symptoms is less often explored. The impact of localised air pollution from industry on health is a major concern in some areas. NCR has been suffering from serious air pollution for years due to rapid industrialization. However, the

relationship between India's air pollution and pollution control schemes remains understudied in the Indian context.

Current Scenario in NCR:

In January 2024, only 32 Indian cities had clean air while Delhi was the most polluted, suggested findings of a new study by the Centre for Research on Energy and Clean Air (CREA). Delhi and National Capital Region (NCR), got engulfed by the toxic smog with pollution levels breaching permissible standard limits by multiple times in months of October and November, 2023. The Air Quality Index in many parts of the city slipped into the category of 'severe' with a score of 448 on a scale of 500 against the permissible limit of 100 micrograms per cubic metre. AQI values over 100 are considered unhealthy. On November 3, as night descended over Delhi, hundreds of children, coughing and gasping, thronged the out-patient department and emergency ward of some hospitals. The average air quality in the national capital remained in "very poor" category for six consecutive days before plummeting to "severe" category on November 3, with the air quality index (AQI) value reaching a staggering/hazardous 468. The doctors declared the condition as public health crisis. And after many deliberations, discussions and blame game among political leaders, steps announced to take on Delhi pollution.

Visibility also reduced substantially in most parts of the two agrarian states Haryana and Punjab too. The Supreme Court-mandated Environment Pollution (Prevention and Control) Authority declared the public health emergency, following which the Delhi government decided to shut all schools. The EPCA also banned construction activities and shut down the Heavy industries in Delhi-NCR.

Constitutional Provision for Environment:

The Constitution of India, 1950, did not include any specific provision relating to environment protection or nature conservation. Presumably, the acute environmental problems being faced now in the country were not visualized by the framers of the Constitution. However, the past five decades have witnessed two major developments in this connection. The first development took place when the Constitution (Forty-second Amendment) Act, 1976, was adopted in the mid-seventies. Specific provisions relating to certain aspects of the environment, more especially for the protection of the forests and wildlife in the country, were incorporated in Part IV- Directive Principles of the State Policy - and List III - The Concurrent List - of the Seventh Schedule of the Constitution. As a result, the Constitution has now the following provisions specifically relating to environment protection and nature conservation: Part IV: Directive Principles of State Policy (Article 48A): Protection and improvement and safeguarding of forests and wild life: The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country. Part IV-A: Fundamental Duties (Article 51-A): It shall be the duty of every citizen of India - (g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures. Seventh Schedule (Article 246) List III - Concurrent List Item no. 17 Prevention of cruelty to animals, Item no. 17A Forests, Item no. 17B Protection of wild animals and birds. Article 21 of the Indian Constitution states: 'No person shall be deprived of his life or personal liberty except according to procedures established by law.' Article 21 is the heart of all other fundamental rights. The judiciary has resolved most of the environmental cases where they considered right to good environment as fundamental for life and upheld as fundamental right. Thus we can consider

article 21 as mandate for life saving environment. This article focuses on some of the landmark cases that have a bearing on the person's right to life and right to pollution free environment.

JUDICIAL INTERPRETATION TO RIGHT TO LIFE AND ENVIRONMENT

The right to healthy environment has been incorporated, directly or indirectly, into the judgments of the court. Link between environmental quality and the right to life was first addressed by a constitutional bench of the Supreme Court in the **Charan Lal Sahu Case** In 1991, the Supreme Court interpreted the right to life guaranteed by article 21 of the Constitution to include the right to a wholesome environment. In **Subhash Kumar vs. State. of Bihar(1991) 1 SCC 598**, the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws a citizen has recourse to Art.32 of the Constitution for removing the pollution of water or air which may be detrimental to life. In **M. C. Mehta vs. Union of India 1987 SCR (I) 819 (the Oleum Gas Leak case)**, the Supreme Court established a new concept of managerial liability - 'absolute and non-delegable' - for disasters arising from the storage of or use of hazardous materials from their factories. The enterprise must ensure that no harm results to anyone irrespective of the fact that it was negligent or not.

In **Vellore Citizens Welfare Forum vs. Union of India, AIR 1996 SC 2715**, the Supreme Court held that industries are vital for the country's development, but having regard to pollution caused by them, principle of 'Sustainable Development' has to be adopted as the balancing concept. 'Precautionary Principle' and 'Polluter Pays Principle' has been accepted as a part of the law of the country. In **Indian Council of Enviro-Legal Action vs. Union of India, 1996 3 SCC 212 (the Bichhri pollution case)**, following the decision in the Oleum Gas leak case and based on the polluter pays principle, the polluting industries were directed to compensate for the harm caused by them to the villagers in the affected areas, specially to the soil and to the underground water. Enunciating the doctrine of 'Public Trust' in **M. C. Mehta vs. Kamal Nath (1997) 1 SCC 388**, the SC held that resources such as air, sea, waters and the forests have such a great importance to the people as a whole that by leasing ecologically fragile land to the Motel management, the State Government had committed a serious breach of public trust.

MEASURES TAKEN BY THE AUTHORITIES TO TACKLE THE AIR POLLUTION IN DELHI

1. **Odd-Even Policy on Vehicle** was implemented by the government starting from 2018.
2. In a bid to discourage people from taking out their cards and reduce vehicular emissions, **Delhi Authorities Enhanced Parking Fees By Four Times.**
3. **Health and Family Welfare Ministry** directed all hospitals to take all necessary measures to deal with the patient load.
4. Unless, the commercial trucks are transporting essential commodities, all kind of heavy goods vehicles and trucks had been prohibited from entering the city.
5. Amidst the current crisis, the Delhi government **Ban On Civil Construction and Strict compliance of Graded Response Action Plan.**
6. The Union Ministry of Environment, Forests and Climate Change (MoEFCC) had launched NCAP in 2019, aimed at reducing ambient PM pollution levels in 131 non-attainment cities from 24 states and Union territories.

7. Delhi government has come up with its ambitious clean fuel policy and has closed down all its coal power plants.
8. The National Capital Delhi has **Electric Bus** fleet size of 1650 making it first in the country.

SUSTAINABLE DEVELOPMENT AND ENVIRONMENT POLLUTION:

The principle of sustainable development which received international recognition as a result of **Brutland Commission Report (1987)** was overwhelmingly supported by all the nations. Some of the salient principles which underlie the concept of sustainable development were spelled out in the Rio Declaration, 1992 and Agenda 21 (UNFCCC). Therefore, these principles have got to be necessarily followed in order to achieve the objective of sustainable development. These principles are as follows:

01. **Inter-Generational Equity:** The principle of inter-generational equity pre-supposes the right of each generation of human beings to benefit from cultural and natural resources of the past generation as well as the ‘obligation’ to preserve such heritage for future generations.
02. **Environmental Protection:** Environmental protection is an integral part of sustainable development. Most of the nations have enacted environmental protection laws to ensure sustainable development within their territories. So far India is concerned, the Environment (Protection) Act, 1986 is the central legislation. Besides, there are some other pollution controls and prevention laws and States have also framed their own anti-pollution laws according to their local requirements
03. **Precautionary Principle:** The precautionary principle seeks to ensure that a substance or human activity which may cause a threat to the environment is prevented from causing harm to environment. Precautionary principle pre-supposes that onus of proof is on the industrialist to show that his action is benign, that is not harmful to environment.
04. **“Polluter Pays” Principle:** The Supreme Court in **M.C. Mehta vs. Kamal Nath**, observed that ‘polluter pays principle’ has been recognised as fundamental objective of Government's environmental policy to prevent and control pollution. The Court in this case observed that the calculation of environmental damages should not be on the basis of claim put forward by the party, but it should be on the basis of examination of the situation by the Court.

POOR IMPLEMENTATION OF ENVIRONMENTAL LAWS IN INDIA

Environmental laws in India are strong but it lacks obedience from the people. Despite having a specialized court which deals with environmental cases. India still ranks high in terms of pollution around the world. According to the Environmental Performance Index 2022 India currently ranks 180 out of 180 countries. Environmental law in India truly faces an implementation crisis. With rapid industrialization, deforestation, increase in population at a booming rate and lack of knowledge amongst people about the environment and pollution our natural resources are decreasing at a terrifying rate.

LOOPHOLES:

1. Industries are obligated to take permission from the State Pollution Control Board to discharge effluents and causing emissions but there is laxity in compliance due to lack of strong penalty measures. The Comptroller and Auditor General in India in its 2011-12 report on Performance Audit of Water Pollution in India said that the penalties for contravention of WPCA 1974 are too weak.
2. There is lack of independence given to the central and the state boards who still have to depend on the state and the central government for the appointment. This leads to a lack of competent people. The appointment is at the wish of the government.
3. PCB's don't have legal authority and their decisions tend to be overruled by the government.
4. There is also a lack of funds to the Pollution Control Boards and they don't even have proper infrastructure or laboratories.
5. There are certain laws which are not very elastic.
6. The existing laws give importance to some specific types of pollution or specific categories of hazardous substances.
7. The present mechanism fails to accept the polluter pay principle.
8. Environmental Litigation is more expensive compared to other disputes as it involves expert testimony and technical evidences

SOLUTION AND SUGGESTIONS

Prudent environment management is the need of the hour. A few suggestions relating to planning and for improvement of legal as well as enforcement mechanism may be given here which if operationalized may prove relevant and viable to lessen the pollution problems.

1. A reward mechanism needs to be given to businesses, organizations etc. to detect violations and take action to address the issue. Financial subsidies, cost sharing should also be promoted.
2. Public awareness and an increase in political will is a must. NGO's can play a very important role in this.
3. There should be less political interference in the independent regulatory body.
4. More decision making power needs to be given to the boards. There is also a need to establish a body of experts just like the civil services.
5. It is important that laws give environmental values to the society and Courts and Tribunals should refrain from carrying out policy functions and must focus on making a strong environmental jurisprudence in India.
6. The National Environmental Policy 2006 identifies and indicates that there is a need to move to a strong civil liability mechanism which is based on the **polluter pay principle** instead of a criminal penalty mechanism.
7. The legislature, based on the German Environmental Code, should frame one consolidated environmental code, instead of enacting various laws dealing with diverse environmental aspects. It would prevent the overlapping of provisions. The code should enumerate constitution, powers, and functions of all the agencies, so, that functional and jurisdictional overlapping can be avoided. People from different fields of knowledge, who are directly or indirectly involved with the environment should be appointed instead of political and preferential appointment.

CONCLUSION :

‘THE EARTH IS THE MOTHER, AND WE ARE HER CHILDREN... HUMAN DESTINIES ARE INSEPARABLY LINKED WITH THAT OF EARTH. IT IS, THEREFORE, OUR DUTY TO MAINTAIN THE NATURE OF NATURE. IT IS IN OUR SELF-INTEREST, IF NOTHING ELSE.’

Air Pollution kills around 1.2 million people annually in India. New Delhi’s air quality is 20 times above the safe limit. 70% of India’s surface water and groundwater is contaminated and unfit for drinking. Around 47 species of animals and plants are critically endangered in India according to the International Union for Conservation of Nature’s Red Data Book. Urban India is the world 3rd largest garbage generator and by 2050 waste is expected to rise to a staggering 436 million tonnes. So it is very essential that environmental laws need to be implemented strongly because by the looks of it India’s future does not look bright. The concept of sustainable development based on the notion that natural resources should be exploited for the benefit of both present and future generation. As we know that increased industrial activity worldwide requires the use of natural resources which are depleting day by day. It is also true that the need for resource conservation, efficient use of resources and environment friendly corporate policies and behaviour has now been recognised worldwide. Last but not least, if the principles of sustainable development are followed then definitely with the economic growth and industrial development of a country environment protection can be maintained.

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