

Judicial Responses Towards Air Pollution Issues in India

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ABSTRACT

Air pollution in urban areas arises from multiple sources, which may vary with location and developmental activities. Anthropogenic activities as rampant industrialization, exploitation and over consumption of natural resources, ever growing population size are major contributors of air pollution. With great importance on globalisation and industrialisation, a rise in degradation of the environment due to air pollution is a matter of concern. The concept of ecological conservation and protection of environment from degradation is not new to mankind and have been a n essential part of our civilization since time immemorial. The judiciary being the pillar of our country have been playing a prominent role in providing environmental justice to victims of air pollution. Moreover, Judiciary plays a significant role in enunciating principles and imposing liabilities on those who pollute air. This article attempts to appraise the notable role played by the Indian judiciary in interpreting legal provisions to protect, control and abate air pollution and provides environmental justice in India.

KEYWORDS- Judiciary, Supreme Court, High Court, Air Pollution

INTRODUCTION-

Air pollution refers to the presence of harmful substances in the Earth's atmosphere that can have detrimental effects on human health, the environment, and the overall quality of air. These pollutants can originate from various sources, both natural and human-made, and can take various forms, including gases, particles, and chemicals. Air pollution can have wide-ranging impacts on both local and global scales. Many efforts to combat air pollution in India have been taking, which includes implementing laws, implementing judicial pronouncement by Indian judiciary, using cleaner technologies, promoting renewable energy sources, encouraging sustainable transportation, and raising public awareness about the importance of clean air. Judiciary including international agreements and organizations also play a role in addressing transboundary air pollution issues.

Judiciary, especially the higher judiciary plays a vital role to combat deterioration in air quality in India by pronouncing many landmark judgements. The Indian judiciary plays a crucial role in the control of air pollution by interpreting and enforcing environmental laws, issuing directives, and ensuring that government agencies and industries take necessary actions to mitigate the adverse effects of air pollution. The judiciary's role is particularly important in cases where there are violations of environmental norms and regulations. There are many ways by which the Indian Judiciary contributes to abate, prevent or control air pollution in India, those are enforcement of air pollution control laws, issuing guidelines and directions to various governmental agencies and industries etc., monitoring and oversight the progress of pollution control measures, by allowing citizens to file environmental Public

Interest Litigations and holding authorities accountable for taking action to control it, spreading public awareness and education, to provide compensation and remedies, apply the precautionary principle, which allows it to take preventive actions even in the absence of complete scientific certainty about the impacts of air pollution. Following are few important judgements pronounced by the Apex Court to fight with air pollution problem:

In *Union Carbide Corporation Vs. Union of India*¹, the Bhopal Gas leak Tragedy that occurred at midnight on 2nd December, 1984, by the escape of a lethal toxic poison named Methyl Iso-cyanate, from the appellant's pesticide factory and took many innocent human lives and left tens of thousands of innocent citizens of Bhopal physically impaired or affected in various degrees. The matter concerns the interests of a large number of victims of a mass disaster. There was long delay by the Court to make a quick decision relating to the compensation to victims of the Bhopal tragedy. It is the worst ever industrial tragedy that took place due to the leakage of nearly 40 tons of methyl isocyanate (MIC) gas which has been manufactured and stored in the union Carbide's Chemical Plant in Bhopal escaped into the atmosphere and caused death of 3,500 people who lived in the dispersing chemicals pathway and injured nearly 200,000 some seriously and permanently. The Plant is a subsidiary of Union Carbide Corporation incorporated under the laws of the State of New York with its headquarters at the State of Connecticut.

The incident posed a question before the Indian legal system to compensate large number of victims of the incident. There were chances of multiplicity of litigations. Again, the intensity of damage and suffering varies from one victim to another. In order to avoid the problem of multiplicity of parties, Parliament passed the Bhopal Gas Disaster (Processing of Claims) Act 1985, known as Bhopal Act conferring power on Union of India to take legal action on behalf of the victims. Thus, the union of India was empowered to sue under the doctrine of *parens patriae*. The doctrine of *parens patriae* relates to the rights of person, real or artificial, to sue and to be sued on behalf of another who is incapacitated to take up the case before a judicial forum as effectively as the former can. The Union of India selected American District Court, wherein the headquarter of the parent company Union Carbide Corporation (UCC) was situated as the proper forum to file the case. The reason for this decision was the Indian Government's thinking that Indian courts have not reached its full maturity to protect the interests of victims suitably and to decide the issue of compensation in the best possible manner. Indian law of torts is in its infancy. Hence just and speedy decision was not possible. But the UCC argued that only Indian Courts can best protect the interest of the victims. Though Union of India opposed the UCC's motion but The American court accepted the argument of UCC and declared that the Indian court is the most appropriate court for this matter.

After denial of the American Court to decide this matter the matter was first reported to the District Court of Bhopal. The Madhya Pradesh High Court reduced the interim relief grant by the District Court from Rs 3500 million to Rs 2500 million .UCC preferred appealed to the Supreme Court .The Supreme Court ordered an overall settlement of the claims that arose from the disaster whereby the Union Carbide Corporation was to pay an amount of US \$ 470 million to the Indian Government as full and final settlement of all the claims. The entire amount had to be and was paid by March 31, 1989. The Supreme Court by exercising its extraordinary jurisdiction terminated all proceedings, civil, criminal or contempt of court which has arisen out of the disaster and were pending in subordinate courts. The

¹ AIR 1990 SC 273

Supreme Court orders appear quite unusual in the sense that they seem to lack the expected judicial discourse and elaborate reasoning required in disposing of such an important case by the highest court. In other words, the Court justified them entirely on humanitarian considerations²

In an another landmark judgement pronounced by the Apex Court of India took up action to protect the national heritages like Taj Mahal from deterioration and damage due to atmospheric and environmental pollution.³ The Court indicated that relocation of the industries from TTZ was to be resorted to only if Natural Gas was not acceptable/available by/to the industries as a substitute for coke/coal. After examining the reports from National Environmental Engineering Research Institute, Varadarajan committee, Central Pollution Control Board (CPCB) and Uttar Pradesh (U.P.) Board, the Apex Court on 31.12.1996 directed that the industries in the Taj Trapezium Zone (TTZ) all the 292 out of 510 industries had to approach either to the GAIL for grant of industrial gas-connection or to the U.P. Government for allotment of alternative plots outside TTZ or stop functioning using coke/coal as these industries were contributing air pollution in the area of Agra. Industries not applying for gas or relocation to stop functioning with coal/ coke from 30.04.1997. The Court based its judgement on the Precautionary Principle and Polluter Pays Principle, thereby, making them an integral part of the environmental jurisprudence of our country. The Supreme Court has assumed a proactive role and made liberal use of the public interest litigation in protecting fundamental environmental interests. The Supreme Court also relied upon the Article 21, the Directive Principle of State Policy and Fundamental duties enshrined under Article 47, 48-A and 51(A) (g) of the Constitution of India. Apart from these Constitutional mandates to protect and preserve environment from the air pollution, Court relied upon the Court also relied upon several statutory enactments such as The Water (Prevention and Control of Pollution) Act, 1974, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986.

In *M.C. Mehta vs UOI and Others*.{*Delhi Vehicular pollution case*: writ petition (civil) no.13029/1985} During the pendency of this Writ Petition, the Honorable Supreme Court passed several orders/ directions to deal with the situations and impressed upon the concerned authorities to take urgent steps to tackle the acute problem of vehicular pollution in Delhi which include elimination of leaded petrol, replacement of old autos, taxis and buses, construction of new Interstate Bus Terminus at entry points, along with strengthening the air quality monitoring .

In *Vellore Citizen Welfare Forum Vs Union of India and Others*⁴ the Honorable Supreme Court observed that “the Precautionary Principle” and “the Polluter Pays Principle” are essential features of “Sustainable Development”. The Honorable Supreme Court issued the directions for compliance emphasizing that, the Union of India would give priority to transport sector including private vehicles all over India with regard to the allocation of compressed natural gas.

In *Oleum Gas leak case*: The Apex court recommended that a national policy for location of hazardous industries in areas of scarce pollution highlighting the need of setting up neutral scientific expertise body which could act as an information bank for the courts and the government departments and recommended for establishing ‘environmental courts’ to deal with cases of environmental pollution.

² Abraham, C.M. & Abraham, S. (1991), The Bhopal Case and the Development of Environmental Law in India. *The International and Comparative Law Quarterly*, Vol. 40(2),p 349

³ M.C. Mehta Vs UOI and Others (1997) 2 SCC 353

⁴ (1996) 5 SCC 647

In *Murli Deora vs. Union of India and others*⁵ while prohibiting smoking in public places the Supreme Court stated that fundamental right under Article 21 of the Constitution of India provides that no one shall be deprived of his life and in any case there is no reason to compel non-smokers to be the helpless victims of air pollution. Realizing the gravity of the situation the Honorable Supreme Court directed and prohibited the smoking in public places and issue necessary directions to the Union of India, State Governments as well as the Union Territories to take effective steps.

In October 2015, The Supreme Court imposed Green tax or Environment compensation Charge (ECC) on commercial vehicles entering Delhi to minimize air pollution, initially. Light vehicles and two axle trucks were ordered to pay Rs 700/- and Rs 1,300/- was fixed for trucks having three axles and above. This charge was later doubled in December, 2015.⁶ Many principles have been introduced by the Indian Judiciary for the better protection of environment from the adverse impact of air pollution. The Supreme Court spoke first about the precautionary principle in *the Vellore Citizens' Welfare Forum v. Union of India*⁷ in which it was dealing with the pollution caused by 900 tanneries. The polluters pay principle was applied by the court in the *Indian Council for Enviro-Legal Action vs. Union of India*⁸ and others. The Public Trust Doctrine was observed by the Court in *M.C. Mehta v. Kamal Nath case etc.*⁹

DOCTRINES ADOPTED BY THE COURTS

The doctrines evolved mainly by the Supreme Court of India are a substantial contribution to the environmental jurisprudence in India. Article 253¹⁰ indicates the procedure of how decisions made at international conventions and conferences are incorporated into the legal system. The formulation and application of the doctrines into the judicial process for environmental protection from adverse impact of air pollution are remarkable stepping stones in the path of environment protection from air degradation in India. Some of these principles are:-

1. The Polluter Pays Principle.
2. Principle of Non-discrimination.
3. Precautionary principle.
4. Principle of Intergenerational Equity.
5. Doctrine of Common but differentiated responsibility.
6. Public Trust Doctrine

The 'Precautionary Principle' was elucidated by the court in case of *Vellore Citizen's Welfare Forum v. Union of India and others*¹¹ that it's the duty of the state to prevent environmental degradation, and that "the lack of scientific certainty cannot be the reason for postponing measures". 'Polluter Pays Principle' was affirmed in *Indian Council for Enviro-Legal Action v. Union of India*. It was stated that liability would be on the polluter to compensate the sufferers as well as remedy the damaged ecology by paying a cost. Principle of Intergenerational equity implies that the present generation has a duty towards

⁵ 2001(8)SCC 765

⁶ <https://www.downtoearth.org.in/news/air/despite-sc-directions-sdmc-s-toll-contractor-refuses-to-levy-green-tax-on-trucks-entering-delhi-51668> accessed on 24th April , 2019 at 7 pm

⁷ (1996) 5 SCC 647

⁸ (1996) 5 SCC 281

⁹ (1997)1 SCC 388

¹⁰ Art.253, Constitution of India, 1950.

¹¹ *Vellore Citizen's Welfare Forum v. Union of India and others*, AIR 1996 5 SCC 647

the future generations. ¹²The Public Trust Doctrine provides that certain resources like air, water, sea, forests cannot be made a subject of private ownership. ¹³

The Indian judiciary's involvement in addressing air pollution has led to landmark judgments and directives that have had a significant impact on pollution control efforts. However, it's important to note that while the judiciary plays a crucial role, addressing air pollution requires a multi-pronged approach involving legislative measures, regulatory agencies, technological advancements, public participation, and sustained efforts from all stakeholders.

ROLE OF NATIONAL GREEN TRIBUNAL TO DEAL WITH URBAN AIR POLLUTION

Urban air pollution falls squarely within the domain of the NGT which was constituted under the National Green Tribunal Act in 2010 for the effective and expeditious disposal of cases relating to environment protection. The NGT has been set up with an aim to carry out constitutional obligations mentioned under Article 21 of the Constitution of India along with other obligations mentioned under the Preamble of the National Green Tribunal Act, 2010. According to the Preamble of the National Green Tribunal Act, 2010, National Green Tribunal is established for effective and expeditious disposal of environmental protection related cases and also to conserve natural resources including forest, enforcing the legal rights related to environment also providing relief and compensation for damages to person and property. ¹⁴ Despite India's poor air quality, plaintiffs approaching the NGT regarding air pollution are far and few.

The National Green Tribunal Act, 2010 agrees to implement the decisions adopted in Stockholm Conference, 1972 and Rio Conference, 1992 as India participated to these two major international conferences. ¹⁵ While passing any order, award or decision related to any environment protection cases, the NGT is obliged to apply principles of international environmental laws namely principle of sustainable development, precautionary principle, polluter pays principle etc ¹⁶ in conjunction with the domestic rights for the effective implementation of environmental rights and duties in Indian context. Mainly, the NGT enfolds the protection of environmental legal rights and problems arising because of the execution of enactments included in the schedule I.

In 2014, the first case under the aforementioned category 1, *Vardhaman Kaushik vs. Union of India*, was filed relating to hazardous air quality in the National Capital Region. With orders and judgements spanning 4 years, the NGT issued a slew of directions like the ban on polluting industries and regulating traffic movement, asking the government to develop action plans, calling for specific steps on dust control and waste disposal etc. Finally, in 2018, the Tribunal disposed of the case with a direction to the Central Pollution Control Board for the setting up of a two-member committee to look into the violations of its orders in the case.

Worsening urban air quality across the country saw a suo moto case being taken up in 2018, based on a newspaper (Times of India) article discussing the National Clean Air Programme timelines. It called for 102 'Non-Attainment Cities' (i.e. those exceeding average annual concentration levels of notified parameters, like PM_{2.5}, consecutively for 5 years) to take remedial action on air pollution (hereafter referred to as the NCAP case). This case attempted to address issues of urban air pollution

¹² *A.P. Pollution Control Board v. Prof. M.V. Nayudu and Ors.*, 1999 (2) SCC 718

¹³ *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

¹⁴ The National Green Tribunal Act, 2010, Preamble.

¹⁵ *Ibid.*

¹⁶ *Id.*, s. 20.

across the country and called for the development of detailed carrying capacity studies for each city, steps to tackle vehicular pollution and preparation of action plans under the NCAP by each state and local government.

In both the cases, the Tribunal invoked Article 21 (Right to Life) and the three principles of environmental jurisprudence to chastise the central and the state governments and called for more aggressive action in mitigating air pollution. The two cases have resultantly become the highlight of the Tribunal's intervention in urban air pollution. Subsequent benches have, ever since, been using the orders in the two cases (in addition to the Supreme Court's multiple orders in *MC Mehta v. Union of India*) to address any cases that come before the Tribunal on urban air quality. For example, in *Vinay Shivanand Naik v. State of Karnataka* relating to urban air pollution linked to vehicular pollution in Bengaluru, the South Zone bench asked the State Government to comply with action plans formulated under the National Clean Air Plan, as submitted in the NCAP Case. In a similar case, *LG Sahadevan vs Union of India*, for Chennai, the Bench asked for the preparation of an action plan considering the NGT's orders in the *Vardhaman Kaushik* case.

The NGT has been actively involved in addressing various environmental concerns, including air pollution. The NGT plays a significant role in addressing air pollution through the following ways:

1. **Adjudication of Cases:** The NGT is empowered to hear cases and appeals related to environmental violations, including those pertaining to air pollution. It can take up cases on its own or based on petitions filed by individuals, organizations, or government agencies. The tribunal can impose fines, penalties, and sanctions on polluters and those responsible for violating environmental norms.
2. **Regulatory Oversight:** The NGT monitors the implementation of environmental laws and regulations, including those related to air quality standards. It ensures that government agencies and industries adhere to prescribed emission limits and pollution control measures. If there are violations, the NGT can issue directives to address them.
3. **Enforcement of Precautionary Principle:** The NGT can apply the precautionary principle, which states that if an action or policy has the potential to cause harm to the public or the environment, even if scientific evidence is not conclusive, the burden of proof falls on those advocating for the action. This principle allows the NGT to take preventive measures to control air pollution even in the absence of complete scientific certainty.
4. **Monitoring and Reporting:** The NGT can order regular monitoring of air quality levels and the implementation of pollution control measures. It can also demand periodic reports from relevant authorities to assess progress in controlling air pollution and achieving prescribed air quality standards.
5. **Public Awareness and Education:** The NGT can contribute to raising public awareness about the impacts of air pollution and the importance of environmental conservation. Its rulings and decisions often receive media coverage, helping to educate the public about the need to address air pollution.
6. **Guidelines and Recommendations:** The NGT can issue guidelines and recommendations to prevent and control air pollution. These guidelines can cover a wide range of sectors, including industries, transportation, construction, and waste management.

It's important to note that the NGT's role and effectiveness might have evolved since my last update. For the most current and accurate information about the NGT's activities and its role in addressing air pollution, I recommend referring to official government sources or recent news articles.

CONCLUSION

Air pollution is the contamination of the indoor or outdoor environment by any chemical, physical or biological agent that modifies the natural characteristics of the atmosphere. Despite of the presence of many international agreements/ conventions and international environmental law to deal with the problem of air pollution, this environmental problem continues to harm the health and environment globally. Multiple factors like lack of political will to implement the laws, poor enforcement of air pollution control laws, poor coordination among government agencies, weak institutional capacity, lack of access information, corruption etc. are responsible for the ongoing global air pollution crisis. It is the urgency of time to take stringent step to prevent, control and abate foreign particles which make changes the air quality with the help of transfer of technology and laws from developed to developing countries and also by the removing multiple overlapping laws, regulations and rules by subsuming all legal provisions under an umbrella legislation to address the problem of air pollution.

The role of Judiciary is significant in the field of air pollution control in our country. The Supreme Court is, at the present time, stretching the different legal provisions for environmental protection. The Judiciary steps into protect the environment from degradation when State fails to enforce environmental laws. In this way, the judiciary tries to fill in the gaps where there is laciness of the legislation in India. These new innovations and developments in India by the judicial activism open the numerous approaches to help the country. In India, courts are extremely aware and cautious about the particular nature of environmental rights, as the loss of natural resources cannot be renewed. The proper implementation of the decision of Judiciary is necessary to achieve the goal of the Judiciary to protect the environment from the adverse effect of air pollution. There is an urgent need to strengthen the hands of judiciary with the appointment a professional judge to manage the environment cases/criminal acts, so that the judiciary can perform its part more viably.

It is a fact that without public awareness, public participation and their support effective operation of law is not possible. To create a civic consciousness making every citizen aware of his own share of responsibility for the protection of environment. This goal to maintain the air quality standard can be achieved by providing environmental education to common people specially the youth, women, students etc. and also with the help of mass media. Moreover, active participation of Government, Non-Governmental Organizations are also needed in this field to fight with the problem of air pollution.

State should take more thoughtful steps to offer financial assistance and also to announce awards annually to encourage environmental activist in different levels such as Panchayat, Block, Sub-division, State and National level for their active participation to curb air pollution across our country.