LEGAL CONTROL OF INDUSTRIAL POLLUTION IN INDIA

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ABSTRACT

"An Investment to built strong Economy should not super cede the need of healthy environment." Witnessing the world of rapid Industrialization and globalization it is already evident that growth of the industries is at high pace contributing directly to better economic development but simultaneously creating menace to Environment .Industries is one of the greatest sector contributing to economic growth but the degradation in the form of industrial pollution comprising of Air pollution, water pollution cannot be ignored. The industrial pollution is now assuming a dangerous proportion throughout India and growing awareness dissemble to maintain ecological balance for the future generation. In the recent times we have witnessed there is an increasing global concern to protect our environment which is an inalienable part of right to life. The purpose of this research paper is to examine the concept of industrial pollution and come forward with recommendations to cope with problem over viewing the legislative framework on industrial pollution.

KEYWORDS: Industrial pollution, Pollutants, Board, Authorities, Environment, Legislation

1. INTRODUCTION

Since the beginnings of the Industrial Era , there has been very rapid increase in the amount of pollutants in the air and the water, due to emissions from, factories, chemical plants and other manufacturing methods . Industrial pollution is generally referred to the undesirable outcome when factories (or other industrial plants) emit harmful by-products and waste into the environment such as emissions to air or water bodies (water pollution), deposition on landfills etc (land pollution) or emission of toxic chemicals into the atmosphere (air pollution). [1] The various industries causing pollution are the mining and metallurgical industries, power generating plants, manufacturing factories, processing industries, etc. There has been a great concern on earth's changing condition especially when effects of growing hub of industries is creating a network of environmental problems resulting into devastating effects. The effects of industries are myriad because they are of all kinds and each has various processes that take place in each of them.. Most of the pollution can be traced to some industry or the other. For example studies have shown that out of the 29716 industries, presently 8.14 million tones of hazardous wastes

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are being generated. As on date only 21 TSDF (Transport, Storage, and Disposal Facilities) exist.[2] The hazardous wastes are stored in the industrial premises and create problems related to contamination of ground water and soil with air pollution in the area. This therefore has to be tackled on a war footing through promoting clean technologies to reduce generation of hazardous wastes. Industrial pollution results into various kinds of pollution as such

I. INDUSTRIAL AIR POLLUTION

The effects of improper management of industrial air pollution are being witnessed in India as the quality of air within industrial areas is deteriorating at fast pace and its effect we are observed in our daily lives in different forms, some gradual, some sudden. The ever increasing effect on industrial air pollution calls for management strategies and decisions to be made after comprehensive analysis of all relevant factors. Industries are discharging organic pollutants , particulates, gaseous pollutants, hydrocarbons ,volatile organic compounds , hydrogen sulphides ,leas , hazardous waste , oils and solvents etc[3]. The green house gases emitted is responsible for various environmental problems as such Global Warming , ozone layer depletion etc .Air pollution introduces chemicals, particulates or biological materials which cause discomfort, disease or death to humans and damage to both the living organisms (such as food crops) and the built environment. The worst Industrial incident in India was the 1984 Bhopal Gas Tragedy, methyl isocynate (MIC) gas leak in Bhopal on December, 1984 killing at least 5000 people and some 50,000 people have been seriously affected by the leak of poisonous MIC from the union carbide pesticide.[4]

The other effects of industrial air pollution are various diseases as such lung cancer, asthma and also problems such as corroded roof tops as a result of chemical fumes from the industries that have weakened overtime causing problem during rainy seasons, and also complained that the industries have grown so close to residential areas unlike before where they were slightly away from residential areas. They also corrode rooftops of vehicles. With these various green house gases such as carbon monoxide, carbon di oxides ,oxides of sulphur are continuously emitted causing problem as such Global warming leading to increase in earth temperature.

II. INDUSTRIAL WATER POLLUTION

Industry is a huge and major source of water pollution, it produces pollutants that are extremely harmful to people and the environment. Industrial water pollution is caused by the discharge of harmful chemicals and compounds into water, which makes it unsuitable for drinking and other purposes. Although 70% of the Earth is covered by water, only water bodies like lakes, ponds, rivers, reservoirs, and streams provide us with fresh water, and so, keeping them clean is an issue of survival not only for humans but for all other forms of life

[2] Arvind Kumar, Industrial Pollution and Management ,Arsh publishing corporation, New Delhi 110002
[3] SC Bhatia , *Managing Industrial pollution, Macmillan India ltd,2003,p.102,New Delhi,110002*
[4] http://www.bhopal.com/ (visited on April 01,2018)

forming a respect for environmental ethics. Since the industrial revolution, we have achieved a lot; our manufacturing processes have become more efficient and productive, science has become much more advanced, and our life has transformed a great phase. But perhaps nothing comes without a price[5] which is in the form of keeping at risk our environment All the advancement and development witnessed in the last few centuries have also brought with them a wide spectrum of problems, water pollution being one of them. Some industrial facilities generate wastewater that is similar to domestic sewage and can be treated by sewage treatment plants. Industries that generate wastewater with high concentrations of organic matter (e.g. oil and grease), toxic pollutants (e.g. heavy metals, volatile organic compounds) or nutrients such as ammonia, need specialized treatment system[6] The industrial wastes include chromium,nitrates,phosphates,sulphur mercury and other toxic substances, which may explain that, despite the lesser percentage of pollution by industry, the deadly effects these highly toxic substances are greater. These industries pollute the water resources by discharging toxic effluents causing health hazards to living beings and also cause threat to marine life . and also coastal euthrophication. Highly polluting industries are referred as Red category Industries.

III. INDUSTRIAL NOISE POLLUTION

Noise pollution takes place when there is either excessive amount of noise or an unpleasant sound that causes temporary disruption in the natural balance. According to the World Health Organization, sound levels less than 70 dB are not damaging to living organisms, regardless of how long or consistent the exposure is. Exposure for more than 8 hours to constant noise beyond 85 dB may be hazardous. If you work for 8 hours daily in close proximity to a busy road or highway, you are very likely exposed to traffic noise pollution around 85dB.Industries are one of the major source of Noise pollution.[7]

Noise is referred as a common occupational hazard in a large number of places such as the iron and steel industry, foundries, saw mills, textile mills, airports and aircraft maintenance shops, crushing mills, among many others. In 1987, amendment to the Air (Prevention And Control of Pollution) Act, 1981 expanded the definition of "air pollution" to include noise. Industrial Noise particularly refers to noise that is created in the factories which is unbearable. Sound becomes noise only it becomes unwanted and when it becomes more than that it is referred to as "noise pollution". Industrial sites such as Kolhapur in Maharashtra,Vadodra in gujarat, Tanneries Industries located in Uttar Pradesh are highly effected by the noise pollution. It mainly effects on human health, hearing problem etc.

[5] https://en.wikipedia.org/wiki/Water_pollution_in_India(visited on April 03,2018)
[6] http://www.water-pollution.org.uk/industrialwaste.html(visited on April 03,2018)
[7] Dr Zannin , Noise Pollution in Urban and Industrial Environments: Measurements and Noise Mapping *Pollution science, technology and abatement*, Nova Science Publishers, Incorporated, 2016, p.07

2. Current scenario of industries in India

India is becoming hub of industries emerging as largest sector of country. In 2005, the industrial sector contributed to about 24% of GDP. Between 1999 and 2004, the industrial sector's value addition has grown at the rate of about 7% per annum. Even higher growth rates are expected in the future as a result of projected overall high economic growth rate of 8-9% annually.[8] To address the environmental challenges in coordination with the state governments, the Central Pollution Control Board has identified 43 critically polluted areas across the Country. The chemical and engineering industries are at the top of the government's list, since they are the major contributors to air, water, and waste pollution.[9] Despite an enabling legislation and progress in institutional development, keeping up with the environmental challenges of rapid urban growth, industrialization, and infrastructure development (including provision of adequate environmental infrastructure to booming urban areas) has proved to be difficult. Industries are classified into red, orange and green and amongst them red category industries are termed as highly polluting industries, this division has been iniated by Central Pollution Control Board[10]. It was found that environmental pollution in 10 major industrial hubs had reached a "very alarmingly high" level. This list includes Ankleshwar and Vapi in Gujarat, Ghaziabad score) and singrauli in Uttar Pradesh, Korba in Chhattisgarh, Chandrapur and in Maharashtra, Ludhiana Punjab, Vellore in Tamil Nadu, Bhiwadi in Rajasthan and Angul Talcher in Orissa.

3. Legislative Framework upon Industrial pollution in India

The Government of India has launched various programmes with certain legislation to combat the problem of Industrial Pollution. Pollution laws have become very important for industries. The industries creating pollution has to work under the permissible limit given in these laws. Disobedience of these pollution laws can lead to closer of industry and criminal prosecution for management.(including Penal provision).Certain legislative enactments for the regulation of Industrial pollution in India are as follows:-

I. THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

This act has been enacted under article 253 of the constitution of India [11]to ratify the commitment made at the United Nations Conference on Human Environment held at Stockholm in June 1972 , India has been its signatory. An Act to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out certain mentioned function, of Boards, for conferring on and assigning to such

[8] Report on the Environment and environmental regulatory mechanisms, by working group, planning commission, 2007.
[9] Ahluwalia,V.K , *Environmental pollution and health , 2015,New Delhi*
[10] https://gpcb.gov.in/pdf/rog.p(visited on April 05,2018)
[11] Article 253, The Constitution of India

Boards powers and functions relating thereto and for matters connecting therewith.[12] The state board, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, lay down standards for emission of air pollutants into the atmosphere from industrial plants and automobiles .[13]

Its main features provide as function of the board to inspect, at all reasonable times, any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution[14]. These prescribe standards for emissions to be laid down for different industrial plants with regard to quantity and composition of emissions and the particulate matter and gases that are released by industry. State government has powers to declare air pollution control areas after consulting with state boards. In the same manner, state government can give instructions ensure standards of emission from automobiles and restrict operation of certain industrial units and penalties are imposed by the state pollution control board. . According to this Act, no person can operate certain types of industries including the asbestos, cement, fertilizer and petroleum industries without consent of the State Board[15].

II The Water (Prevention and Control) Act 1974

This Act has been enacted for prevention and control of water pollution and maintaining or restoring of wholesomeness of water with other objectives as such establishment of Boards for prevention and control of water pollution and providing penalties for the contravention of the provisions of the act[16]. This is also the first specific and comprehensive step & legislation institutionalizing simultaneously the regulatory agencies for controlling water pollution. The Pollution Control Board at the Centre and in the State came into being in terms of this Act. This Act aims at establishment of Central and State Pollution Control Board at the central level and also at state level for each state and giving powers to the members so as to enable them to carry out the purposes of the Act.

The main feature of the act are as State Board or any officer authorized shall have the power to take samples of water from any stream or well and of any sewage or trade effluent passing from any plant or vessel or over any place into any such stream or well[17]. To advise the State Government regarding proper functions and programme to be carried out to check the pollution especially caused by the Industries. It also lays down that no industry or operator process or any treatment and disposal system can be established without the previous consent of the State Board and no industry or process can discharge sewage or trade effluent into a stream or well or sewer or

[12] Preamble, The Air Prevention and control of Pollution)act,1981
[13] Section 17(1)(g), The Air (Prevention and Control) Act, 1981
[14] Section 17(1)(e), The Air (Prevention and Control) Act, 1981
[15] Section 17(1), The Air (Prevention and Control) Act, 1981
[16] Preamble, The Water (Prevention and Control) act,1974
[17] Section 21, The Water(Prevention and Control of Pollution) Act, 1974

land in excess of the standards and without the consent of the Board[18]. It is mandate that consent should be taken before establishing any industry. If any person is again found guilty of an offence under the same provision, on the second and every subsequent conviction shall be punishable with imprisonment which shall not be less than one and a half years which may extend to six years and with fine[19]. It is obligatory to provide additional information sought by the State Board. On receipt of application, State Board may grant the consent subject to certain condition refuse the consent for reasons to be recorded in writing.[20]

III. WATER POLLUTION CESS ACT (1977)

An Act to provide for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with a view to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974. A cess is to be levied and collected for the purposes of the main Act and for utilization there under from every person carrying on any specified industry and from every local authority. The specified industry has been listed under the First Schedule to the Water Cess Act.[21] Those industries that had installed a suitable treatment plant for the treatment of industrial effluents can get a rebate of 70 per cent on the cess payable.

Every person carrying on any specified industry and every local authority, liable to pay the cess, shall furnish such returns, in such form and at such intervals as may be prescribed. If he fails, notice shall be sent to him. The act provides for the penalising provision as if any person carrying on any specified industry or any local authority fails to pay any amount of Cess payable under section 3 to the State government within the date specified in the order of assessment made under section 6, such person or local authority, as the case may be, shall be liable to pay interest on the amount to be paid at the rate of two percent for every month or part of a month comprised in the period from the date on which such payment is due till such amount is actually paid.[22]

IV. The Environment Protection Act, 1986

The Environment Protection Act was enacted under Art.253 of the Constitution of India. The preamble of the Act embodies purpose of the Act is to implement the commitment made at the United Nations Conference on Human Environment held at Stockholm in June 1972, in which India had actively participated[23]. The term Environment include water, air land and the interrelationship between water , air , land and human being, other living creatures, micro organism, plants.[24] It defines Environmental Pollutant: “environmental pollutant" means

[18] Section 25, The Water(Prevention and Control of Pollution) Act, 1974
[19] Section 45, The Water (Prevention and Control of Pollution) Act, 1974.
[20] Section 25,water (prevention and control act),1974
[21] Section 3, (The Water Prevention and Control Of pollution)Cess Act, 2003
[22] Section 14, The Water (Prevention and Control Of pollution)Cess Act, 2003
[23] Preamble, Environment Protection act ,1986
[24] Section 2(a), Environment Protection act, 1986

any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to environment. [25]

The main feature of the act are as such it Act seeks to supplement the existing laws on control of Pollution by enacting a general legislation for environmental protection and to fill the gaps in regulations relating to major environmental hazards .The Act aims at protection and improvement of the Environment with sustainable means and methods with the prevention and control methods. It prescribe for the restriction of the areas in which any industries, operations or processes or class of industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards[26]. It provides for inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials or substances and giving, by order, of such directions to such authorities, officers or persons as it may consider necessary to take steps for the prevention, control and abatement of environmental pollution.[27] No person carrying on any industry, operation or process shall discharge or emit or permit to be discharged or emitted any environmental pollutants in excess of such standards as may be prescribed.[28]

V. Environment (Siting for Industrial Project) Rules, 1999

The rules are made by Central Government in exercise of the powers conferred by clause (v) of sub-section (2) of section 3 of the Environment (Protection) Act, 1986 [29]The Environment (Siting for Industrial Projects) Rules, 1999 provides provisions relating to restricted areas to be avoided for siting of industries, precautionary and preventive measures to be taken for site selecting as also the aspects of environmental protection which should have been incorporated during the implementation of the industrial development projects. This policy provides that indiscriminate expansion of the existing industries and setting up of new industrial undertakings within the prescribed limits of metropolitan cities and the larger towns shall not be permitted. [30]

Industrialists will have to submit comprehensive Environmental Impact Assessment Report having detail on the nature and location of industrial project nature and the location. The industries will be required to submit half-yearly progress report on installation of pollution control devices to the respective State Pollution Control Boards.[31]

[25] Section 2(b),Environment Protection act,1986
[26] Section 7, Environment Protection act 1986
[27] Section 6, Environment Protection act 1986
[28] Section 7,Environment Protection act ,1986
[29] Section 3, Environment Protection act ,1986
[30] Mohammed Nasim , *Environment Law in India,wolters Kluwer ,p.98*
[31] http://www.indiaenvironmentportal.org.in/content/447783/environment-siting-for-industrial-projects-rules-1999/(visited on April 07,2018)

VI .National Environment Appellate Authority Act, 1997

The President of India, in exercise of the powers conferred under Art. 123 of the Constitution of India, promulgated an ordinance to provide for the establishment of a National Environment Appellate Authority (NEAA) to hear appeals with respect to restriction in areas in which any industries, operations or processes shall not be carried out or shall be carried out subject to certain safeguards under the Environment (Protection) Act, 1986. The said ordinance has been replaced by the National Environment Appellate Authority Act, 1997. Under the Act, any person who feels aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried or shall be carried out subject to certain safeguards, may file an appeal to the Authority within 30 days from the date of such order. However, the Authority may entertain an appeal beyond this period if there was sufficient cause for delay in filing the appeal. The Authority is required to dispose of the appeal within 90 days from the date of filing of the appeal and may extend it for reasons to be recorded in writing.[32] Whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to 7 years, or with fine which may extend to one lakh rupees, or with both.[33]

VII. NATIONAL GREEN TRIBUNAL

The National Green Tribunal has been established under the National Green Tribunal Act 2010 for proper and expeditious disposal of cases relating to environmental problems and conservation of forests and other natural resources including enforcement the rights relating to environment and providing relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto[34]. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908and of law of evidence, but shall be guided by principles of natural justice**.** Where death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal.[35]

CONCLUSION

India has adopted various command and control approach that sets standards to curb industrial pollution with motive. The success of pollution control policy in India to control and combat pollution has been limited due to poor monitoring and enforcement of environmental laws by the pollution controlling agency and boards which in turn is due to slow response of courts in enforcing actions sought by state PCBs, financial constraint

[32] Section 11, National Environment Appellate Authority Act, 1997
[33] Section 19, National Environment Appellate Authority Act, 1997
[34] http://envfor.nic.in/rules-regulations/national-green-tribunal-ngt(visited on April 11,2018)
[35] Section 17(1),National Green Tribunal Act,2010

of the Boards, low penalties for non-compliance, widespread corruption and preponderance of small-scale units that lack any technical, financial and managerial capabilities to treat their effluents. Therefore there is need of proper observation of various regulations and guidelines prescribed for Industries followed by proper implementation of laws to achieve the goal of best economy with green and clean nation.