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## “India’s Environment Laws: An Analysis on Air Pollution and Plea for the Future”

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### ABSTRACT

The authors, by way of this piece, aim to critically analyze the issues and lacuna surrounding the Environmental Law Regime in India. With the burgeoning population and increasing rapid development, the environmental concerns also manifold. Environmental concerns have been, more or less, overlooked when it comes to development. The citizens should be aware that the existence or absence of natural resources and a healthy environment can facilitate or retard the very process of development of a country in numerous ways. The authors, therefore, believe that the focus should primarily be on integration of development and uprooting environmental concerns arising therein.

In this backdrop, the authors also are of the opinion that maintaining ecological quality is the essence of improving quality of life which leads to sustainable development. That being said, there is a dire need of balance and harmony between the developmental and environmental needs of the country. India has enacted a plethora of laws, however, there is lack of effective implementation and it is well established that without effective implementation, law merely becomes a dead letter.

Addressing this multi-dimensional and multi-sectoral problem calls for a meticulous and cogent approach. The touchstone of effective implementation is to create civic consciousness about health impacts of air pollution and the advantages of mitigation amongst citizens.

In sum, the very purpose of this analytical piece is to identify the pernicious effects of air pollution, the grey area and scope of holistic development and to further propose some recommendations on how health related concerns can be used as a tool to build support for mitigation and prevention of air pollution.

**Keywords:** *Ecological Concerns, Sustainable Development, Implementation, Consciousness.*

## 1. INTRODUCTION

The rapid increase in the Indian population and its development economically has led to a drastic degradation of the environment that undermines the environmental resources upon which sustainable development depends. The economics of environmental pollution, degradation and depletion of resources has been in fact neglected as compared to the issues of expansion and growth. India has been no exception to this worldwide phenomenon, rather because of the abundant increase in its population, environmental degradation has been faster in India as compared to other developing countries.

The country's population is estimated to be 1.37 billion based on the most recent UN data<sup>1</sup> but the current infrastructure in most of the cases is not only over stretched but also inadequate. Urban development in our country is presently going through a very progressive stage. The unprecedented challenges of such an urban shift have resulted in cities being degenerated into squatters' camps and slums. Subsequently, the rapid expansion of cities has caused acute problems of atmospheric pollution, transport congestion, and unwise water and solid waste management resulting in the deterioration of the quality of life.

According to the report published by the state of global air, every year seven million people, approximately, are killed by Air pollution.<sup>2</sup> Air pollution is also the 5<sup>th</sup> highest cause of mortality in the world.

## 2. ADVERSE EFFECTS OF AIR POLLUTION

Many serious and dangerous diseases, especially diseases relating to our central nervous system (CNS) such as stroke, Neuro developmental disorders, Alzheimer's and Parkinson's disease are caused due to Air pollution. Studies have time and again showed that the different components of air pollution like Nano-sized particles have the potential to easily reach and pass through the Central nervous system which can further lead to activation of innate responses of the immune system. Additionally, what can also affect the health of the CNS is the systemic inflammation that arises from the cardiovascular or the pulmonary system.

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<sup>1</sup> World Population Review, (Nov. 25, 2019), <http://worldpopulationreview.com/countries/india-population/>.

<sup>2</sup> World Health Organisation, (Nov. 20, 2019), [https://www.who.int/health-topics/air-pollution#tab=tab\\_1](https://www.who.int/health-topics/air-pollution#tab=tab_1).

Furthermore, it is observed that across the globe, on an average, life expectancy is affected and is reduced by air pollution by one year and eight months. This data clearly means that a baby who is born today will die, on an average, twenty months earlier than the time he/she is expected to if there is no air pollution.<sup>3</sup>

The recent study of “Global Burden of Disease” published in *The Lancet*<sup>4</sup> states that “outdoor air pollution caused more than a million premature deaths in India in 2016, the cost of which, according to OECD estimates, amounts to more than USD 800 billion.”

Moreover, it is also essential to point out that the recent report of the Health Effects Institute<sup>5</sup> focused on the aspect of air pollution and stated that it is now imperative for India to take further steps in order to alter the current ongoing air pollution issues, failing which the deaths that such pollution such pollution causes (in India) will witness an upsurge and the figure may reach as high as 1.7 million deaths per year in 2030 and to 3.6 million deaths per year by the year 2050 from 1.1 million in 2015.

Apart from deaths, air pollution is also responsible for low productivity and inefficiency in some industries. Pollution has a negative effect in industries accounting for 61% of India’s output with some industries particularly sensitive to pollution. The labor-intensive industries are severely hurt by workers’ exposure to pollution.

The situation of air pollution in India is worsening every year and is costing the economy approximately 3% of the Nation’s GDP.<sup>6</sup> Not only this, it is of great disappointment that every new born baby in the city of New Delhi can be said to be smoking about 25 cigarettes from the first day of his or her life.<sup>7</sup>

### 3. CONSTITUTIONAL AND LEGISLATIVE MEASURES

It has been stated by the Apex Court that “the right to life includes the right of enjoyment of pollution free water and air for full enjoyment of life.”<sup>8</sup> With regards to the protection of our environment, our constitution also lays down certain guidelines. As provided under Article 48-A of the same, it is the responsibility of the State, to do so. The Article reads as follows: “*The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country*”.

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<sup>3</sup> State of Global Air/2019, (Nov. 10, 2019 03:43 pm), [https://www.stateofglobalair.org/sites/default/files/soga\\_2019\\_report.pdf](https://www.stateofglobalair.org/sites/default/files/soga_2019_report.pdf).

<sup>4</sup> Global, regional, and national comparative risk assessment of 79 behavioural, environmental and occupational, and metabolic risks or clusters of risks, 1990–2015: a systematic analysis for the Global Burden of Disease Study 2015, (Nov. 13, 2019), <[https://www.thelancet.com/journals/lancet/article/PIIS0140-6736\(16\)31679-8/fulltext](https://www.thelancet.com/journals/lancet/article/PIIS0140-6736(16)31679-8/fulltext)>.

<sup>5</sup> *Supra* note 5

<sup>6</sup> Greenpeace, *Airpocalypse*, (Nov. 17, 2019), <https://secured-static.greenpeace.org/india/Global/india/Airpocalypse-Not-just-Delhi-Air-in-most-Indian-cities-hazardous-Greenpeace-report.pdf>.

<sup>7</sup> FIT, (Nov. 19, 2019), <https://fit.thequint.com/cancer/lung-damage-air-pollution>.

<sup>8</sup> *Subhash Kumar v. State of Bihar*, (1991) 1 SCC 598 (India) [hereinafter *Subhash Kumar*].

Furthermore, the duty of protecting our environment must not just be seen as one that only the government must fulfill. It is also the fundamental duty of each citizen to protect and preserve the environment. This duty is also envisioned under the constitution in the form of Article 51-A (g)<sup>9</sup> according to which: *“It shall be the duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.”*

India has a very wide and elaborate legal framework which consists of more than two hundred laws that are related to environmental preservation. The Air Act 1981<sup>10</sup> was one such legislation that was brought in force with a view to curb and prevent pollution. The act prescribes the ambient air quality standards and means for the prevention and controlling air pollution. It prohibits the usage of polluting substances and such fuels and also attempts to help regulate the appliances that pollute the air. The “Air (Prevention and Control of Pollution) Amendment Act, 1987” was also passed that empowered both the State and the Central Pollution Boards in order to meet serious emergencies. The Boards were given powers which empowered them to take sudden and immediate required measures in order to solve and tackle possible emergencies and also to meet and recover expense incurred by the wrongdoers.

#### 4. INEFFECTIVENESS OF LAWS IN INDIA

About 200 State and Central laws and legislations, directly related to the environmental problems, have been enacted in India. However, more the number of laws, the more are the difficulties in their enforcement. Efficient enforcement of a fairly detailed, integrated and exhaustive law for the preservation of the environment is the need of the hour. The reasons for such a situation of detachment between the prevailing environmental legislations and the ever rising levels of air pollution can be easily seen in lack of enforcement of the prevailing law of environment. The two of the many reasons for such an alarming situation may be concluded as:

- The discrepancies that exist in the current environmental guidelines between the state and the central government for the businesses to follow.
- The existence of a huge no. of SMEs lacking the resources as well as the required technical skills in order to follow the prevailing existing environmental legislations.

Although there has been a rise in the number of cases related to environmental degradation and pollution, ecological damage and issues based on natural resources before the Judiciary, in almost all such cases, the requirement of “natural scientific expertise” as an integral aspect to inform judicial decision-making has been highlighted. All of these cases have seen to require immense scientific expertise. Also, it has been reflected by experience that the prosecution

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<sup>9</sup> Article 51-A(g), Constitution of India 1950.

<sup>10</sup> The Air (Prevention and Control of Pollution) Act 1981 (India).

in the ordinary Criminal Courts under the provisions of the acts such as the Air Act, Environment (Protection) Act, and Water Act fail to reach to any conclusion due to two reasons. First relates to the huge work load in such Courts and second to the absence of the required appreciation in relation to the importance of environment matters by the people who are responsible to conduct such cases.<sup>11</sup>

Moreover, the industries in Courts immediately question the orders that have been passed by the Authorities under any of the provisions of the Environmental Protection Acts. It then takes years for such to reach their conclusion. In most of the cases, interim orders are granted for time being and these all the more results in the inability of the authorities to ensure the effective implementation of the orders granted by them. This has emerged as an area of grave concern which requires prompt and robust action.

It is, therefore, the need of the hour to design and set up entirely different machinery for decreasing the delays which are causing hindrance to the effective implementation of environment laws. Furthermore, it must also be taken into account that it may be difficult for the judicial officials alone to appreciate the various technical and scientific dimensions. Therefore, it is necessary that the provisions must be laid down for setting up “Environment Courts” along with some experts from various science backgrounds who will ensure that the orders are given in consonance to the environmental legislations/laws.

In pursuance to this, it is suggested that there must be a two-tier system at the central and State levels. The courts herein must be then given the jurisdiction in order to decide both i.e civil cases concerning compensation to victims and the case of Criminal nature that come in the ambit of the various existing environmental laws. The system of appeals must be such that the appeals in relation to the decision granted by the Environmental Courts at the State level may be preferred to the those existing at the Central level and further to the may be heard by the Supreme Court.

The Apex Court, in a landmark case, recognized that it is paramount to protect and safeguard the citizens’ rights to live in a safe and healthy environment<sup>12</sup> with slightest disturbance of ecological balance.<sup>13</sup> However, the State doesn’t recognize the right of consent of its citizens while giving a green flag for industries to operate. A preliminary hearing should be made and the stakeholders should be given an opportunity to present their objections and suggestions. The parties being affected and, and the interested persons should be bestowed with an opportunity to participate in hearings and to present their views to the Boards and as a result the Board should take its final decisions based the views so expressed.

The US statutes thus provide expanded opportunity to its citizens regarding decisions concerning air pollution. The statutes provide opportunities to citizens for participation and interactions not only for the development of the air

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<sup>11</sup> Indian Council for Enviro-Legal Action v. Union of India & Others, AIR 1996 SC 1446 (India).

<sup>12</sup> Subash Kumar, *supra* note 8.

<sup>13</sup> Kendra v. State of U.P., 1989 Supp. (1) SCC 504 (India).

quality but also for the enforcement of these laws. Similarly, we should also have the provisions of public participation and interaction which would make it more effective and public-friendly.

## 5. PUBLIC PARTICIPATION AS FUNDAMENTAL TO GROWTH

We do have significant Environmental protection laws in India but it cannot be denied that we have not been really successful in environmental protection. The reason can be mainly traced in the lack of public awareness and political will. Mere enactment of law by authorities might not mitigate or bring about adequate control on pollution. Without its effective implementation, law merely becomes a dead letter. It is an established fact that no law can operate effectively without public awareness and support. The most crucial and herculean task with regards to air pollution is to create a civic consciousness making each and every citizen aware of his share of responsibility.

For creating this civic consciousness, robust steps should be taken to communicate the facts to the common man and to educate them about the perils of air pollution. A citizen must be aware of the consequences of air pollution and must be made to realize the fact that though the abatement of pollution is a global problem, it germinates at home and individual contribution is a paramount for the containment of this lethal problem.

Another important reason can be the nature of such laws in India. They are mainly “human-centric” which means the prime focus is on human protection and are not really enacted for the environmental protection. The most possible reason behind this is the fact that all environmental legislations think of humans as superior to the mother earth.

The awareness of the general public and the seriousness in order to tackle such problems of environmental degradation should be of utmost priority to all of us. Having an air conditioner or, for instance a water cooler at our homes to comfort us is not a demonstration of progress mankind has made but indeed is a sign that we are on the verge of destroying our environment.

It is thus crystal clear that only the enactment of various environmental legislations will not do the needful. We need a more healthy and positive approach and contribution from each and every citizen. It is important for efficient enforcement of all these legislations/laws.

Also, it is well established that “*Every generation owes a duty to all succeeding generations to develop and conserve the natural resources of the nation in the best possible way.*”<sup>14</sup> It is high time that each one of us takes this duty seriously and performs it to the best of our abilities, for what we strive for is a growth that is not only appreciable but is also one that is sustainable.

### CONCLUDING REMARKS

The TSR Subramanian Committee, reviewing the environmental regulations in India, bluntly observed that “the legislations are weak, monitoring is weaker, and enforcement is weakest”. For a developing country like India the enforcement authorities have to be meticulous about laws which govern the environment. While growth of industries plays a paramount role in development of a country due regards should be given to keep the pollution under control. The country is in a dire need of a comprehensive legislation which covers all forms of environmental pollution to achieve uniformity of approach towards all environmental problems. In sum, development and measures to contain environment deterioration should go hand in hand, so as to ensure the holistic development of the country and its citizens.

Considering the fact that the legal control of air pollution in India is still at an embryonic stage, educational institutions and authorities have a massive role to play in creating the civic consciousness among the citizens for abatement of pollution. Each individual must know enough about the significance of a natural, healthy environment to take an intelligent interest to contribute and mitigate the pollution problems.

The noxious nature of air pollution calls for a need to prevent it. The problem of air pollution was not acute in the ancient times but in the current scenario it has escalated manifolds and has become a grave concern affecting the globe, wanting immediate adoption of adequate containment measures, lest surviving in this world would become impossible.

***“The only solution to pollution is a people's humane revolution!”***

- ***Bobby Seale***

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<sup>14</sup> State of Tamil Nadu v. Hind Store, AIR 1981 SC 711 (India).

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