

LEGISLATIVE MEASURES TO CONTROL AIR POLLUTION IN INDIA

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ABSTRACT

Air is the most important factor of environment. Without air nobody can survive. But today the polluted or degraded air quality is a big problem because pollution of air has affected the health of people or causing many diseases. Air pollution problem cannot deal only with technology advancement. To control, prevent and control air pollution, legislative provisions and its implementation also plays an important role. Moreover, it should be integrated with total over all national planning schemes along with the vibration of Judicial process. Air pollution cannot be solved without the help of economists, sociologists, scientists and lawyers etc. Law is regulator of human conduct. There are numerous major laws directly or indirectly related to solve the issue of air pollution. The Air (Prevention and Control of Pollution) Act, 1981 is the major legislation to abate, control and prevent air pollution in India. Different states of India participated in the process to fight with the menace called air pollution by enacting air pollution control rules within the state.

KEYWORDS- Air pollution, National Green Tribunal, Law, Legislative measures

INTRODUCTION

Air pollution has become one of the most dangerous and most widespread kinds of environmental pollution around the world. This insidious killer is the potent current threat for the human community throughout the world irrespective of size, development, and population of a Country. The degradation of air quality is one of the major environmental concerns which have adverse effect not only on human health, ecosystem but also on the economy worldwide. Air pollution imbalances in the quality of air which leaves its impact felt on the society. The extent of the air pollution depends on how weather disposes off the air pollutants and the ability of the atmosphere to dilute and disperse them is limited to three factors -wind speed, the depth in the atmosphere to which air near the surface can be mixed and rain.¹ Some of the major air pollutants that are responsible for air pollution are sulphur oxides, nitrogen oxides, carbon monoxide, carbon dioxide, volatile organic compound, particulate matter, persistent free radicals, chlorofluorocarbons, ammonia are responsible for air pollution.² The mixture of these noxious gases can change the original composition of pure air and can transform air into a polluted and unhygienic one which is not a good sign for this planet.

¹ P.S. Jaswal, Nistha Jaswal et. al., *Environmental Law* 251 (Allahabad Law Agency, Faridabad, 4th edn., 2015).

² Rakesh Kumar Singh, *Environmental Law* 129, 130 (University Book House (Pvt.) Ltd. Jaipur, 2nd Revised edn., 2017)

The problems and solution of air pollution are complex due to the presence of variety of noxious air pollutants in the atmosphere which can travel thousand miles, without losing their harmful effects on environment as well as human health at large. These air pollutants are responsible for many short terms and long-term health issues to the human being, other living creature, non-living things, environment etc., also responsible for economic degradation. That is why the problem of air pollution is considered as a potent threat to the quality of our life and possibly to its very existence. We can survive without water for few days, without food for a week may be but the ability to survive without air is not more than few minutes because air constitute one of the important elements of our life and vegetation.³

Legislative measures are important to control and regulate human conduct in a society. Various legislations have been passed by the legislature which either directly or indirectly deal with the problem of air pollution in India. With a view to prevent and control the devastating effect of industrialisation, urbanisation and motorisation, legislations were passed to definitely control both the point and mobile sources of air pollution in India. All over the world, the importance of environmental laws is growing immensely and the air pollution control laws are undoubtedly undergoing a period of unprecedented rapid change with the time.

The Bengal Smoke Nuisance Act, 1905 and Bombay Smoke Nuisance Act, 1912 are the examples of few earliest legislative measures to control air pollution in India. Since then, numerous statutes are also enacted to tackle the problem of air pollution either exclusively or partially across the country. With the help of division of the power between central as well as state provided sufficient power to the respective governments to legislate environmental legislation. Apart from the legislative measures, constitutional provisions as discussed in the previous chapter are also made available to tackle the problem of environmental pollution and to protect and improve environment.

The traditional common law remedy of nuisance is available to control air pollution. According to Salmond, “the wrong of nuisance consists in causing or allowing without lawful justification to escape of any deleterious thing from his land or from elsewhere into the land in possession of the plaintiff, e.g. water, smoke, fumes, gas, noise, heat, vibration, electricity, disease, germs, animals.” Law of easements also put some restriction on air pollution. An easement is a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own.⁴ In the Indian Easements Act, 1882 easements are described as restrictions on natural rights. In respect of air there are two rights, (1) right to ventilation and (2) right to purity of air. Every person has a natural right that the air passing to his land shall not be unreasonably polluted by other persons.⁵ The right is not absolute. It is subject to uses by others of their property. Following are few legal provisions for the control of air pollution in India:

³ Nikhil Sharma, Avinash Kumar Agarwal et.al., *Energy, Environment, Sustainability -Air Pollution and Control* (Springer Nature Singapore Pvt. Ltd., Singapore, 2018)

⁴ The Indian Easements Act, 1882, Sec 4

⁵ *Supra note 23*, sec. 7

CONSTITUTIONAL PROVISIONS

The Constitution of India is the supreme legal living documents in India. There is no specific provision to prevent, control and abate air pollution but there are provisions for the protection of general environment. The preamble to our constitution ensures socialist pattern of the society, dignity of the individual, decent standard of living and pollution free environment is inherent in this.

i) Preamble

The preamble of the Constitution of India establishes that our country is based on the “socialistic”⁶ pattern of society, in which the state pays more attention to social problems than on individual problems. The basic idea behind the concept of socialism is to promote “decent standard of living for all” which is only possible in a pollution free environment. Environmental Pollution has emerged as one of potent threat for the society at large so the State is under an obligation by the Constitution to pay attention to provide a pollution free environment for the decent standard of living to all to establish a just social order.⁷

The preamble further declares that, the great rights and freedoms which the people of India intended to secure all citizens include justice, social, economic and political. Justice also includes environmental justice. Although the particular word ‘environment’ does not find a place here, we can very well interpret this to include environmental justice. Environment as a subject matter has entered in our day to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country.⁸

The Preamble also declares India to be a “Democratic Republic”. In a democratic set up, people have the right to participate in government decisions. They also have the right to know and access to information of government policies which is very important for the success of the environment policies⁹

ii) Fundamental Rights

The Constitution of India under Part III guarantees fundamental rights which are essential for the development of every individual and to which a person is inherently entitled by virtue of being human alone. The essence of Principle 1 of the Stockholm Declaration, 1972 can be seen in our constitution in Articles 14, 19 and 21 dealing with the Right to Equality, Freedom of expression and the right to life and personal liberty respectively. Right to healthy environment is also a right without which development of individual and realization of his or her full potential shall not be possible. In *Subhash Kumar vs. State. of Bihar*¹⁰ the Supreme Court held that right to life is a fundamental right under Article 21 of the Constitution which includes 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 Article 32 of the Constitution for removing the pollution of water or air which may be detrimental to life. Article 21 of the Constitution of India guarantees a life of dignity, to be lived in a healthy and pollution free environment, free of danger of disease and infection as there exists a close link between life

⁶ The word “socialist” was added to the preamble by the Constitution (Forty-second Amendment) Act, 1976 vide (w.e.f. 3-1-1977).

⁷ Article 38 of the Const. Of India mandates the State to secure a social order for the promotion of welfare of the people

⁸ Nanda ,S.K.(2007). *Environmental Law*. Allahabad: Central Law Publication. p 65

⁹ Jaswal, P.S. & Jaswal, N. (2009). *Environmental Law*. Haryana: Allahabad Law Agency. p 37

¹⁰ (1991) 1 SCC 598

and environment. The right to life would be meaningless if there was no healthy environment. The Apex Court of India impliedly treated the right to live in pollution free environment as a part of the fundamental right of life under Article 21 of the constitution.¹¹

Right to know which is implicit under Article 19(1)(a) of Part III which has close link with Article 21 specially in case of environmental matter. People of democratic country like India have to collect information in case of any secret government decision which may affect health, life and the environment.

Article 19(1) (a) expressly mentioned fundamental right of speech and expression. In number of cases in India where people have approached the Court by exercising the fundamental right of speech and expression by writing letters to the court or otherwise by filing petitions before it, highlighting the violation of the rights of the people to live in a healthy environment in one way or the other. In India media is also playing a crucial role in moulding the perception of people in issues relating to the environment. Article 19(1)(a) is interpreted to include the freedom of press as well.

Article 19(1)(g) guarantees all citizens the right “to practice any profession, or to carry on any occupation, trade or business.” However, this right of citizens is not absolute as Article 19(6) can lay down reasonable restrictions which are in the interest of general public. Thus, reasonable restriction can be imposed to deal with environmental hazardous.

Article 14 provides right to equality. It strikes at “arbitrariness” of governmental action because “an action that is arbitrary must necessarily involve a negation of equality. Whenever there is arbitrariness in State action, whether of the legislative or of the executive or of an authority under Article 12, Article 14 springs into action and strikes down such action.”¹² That means any arbitrary action of government related to environment can also be strike down with the help of this article.

iii) Directive Principles of State Policy

The Directive Principles under Part IV of the Indian constitution are directions to build a welfare state. Clean and pollution free environment is also one of the elements to be a welfare state. By 42nd Amendment, 1976 Article 48 -A was inserted in Indian Constitution which says that “the state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country”.

Article 47 of the Constitution is one of the directive principles of State policy and it provides that the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of health as its primary duties. The improvement of public health also includes protection and improvement of the environment without which public health cannot be assured. *In M.C. Mehta v. Union of India*,¹³ the court observed that Articles 39(e), 47 and 48-A by themselves and collectively cast a duty on the state to secure the health of the people or to, improve public health and to protect and improve the environment.

iv) Fundamental Duties

¹¹ M.C. Mehta v. Union of India, A.I.R. 1987 S.C. 1086.

¹² K.T. Plantation (P) Ltd. v. State of Karnataka, (2011) 9 SCC 1.

¹³ (2002) 4 S.C.C. 356.

The 42nd Amendment of the Constitution of India, 1976 added a new Part IV-A dealing in the Constitution of India fundamental duties.¹⁴ This new part has been added on the recommendation of the Swarn Singh Committee bringing the Constitution of India in line with Article 29(1) of the Universal Declaration of Human Rights.¹⁵ The main motive behind the inclusion of fundamental duties is to inculcate a sense of responsibility among the citizen and to promote their participation in restructuring and building a welfare society. The protection of the environment is also fundamental duty provided under Part IV-A so it is a constitutional priority and it is the concern of every citizen. Article 51 -A of Part IV-A enlists 11 fundamental duties, among them one Article 51-A (g) clearly imposes duty on every citizen to protect environment and says that “It shall be duty of every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures.”

v) India’s obligation towards International Environmental Agreements

India is under an obligation to translate the contents and decisions of International Conferences, treaties and agreements into the stream of national law. Article 51(c) provides that “the State shall endeavour to foster respect for international law and treaty obligations in the dealings of organized people with one another”

Under Article 253 of the Constitution Parliament of India is empowered with the power “to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body”. So with the help of Article 253 along with Entry 13 and 14 of List -I (Union List) of the Seventh Schedule of Constitution, the Parliament has very wide power to legislate even any subject included in the State List provided that those issued at any international conferences, association or other body or it is the implementation of any international treaty, agreement or convention.¹⁶ The subject matters over which the parliament can make laws are “participation in the international conferences, associations and other bodies and implementing of decisions made there at¹⁷ and “entering into treaties and agreements with foreign countries and implementing of treaties, agreements and conventions with foreign countries”¹⁸

vi) Division of Legislative power in case of environmental matter

Article 246 of Part XI of the Constitution divides the subject areas of legislation between the union and the states. Three list namely Union List, State List and Concurrent List are mentioned in Article 246. The word ‘environment’ does not appear in any list but matter associated with environment like forest (Concurrent List)¹⁹, protection of wild animal and birds (Concurrent List)²⁰, water (State List)²¹ found mentioned in the list. In the case of Union List over which the Parliament has exclusive power to legislate.²² In case of State List, the State

¹⁴The Constitution (Forty-second Amendment) Act, 1976 (w.e.f. 3-1-1977), Section 11

¹⁵ Article 29(1) of the Universal Declaration of Human Rights. It provides “Everyone has duties to the community in which alone the free and full development of his personality is possible”.

¹⁶ Jaswal, P.S. & Jaswal, N. (2009) *Environmental Law*, 39 Haryana: Allahabad Law Agency. p. 39

¹⁷ The Union List in the VII Schedule to the Constitution of India, Entry 13

¹⁸ *Ibid*, Entry 14

¹⁹ The Concurrent List in the VII Schedule to the Constitution of India, Entry 17A

²⁰ *Ibid*, Entry 17 B

²¹ Entry 17 of State List in the VII Schedule to the Constitution of India

²² The Constitution of India, Article 246(1)

Legislature have exclusive power to legislate any matter enumerated in the State List. Under the Concurrent list²³ both Parliament and State Legislatures have overlapping and shared jurisdiction over some subject areas. The Parliament of India has residual power under Article 248(1) of the Constitution of India to legislate on subjects which is not enumerated under the Concurrent List and State List.

LEGISLATION FOR THE PREVENTION, CONTROL AND ABATEMENT OF POLLUTION

Numerous direct and indirect legislations have been introduced in India to control, abate, and prevent of air pollution since pre independence period. The adverse repercussions of air pollution are still going on, which an indication of the gaps and uncertainties in existing legal provisions to deal with this grave problem. More stringent laws along with technological advancement is urgently needed in India to control and reduce the detrimental effect of air pollution.

- i) The Air (Prevention and Control of Pollution) Act ,1981 -The United Nations Conference on the Human Environment held in Stockholm in June, 1972 (“Stockholm Conference”), the Stockholm Declaration was proclaimed and resolution was taken for preservation of environment and prevention and control of pollution. India was also a party to the Stockholm Conference. The Air (Prevention and Control of Pollution) Act ,1981 was enacted to implement the decisions made at Stockholm Conference under Article 253 of The Constitution of India to take appropriate steps for the preservation of natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The act provides for an integrated approach for tackling environmental problem relating to pollution.²⁴
- ii) The Factories Act, 1948 -This is the first act of independent India indirectly focusing on air pollution. Chapter III -Sects. 13, 14 and 15 of this Act focuses on proper ventilation, dust, fumes and humidity related to the health of labor. The Act requires factories to make effective arrangements for adequate ventilation by circulation of fresh air²⁵ and empowers the State Government to make rules regarding the same. The Act prohibits pollution caused by dust and fumes inside the factory.²⁶
- iii) The Industrial (Development and Regulation) Act, 1957 -This was the first act providing power to central government to cause investigation to be made into scheduled industries or industrial undertakings. The extent was limited to the purpose of conserving any resources of national importance which are utilized in the industry along with the regulation of production and industrial development.

²³ *Ibid*, Article 246 (2)

²⁴Tripathi, S.C. (2017). *Environmental Law*, Allahabad: Central Law Publications. p.163

²⁵ The Factories Act 1948, Sec. 13.

²⁶ *Ibid*, Sec 14

- iv) The Mines Act, 1952 -The consideration of air pollution was again limited to the ventilation, actions to be taken in respect of dust fire and inflammable and noxious gases including precautions against spontaneous combustion, underground fire and coal dust.
- v) The Inflammable Substances Act, 1952 -The act was indirectly stirring air pollution through safety. The solitary purpose of the act was to declare certain substances to be dangerously inflammable and regularizing the import, transport, storage and production by applying thereto the Petroleum Act 1934.
- vi) The Atomic Energy Act, 1962 -The act was addressing only health impact and safety from the radioactive substances with the sole purpose of control over atomic energy and radioactive substances.
- vii) The Environment (Protection) act, 1986- This act came into force on 23rd May, 1986 to provide for the protection and improvement of environment and for matters connected there with. This act is serving as an umbrella act for many other rules and laws. e.g. Notification on lead free petrol and catalytic convertors for vehicles in metropolitan cities, 1995 etc.
- viii) Motor Vehicle Act, 1988 -This act deals with control of automobile emissions and specifies vehicular emission standards the central government and state governments to further regulate and enforce them. This act states that all hazardous waste is to be properly packaged, labelled, and transported. The Government has also notified emission standards for on-road vehicles and mass emission standards for new vehicles under the Motor Vehicles Act, 1988.
- ix) The Ozone Depleting Substances (Regulation and Control) Rules, 2000- This act deals with prohibition on new investments with ozone depleting substances, Regulation of import, export and sale of products made with or containing ozone depleting substances along amid monitoring and reporting requirements for the same. The Ozone Cell established by the Ministry of Environment and Forest which has been given the responsibility for carrying out all tasks relating to phase out of ozone depleting substances.
- x) The Municipal Solid Waste (Management and Handling) Rules, 2000-Ambient air quality monitoring has been made mandatory at the landfill sites including installation of landfill gas control system.
- xi) The Noise Pollution (Regulation and Control) Rules, 2000- Ambient air quality standards in respect of noise, mentioned here are classified on the basis of area (land use), time (day or night)
- xii) Public Liability Insurance Act, 1991-The Public Liability Insurance Act was enacted with the objectives to provide for damages to victims of an accident which occurs as a result of handling any hazardous substance. The Act applies to all owners associated with the production or handling of any hazardous chemicals.
- xiii) National Green Tribunal Act, 2010- The National Green Tribunal Act has been enacted with the objectives to provide for establishment of a National Green Tribunal for the effective and expeditious disposal of cases relating to environment protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.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.²⁷ 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 etc²⁸ 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.

OTHER REMEDIES

i). Law of Torts

Civil remedies are provided under the Law of Torts in case of environmental degradation in the form of air pollution in India. Indian Law of Torts is based on English Common Law. Under Article 372 of the Constitution of India which ensures the continuance in force of existing law and their adaptation, the common law based rules of tort continue to operate in India. In context of environmental cases, majority of air pollution cases falls under the four categories of Common Law, those are- trespass, negligence, nuisance and strict liability.²⁹ To these traditional categories, the Supreme Court has added a new class based on the principle of 'absolute liability' in the post-Bhopal period and was later adopted by the legislature³⁰

Negligence as a tort is a breach of duty caused by the omission to do something which a reasonable man would do or doing something which a prudent and reasonable man would not do.³¹ Trespass signifies any transgression of offence against the law of nature, of society, or the country, whether relating to a man's person or to his property³².

A person can charge for nuisance because of air pollution when an act endangers his life, health, property or comfort or when an act obstructs him in the enjoyment of the rights common to all people. Nuisance means "An unlawful interference with the use and enjoyment of land or property, or some right over, or in connection with it."³³ There are two categories of nuisance i.e. "public nuisance and private nuisance."³⁴

The principle of "strict liability" is a "accountability with no fault on the part of the defendant is very important in relation to matters happening from ecological distraction because it has been applied to a remarkable variety of things": "Fire gas, explosions, electricity, oil, noxious fumes, colliery spoil, poisonous vegetation, etc."³⁵ The most important case related to the strict liability is of Ryland v. Fletcher.³⁶ Under strict liability a person can be held strictly liable without any fault on his part. It holds a person strictly liable when he brings or accumulates on

²⁷ *Ibid.*

²⁸ *Id.*, s. 20.

²⁹ Mathur M. (1996). *Legal Control of Environmental Pollution: Jurisprudence and Laws Applicable to Environmental Violation and Prevention*. New Delhi: Deep and Deep Publications. p. 154.

³⁰ Rosencranz A. & Divan S. (2001). *Environmental Law and Policy in India: Cases, Materials and Statutes*. New Delhi : Oxford University Press. p. 88.

³¹ Mathur M. (1996). *Legal Control of Environmental Pollution: Jurisprudence and Laws Applicable to Environmental Violation and Prevention*. New Delhi: Deep and Deep Publications. p. 161

³² *Ibid* at p. 181

³³ Kapoor S.K. (2010). *Law of Torts*. Allahabad: Central Law Agency. p.250

³⁴ *Supra* note 58 at p. 243

³⁵ Shastri. S.C. (2014). *Environmental Law*. Lucknow: Eastern Book Company. p. 85

³⁶ *Supra* note 63 at p. 190

his land something likely to cause harm if it escapes, and damage arises as a natural consequence of its escape.³⁷ The Indian Courts in many cases applied it. The doctrine of strict liability is subject to “a number of exceptions that considerably reduce the scope of its operation.”³⁸ Exceptions like act of God, plaintiff’s consent, statutory authority etc are included.

The doctrine of absolute liability is based on “no fault liability”. In India this doctrine is originated from ‘*the Shriram Gas Leak Case*’ filed by the environmentalist and lawyer M. C. Mehta as public interest litigation.³⁹ In case of doctrine of absolute liability there are no exceptions like strict of liability. If industrial accident took place on account of dangerous or hazardous activity, the enterprise involved in such activity is liable to compensate the person affected by such industrial accident. It is immaterial to examine, who committed negligence. Rejecting the theory of strict liability propounded in *Rylands v. Fletcher*, the Indian Supreme Court in *M.C. Mehta v. Union of India*⁴⁰ (Oleum Gas Leakage or Shriram Food and Fertilizer Industry case) declared that:

“We have to develop our own law and if we find that it is necessary to construct a new principle of liability to deal with unusual situation....on account of hazardous or inherently dangerous industry....we should not hesitate to evolve principle of liability though such principle might have been evolved in England.”

ii. Punishment for Eco-crime offences under Indian Penal Code, 1860

Indian Penal Code, 1860 (IPC) was the first attempt to control specifically water and atmospheric pollution through criminal sanction in India. Part XIV of the IPC, 1860, consisting of Sections 268 to 294A deals with the issues of environmental pollution.⁴¹ There are many provisions against air pollution in Indian Penal Code, 1860. The Chapter XIV of Indian Penal Code deals with offences relating to public health, safety,decency, convenience, morals under Sections 268, 269, 270, 278, 290 has the main object to protect public health, safety and convenience by rendering environmentally hazard act a punishable one.

Public Nuisance has been defined as, a person is guilty of a public nuisance who does any act or is guilty of illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right.⁴²

Section 268 further clarifies that “a general nuisance or annoyance is not justifiable on the ground that it causes some convenience or advantage. Other provisions that deal environmental issues are”.⁴³

- a. Negligent act likely to spread infection or disease dangerous to life⁴⁴
- b. Malignant act likely to spread infection or disease dangerous to life⁴⁵

³⁷ *Ibid* at p. 105

³⁸ *Supra* note 62 at p. 105.

³⁹ *Supra* note 58 at p. 247

⁴⁰ (1997) 2 SCC 353: AIR 1997 SC 734.

⁴¹ Gaur K.D. (2013). *Textbook on The Indian Penal Code* . New Delhi: Universal Law Publishing Co. Pvt. Ltd. p. 385

⁴² Indian Penal Code, 1860, sec 268

⁴³ *Supra* note 73 at p.485-486.

⁴⁴ Indian Penal Code, sec 269

⁴⁵ *Ibid*, sec 270

c. Making atmosphere noxious to health.⁴⁶

However, the fundamental prerequisite of the provision to penalize “a person is the guilty intention of the accused, i.e. the act of the accused should be negligent, malignant or voluntary, which vitiates the atmosphere. In case of public nuisance, the IPC provides for fines up to Rs. 200/- by way of punishment⁴⁷ And for making the atmosphere noxious to health Rs. 500/- only⁴⁸The amount provided as punishment under the penal code are too scanty to achieve the aim to stop air quality degradation in the form of public nuisance is not possible in India.

The Kerala High Court held that: “Smoking, in any form, in a public place is a public nuisance cases can be filed under Section 290 of IPC and it is violative of right to life provided under Article 21 of the Constitution.”⁴⁹

i) Provisions under the Criminal Procedure Code, 1973

The provisions of Chapter X Part B⁵⁰ of the Criminal Procedure Code, 1973 (Cr.P.C.) provides effective, speedy and preventive remedies for public nuisances cases including insanitary conditions, air, water and noise pollution to safeguard the environment. Since, the Cr.P.C, is not a substantive law and it deals only with the procedural aspect, thus, it does not provide definition and meaning of the term public nuisance and private nuisance.⁵¹

The Criminal Procedure Code provides that a district magistrate or sub-divisional magistrate or any other executive magistrate specially empowered on this behalf by the State government can make a conditional order to remove such nuisance either on receipt of a report of a police officer, or on other information, and taking such evidence that he thinks fit. and if the nuisance maker objects to do so, the order will be made absolute.⁵²The Cr.P.C. confers upon “the Magistrate summary power to give instructions for abatement of a public nuisance and nominated the Judicial Magistrate to outline a technique to make a working drainage system of adequate capacity to meet the needs of the people.⁵³

To any order under section 133 of Cr. P. C. Magistrate must be satisfied the following :

- a. It is a public nuisance i.e. the number of persons injuriously affected is so considerable that they may reasonably be regarded as the public or a portion of it.
- b. It is not a private dispute between different members of the public for which the proper forum is the civil court.
- c. It is a case of great emergency or imminent danger to the public interest.”⁵⁴

⁴⁶ *Ibid* , sec 278

⁴⁷ Indian Penal Code, sec 290

⁴⁸ *Ibid* , sec 278

⁴⁹ K. Ramkrishnan v. State of Kerala, AIR 1999 Ker 385.

⁵⁰ The Criminal Procedure Code, 1973, sec 133 -144

⁵¹ *Supra note 58* at p. 221.

⁵² The Code of Criminal Procedure, 1973, Sec 133

⁵³ Salve H. (2000). *Justice between generations: Environment and Social Justice*. New Delhi: Oxford University Press.p 369

⁵⁴ *Kalyanasundaram v. Kalyani Ammal*, 1975 Cri LJ 1717 (Mad), and also see *Narayan v. SDM*, 1986 Cri LJ 102 (Ori).

ii) . Environment protection under the Code of Civil Procedure, 1908

The Code of Civil Procedure, 1908, also provides provisions for the safeguard of natural environment. The Civil Procedure Code gives the right to action in case of public nuisance.⁵⁵ Public nuisance derives support from section 91 of CPC that lays down the procedure for initiation of a civil suit for the offense of public nuisance. It provides “In case of public nuisance or other unlawful act disturbing or likely to affect, the public, a suit for declaration and injunction or for such other relief as may be proper in the conditions of the case may be instituted⁵⁶: a. By the Advocate General⁵⁷; or b. With the leave of the Court⁵⁸, or c. Any private person if he has sustained special damage.”⁵⁹

Being purely procedural, the section gives the flexibility of seeking parallel remedies in criminal jurisdiction or damages under law of torts. This section does not limit or change any other right that may exist independently of its provisions. Any person responsible for air or noise pollution or causing public nuisance are liable for prosecution but the limitation in case of penalty is merely Rs. 200/- which is too meagre for a person to initiate prosecution. In case of injunction, provisions are provided under the section 94, 95 as well as under Order 39 of CPC, 1908.⁶⁰

CONCLUSION

In India, numerous laws were enacted before Independence and many specific and general laws were also passed after Independence, which are being enforced in order to protect and safeguard the environment, human health and development from the adverse impact of air pollution. The law pertaining to air pollution in India and judicial uncertainty in the arena of air pollution not only proved to be inefficacious but also inadequate to serve against this global menace. One of the major specific enactments to handle the problem of air pollution is the Air (Prevention and Control of Pollution) Act, 1981, with an objective to prevent, control and abate air pollution in India. Boards are constituted, powers and functions are conferred to them under this act to prevent air pollution, still air quality degradation is going on. Likewise, other enactments are also proved as not adequate to prevent and control air pollution and to punish the polluter. Air pollution is increasing across our country in a tremendous way including all major cities, such as NCR Delhi, Varanasi, Mumbai, Gujarat, Guwahati etc. Many lacunas are present in the present air pollution control legislation, so urgent amendments are needed to handle this menace in India. There is an urgent need for a comprehensive legislation in India and particular authority with wide powers to check air pollution. Nonetheless, as mentioned so far, the investigator has been able to identify some of the issues in enacting air pollution control legislation which should be helpful in proceeding further, leading to effective suggestions by way of conclusions and suggestions.

⁵⁵ The Civil Procedure Code, 1908, sec 91.

⁵⁶ Takwani, C.K.(2013).*Civil Procedure Code with Limitation Act*. Lucknow: Eastern Book Company. p. 464

⁵⁷ The Code of Civil Procedure 1908, sec 91(10)(a)

⁵⁸ *Ibid* .sec 91 (10)(b)

⁵⁹ *Ibid* .sec 91(2)

⁶⁰ *Supra note* 88 at p. 242