



REVISITING THE INDIAN AIR TERRESTRIAL POLICIES UNDER ENVIRONMENTAL LAWS

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ABSTRACT

The resilience of air pollution violating fundamental rights for all calls for injunction for those activities causing the pollution, in turn adversely affecting the environment. This alarming proposition is reflected, because of news items appearing on a report telecast in Indian news by the channel NDTV on 23rd March 2022, of IQAIR, a Swiss firm tracking the world air quality around the world of its revelations that Delhi, the Indian capital city is the most polluted, out of 100 polluted cities in the world successively for the fourth year since 2017¹. This mayhem projects Delhi's pollution levels have an increase of 15% from the previous year (the annual average for PM 2.5 was 96.4 micrograms per cubic metre), this being 20% higher than WHO's safety limit which is five². The other downcast is that including Delhi there are 63 cities in India which constitute the most polluted out of a total of 100 cities across the world. The reflections cause concern to those who decipher the implications of such data as to the legal system and its implementation mechanisms, which are not very effective to elucidate the policies, laws and judicial systems to tackle the problem of air pollution. This calls for revisiting the policies and implementation framework of India including judicial activism and implementation or the lack of it to tackle the problem wherever lies the responsibility. Although these should have been reorganized in 2017 when the data was projected to be shown to increase for PM 2.5 particles to 84 in 2017 from 66 in 2015.³ The Corona pandemic may have slowed down certain activities, but appear to be on the rise again with the opening up of the economies across the world. With the concerns of these reports as being serious and of urgent consideration, the Article deems to undertake the study to critically analyse the existing legal regime curbing Air pollution and find the answer to the question, mainly, "Do the laws and implementation processes, relating to air pollution in India, need to be revisited?"

Keywords: Air pollution, Indian laws, health hazards, implications, pollution fines, & penalties ⁴

I. INTRODUCTION

The Lancet study said that data from the Global Burden of Diseases, Injuries, and Risk Factors Study 2019 showed that pollution "remains responsible for approximately nine million deaths per year," updating a 2015 estimate of

¹ <https://www.ndtv.com/india-news/delhi-is-worlds-most-polluted-capital-for-2nd-straight-year-report-2836028> last accessed on (27/4/2022)

² Id.

³ NDTV report, 22 October 2018, available on www.ndtv.com (last visited on 3rd August 2019)

⁴ P.S Jaiswal & Nistha Jaiswal, "Environmental Law: Environment Protection, Sustainable Development and The Law", 3rd ed., Allahabad Law Agency, Faridabad, p.3

three million people dying of it every year.⁵ Furthermore, the study found that 90 per cent of pollution-related deaths occurred in low- and middle-income countries, with India topping the list with 2.36 million deaths and China coming in second with 2.1 million⁶. Rising air pollution levels encircle the Capital city of Delhi and its neighbouring areas as per news reports and evidence displayed them. The news data is further authenticated by several news reports as "the Guardian" 5th March 2019 and released by Greenpeace, an international body that keeps an eye on the pollution level of the world, reported that twenty-two of the world's thirty worst cities for air pollution are in India, with Delhi once again ranked as the world's most polluted capital city.⁷ The million-dollar question of the potential reasons for the rise in air pollution in Delhi where vehicle pollution, home pollution, industrial emissions, road dust, and garbage burning coupled with residential complexes, and infrastructural development maybe causes enough. According to the Delhi Economic Survey 2016-17, the total number of motor vehicles on the road in the NCT of Delhi was 97.05 lakh, up 9.94% from the previous year and are the primary source of increased vehicular pollution,⁸ leading to rising NO₂ as well as particulate matter concentration. Particulate matter (PM₁₀ and PM_{2.5}) emanates especially from the vehicular exhaust, particularly diesel vehicles, road dust, and industrial activities such as combustion processes, construction activities, etc. besides these the massive expansion of the industrial sector.⁹ According to the 6th Economic Census of 2013 of Delhi conducted in 2016-17, there were 8.75 lakh total industrial business entities operating in Delhi. It was much higher than the 5th Economic Census, which was conducted in 2005, this comparison revealed an increase of 1,17,565 enterprises more than the previous one. These figures give a suspected projection of our economy and pollution. A regular check displays that recycling and disposal equipment and plants are not installed by these enterprises and the pollutants are released directly into the atmosphere without filtration. Failure to check vehicular and industrial uses of diesel and petrol in generators, emanating emissions and pollution by the Central and State governments are failed efforts where laws, regulations and policies are not duly complied with by the enterprises and the industry. "Air pollution steals our livelihoods and our futures, but we can change that, we want this report to make people think about the air we breathe because when we understand the impacts of air quality on our lives, we will act to protect what's most important."¹⁰ India's fight against air pollution started with the passed the Air (Prevention and Control of Pollution) Act 1981¹¹ in consonance with the Stockholm conference and its adaptation of its principles.¹² The amendments of 1987 introduced stricter legal and regulatory mechanisms to control the pollution of air. The amended law besides other things was a welcome step and it introduced the National appellate Tribunal as a statutory forum for appeals against the air board decisions as new but despite this, it proved inadequate over time, with its core provisions unable to deal with the type, magnitude and degree of pollution facing the country today.¹³ The Central Government issued a Graded Response Action Plan for Delhi and the NCR On the 12th of January 2017, which included measures such as prohibiting trucks from entering the city; banning construction activities; introducing an odd and even scheme for private vehicles; closing schools; closing brick kilns, hot mix plants, and stone crushers; shutting down the Badarpur power plant; banning diesel generator sets; garbage burning in landfills, and plying of vehicles After proper evaluation by the authorities concerned, the nature, extent, and rigour of the steps to be implemented are connected to levels of pollution, namely serious or emergency, severe, very poor, moderate to poor and moderate.¹⁴ The actions must be carried out over the entire NCR. The Punjab government would also take action on stubble burning. The current state of air quality as shown in the news report of NDTV in most Indian cities and towns indicates that the current legal regime is not only

⁵ BBC News, 18th May 2022, the Lancet study: Pollution killed 2.3 million Indians in 2019, available at <https://www.bbc.com/news/world-asia-india-61489488> (last visited 6/6/2022)

⁶ Id.

⁷ Available at <https://www.theguardian.com/cities/2019/mar/05/india-home-to-22-of-worlds-30-most-polluted-cities-greenpeace-says> (last visited 31 July 2019)

⁸ See <https://transport.delhi.gov.in/content/vehicular-pollution-delhi> (last visited on 6/6/2022) (last visited on 6/6/2022)

⁹ Id.

¹⁰ Statement by "web Sano," the executive director of Greenpeace Southeast Asia,

¹¹ Act no 14 of 1981.

¹² <https://sustainabledevelopment.un.org/milestones/humanenvironment.5-16> June 1972.

¹³ See Shibani Ghosh, need for reforming the liability regime of air pollution in India" centre for policy research, 2015

¹⁴ Press Information, Bureau Government of India, Ministry of Environment, Forest and Climate Change, available at <https://pib.gov.in/newsite/printrelease.aspx?relid=110654> (last visited on 6/6/2022)

falling short of preventing the air pollution and also insufficient in punishing the culprits who cause air pollution or violate air pollution laws, and thus the current legal regime is not very apt and has failed to achieve the Act's objectives. There are many other reasons why the rules and laws related to pollution are either poorly obeyed or not obliged at all in India and each of these requires in-depth analysis. Several steps need to be taken to make the regime of laws to be fairly effective to control air pollution. Realising the importance and urgency of the matter there is an urgent need to revisit and redesign India's current regime of laws to control air pollution by taking into account certain points mind. An enquiry into the various provisions of the Air Act requires special attention from the government and needs to be revisited or changed to curb the problem of air pollution. There are many critical issues which need to be thoroughly examined to make the law a better instrument to deal with the problem. One issue in particular that deserves to be mentioned here is the legal regime focussing on the effectiveness of the existing enforcement mechanism which is the very core of the regime in the context of a violation of statutory provisions, summing up both criminal liability and civil liability under the following Acts.¹⁵ Besides the above legal framework, the jurisprudence that has evolved over years by the decisions of Supreme Court and High Court judgments arising primarily under their writ jurisdiction and recognising a right to clean air. Writ jurisdiction of courts is, however, a discretionary remedy and generally, courts did not accept the writs so easily when the alternative efficacious remedy is available to the petitioners.

II. INTERNATIONAL LAW AND AIR POLLUTION

International law and the international environmental principles are based on the maxim, “*Sic utere to ut alienum non-laedas*” which prohibits States from conducting or permitting activities within their territories that harm other neighbouring States. Historically it started with prohibiting harm to a neighbour¹⁶ to nuisance laws after the industrial revolution with activities of gold mining and copper smelting to the first known environmental case of *Trail Smelter Arbitration*,¹⁷ propagated injuncting harmful and nature detrimental activities, which was followed by international cases of serious environmental harm caused due to human activities. From 1912-to 1965, *Japan's Four Big Pollution Diseases*¹⁸ were pollution due to copper smelting caused pollution in the Water case river. In 1952, the *London Smog Disaster*, where the city of London was covered by a toxic smog for five days due to industrial pollution lead to the enactment of The Clean Air Act.¹⁹ In 1976, *Italy's Seveso Dioxin Cloud* where on July 1976, a chemical plant explosion near Seveso, Italy exposed locals to the highest known levels of dioxin exposure.²⁰ In 1984, *India's Bhopal Cyanide gas leak disaster* occurred where the leakage of oleum gas caused death, disease and disasters taking the lives of millions besides causing environmental harm.²¹ In 1986, the *Chornobyl Nuclear Disaster* occurred in a nuclear power plant in Ukraine, where a flawed Soviet reactor design coupled with serious mistakes made by the plant operators were responsible.²² In 1991, the Kuwaiti Oil Fires, where the Iran-Iraq war left blazing infernos burned for months having devastating effects on air and land pollution and affecting animal and human health.²³

The international Air Pollution story is reiterated from the later 19th century, of the two World wars, Human Rights were enacted and based as fundamental rights for all living beings, which created the Third-generation

¹⁵ The Factories Act, 1948; The Air (Prevention and Control of Pollution) Act, 1981; The Environment Protection Act, 1986; The Indian Penal Code, 1860; The Code of Criminal Procedure 1973; The Code of Civil Procedure, 1908; The National Green Tribunal Act, 2010

¹⁶ *Rylands V Fletcher*, (1868) L R 3 HL 330.

¹⁷ Parrish, Austen L., *Trail Smelter Déjà Vu: Extraterritoriality, International Environmental Law and the Search for Solutions to Canadian-U.S. Transboundary Water Pollution Disputes*, Volume 85, Boston University Law review, pp 363-429, 2005. Articles by Maurer Faculty. 891. <https://www.repository.law.indiana.edu/facpub/891> Last visited: 30/01/2022.

¹⁸ Iwasaki Hirokazu, *Overcoming Pollution in Japan and the Lessons learned*, <http://www.wepa-db.net/pdf/0810forum/paper36.pdf>. Last visited: 11/02/2022

¹⁹ Martinez Julia, *Great Smog of London*, <https://www.britannica.com/event/Great-Smog-of-London>. Last visited: 11/02/2022.

²⁰ Eskenazi Brenda et al, *The Seveso accident: A look at 40 years of health research and beyond*, Volume 121, Environmental International, pp.71-84, 2018, <https://reader.elsevier.com>. Last Visited: 11/02/2022.

²¹ <https://www.britannica.com/event/Bhopal-disaster>. Last visited: 11/02/2022.

²² <https://world-nuclear.org/information-library/safety-and-security/safety-of-plants/chernobyl-accident.aspx>. Last visited: 11/02/2022.

²³ <https://www.lenntech.com/environmental-disasters.htm>; <https://www.cfr.org/timeline/ecological-disasters>; <https://www.conserve-energy-future.com/worst-environmental-disasters-caused-by-humans.php>. Last visited; 11/02/2022

human rights also known as *The Solidarity Rights*,²⁴ which include the right to a healthy environment. Followed by the Stockholm Declaration on 5th June 1972 at Stockholm which is the *Magna Carta* for all environmental issues. This was followed by the *Vienna Convention on depletion of the Ozone Layer, 1985*, for the Depletion of the ozone layer, followed by the Montreal Protocol, 1987 controls the production and consumption of specific chemicals, none of which occur naturally sets specific targets for reduction and a timetable for doing so.²⁵ *The United Nations Convention on Environment and Development, 1992* or the Rio Declaration²⁶ where along with five major agreements were signed the *Framework Convention on Climate Change*²⁷ which was based on a new principle of “*Common but Differentiated Responsibility*”²⁸ and the UNFCCC was followed by the *Kyoto Protocol*²⁹ signed in 1997 and ran from 2005 to 2020, was the first implementation of measures under the UNFCCC. The Kyoto Protocol was superseded by the *Paris Agreement*,³⁰ which entered into force in 2016. This was covered under the concept of “*Sustainable Development* culled from the Brundtland Commission report and other international documents, are Inter-Generational Equity, use and conservation of natural resources, environmental protection, the Precautionary principle, polluter pays principle, obligation to assist and cooperate, eradication of poverty and financial assistance to developing countries.”³¹

III. SCREENING THE CURRENT INDIAN LEGISLATIVE FRAMEWORK DESIGNED TO REGULATE AIR QUALITY

The existing scan of the regulatory and legal framework for poor air quality and shortcomings, for the sources of pollution, assessing the state policies, rules, and strategies for combating air pollution, comprehending the challenges of resolving the air pollution problem in Delhi, to identify and mark legal gaps in the existing legal framework and suggest ways to remove those gaps along with the gaps in the existing legal and regulatory framework and to offer suggestions for improving the quality of Air in the region.

A. CONSTITUTION OF INDIA AND AIR QUALITY

The Republic of India is one of the largest democratic nations in the world and is also the only country in the world having the lengthiest written constitution which came into force in the year 1950. It however did not have environmental provisions as environmental concerns had not arisen at that time, India being an agrarian economy. It has incorporated environmental protectionist measures in both Fundamental Rights and Duties under Articles 39, 42, 47, 48 and 49 and amended its constitution in 1976 to include Article 48-A in the form of directive principles and Article 51-A (g) as Fundamental Duties for both the State and citizens as a follow up of the Stockholm conference, 1972, its commitment given to the world. The 42nd constitutional amendment, on January 3, 1977, and the country's commitment to protect and develop the environment and maintain air quality and the right to clean air is now recognised as part of the right to life under Article 21 of the Constitution, guarantees a person the right to live with dignity and a pollution-free environment. Where the Right to the profession under Article 19(1) (g) interferes with the Right to life, the Supreme Court in the first environmental case of India adjudicated those quarrying activities responsible for the livelihoods of several could not be allowed where the health of both people and environment are affected, the latter would prevail over the former.³² Today, according to the pollution abatement policy of 1992. the government of India has fixed a goal to integrate environmental issues into decision-making at all levels.

²⁴ Ibid.

²⁵ <https://ozone.unep.org/treaties/vienna-convention> Last visited: 30/01/2022

²⁶ <https://www.un.org/en/conferences/environment/rio1992>. Last visited: 30/01/2022.

²⁷ <https://unfccc.int/resource/docs/convkp/conveng.pdf>. Last visited: 30/01/2022

²⁸ <https://www.britannica.com/topic/common-but-differentiated-responsibilities>, Last visited: 30/01/2022.

²⁹ <https://unfccc.int/process-and-meetings/the-kyoto-protocol/what-is-the-kyoto-protocol/kyoto-protocol-targets-for-the-first-commitment-period>. Last visited: 30/01/2022.

³⁰ <https://unfccc.int/process-and-meetings/the-paris-agreement/the-paris-agreement>. Last visited: 30/01/2022.

³¹ *Vellore Citizens Welfare Forum v. Union of India*, AIR 1996SC 2715.

³² *Rural Litigation and Entitlement Kendra v. State of U.P.*, AIR 1982 SC 652.

B. THE FACTORIES ACT 1948 AND AIR POLLUTION

The factory act is India's first indirect response to deal with the problem of air pollution since its independence. Sections 13,³³ 14, and 15 deserve special mention in that regard as these address proper ventilation, dust, fumes, and humidity as they pertain to worker health. The act also deals with the industrial safety, discharge of pollutants, hazardous substances and workplace conditions and employees' well-being and welfare. An amendment was made to the Factories Act in the year 1987 and a new Chapter 4-A was incorporated into it. It is related to provisions which deal with hazardous work. We can consider chapter 4-A as a welcome step as it provides for the regulation of hazardous substances to protect the health of workmen. Though it is quite comprehensive, it does not provide for citizens' suits.

C. THE AIR ACT 1981 AND AIR POLLUTION

Hazards of Air pollution may be created due to anthropogenic as well as human activities responsible for the release of pollutants into the atmosphere. The law attempts to dissuade the complexities of the problem by enactment and implementation of the law which has been legislated upon only in the latter part of the twentieth and twenty-first centuries. The legal roots of air pollution were found under the tortious liability of nuisance and the no-fault or strict liability. The remedy lay in compensation and injunction on such activities. The more recent or the current law for liability was initiated with environmental matters. In India, The Air Prevention and Control of Pollution Act, 1981 was one of the acts legislated to deal with Air pollution by reiterating the conformity to the UN Conference on the Human Environment in 1972³⁴. This is the first law enacted solely for the goal of preventing, controlling, and reducing air pollution. It was created to carry out the purposes after establishing authorities in the form of boards and by conferring and allocating powers and functions about the issues at hand to such boards.³⁵

The Air Act so constituted gives birth to various authorities like the Central Pollution Control Board (CPCB)³⁶ at the central level which governs all union territories and the State Pollution Control Boards (SPCB)³⁷ at the state level. The act delegated various functions and responsibilities to the two authorities and these functions of the board are defined in Sec-16 and 17 respectively. Though the primary function of the board is to improve the quality of air and to prevent, control or negate the factors that cause air pollution in the country³⁸ besides it, the pollution control board also discharges various other functions, such as the "state boards advise the State Government on any matter concerning the prevention, control or abatement of air pollution"³⁹ to carry out any other duties that may be specified or assigned to it by the Central Board or the State Government from time to time⁴⁰. It may declare any area as an air pollution control area and seeks a prospective industrialist or the developer to take prior consent of the Board before starting a new activity.⁴¹ It also allowed the working of those industries to only continue for three months⁴² and no more after the commencement of the Act, where the decision of the Board would allow its continuance based on the activity.⁴³ The State Government under the Act has the power to seek necessary documents,⁴⁴ procedures about assent in writing,⁴⁵ and appropriate fees where it grants permission or refusal which it records in writing⁴⁶ or grants permission with conditions including specifications for

³³ Sec 13(1) (a), factories act 1948.

³⁴ Supra note 4.

³⁵ <https://legislative.gov.in/sites/default/files/A1981-14.pdf>

³⁶ Sec 3 of Air pollution Act 1981.

³⁷ Id sec 4

³⁸ Id sec 16

³⁹ Sec17(1)(b), Air Act,1981

⁴⁰ Id.17(1)(I)

⁴¹ Ibid, Section 21

⁴² Ibid, Section 9

⁴³ Ibid, Section 21(1)

⁴⁴ Ibid, Section 21(3)

⁴⁵ Ibid, Section 21(3),

⁴⁶ Ibid, Section 21(4)

equipment, particularly pollution control devices⁴⁷. The limited period of consent needs to be renewed timely.⁴⁸ The Board may cancel the consent before the period expires or refuse to renew the consent if there is a failure to meet the requirements or revise the consent requirements if there is a technological advancement after giving the industrialist a hearing of his case and charge the fees as prescribed along with details of the plant and other information under the Rules.⁴⁹ The Act also empowers the State Boards to obtain information about emissions from industrial plants, enter and inspect premises, take samples of emissions and send them for analysis⁵⁰. When a person to whom the State Board has granted consent under subsection (4) transfers his interest in the industry to another person, the consent is deemed to have been granted to that other person, and he is bound to comply with all the conditions subject to which the consent was granted as if it had been granted to him originally.⁵¹ A dissatisfied investor by the decision of the Board whether it is specifications or discharge of emissions may apply to the Appellate Authority established within 30 days of the decision,⁵² which may be condoned and extended only if they are satisfied that the appellant was precluded from filing the appeal in time by justifiable justification. “The Appellate Authority shall consist of a single person or three persons as the State Government may think fit to be appointed by the State Government.”⁵³ Matters that are appealable before an Appellate Authority constituted under this Act cannot be filed before any civil court.⁵⁴ A decision or order of the Appellate Authority may be appealed against before the National Green Tribunal⁵⁵.

The Air Act supports a command-and-control form of regulation with criminal sanctions prohibiting industries from emitting any air pollutant over standards laid down by the board in the exercise of its powers under sec 17(1)(g)⁵⁶. Board can approach a court (not lower than a Metropolitan Magistrate or a Judicial Magistrate of the first class) for restraining any person who is likely to cause air pollution⁵⁷. “Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order direct such person to desist from taking such action as is likely to cause emission or authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the court.”⁵⁸ In case of emissions have occurred more than the permissible standards or are likely to occur due to an unforeseen incident, the person in charge of the premises has been placed under an obligation to inform the Board immediately⁵⁹. Any remedial measures undertaken by the Board or any other agency to mitigate the impact of such emission of air pollutants are recoverable from the person concerned⁶⁰. This provision implicitly recognises and implements the polluter pays principle a principle that finds statutory expression much later in the National Green Tribunal Act 2010⁶¹. The act also recognises the absolute liability principle which was the first time evolved and incorporated into Indian environmental jurisprudence by the Supreme Court of India in its historic decision in the Oleum Gas Leak case in 1987.⁶² The central pollution control board and the State Boards were given extra authority to make certain instructions to ensure compliance with the Act's provisions by an amendment in 1987. For example. directions for the closure, prohibition, or regulation of any industry, activity, or process; or the interruption or regulation of the supply of energy, water, or any other service. The recipients of such directives

⁴⁷ id

⁴⁸ id

⁴⁹ Sec 21(2)

⁵⁰ Sec 24 of Air Act 1980.

⁵¹ Id. Sec 21(7)

⁵² Supra n.39, Sec 31(1)

⁵³ id

⁵⁴ Sec 46 of Air Act, 1980.

⁵⁵ Sec 16(f) of NGT Act, 2010.

⁵⁶ Sec 22 of Air act 1980.

⁵⁷ Id Sec 22A

⁵⁸ Sec 22A (3). Of Air Act 1981, see also madhumita Dhar Sarkar, Legislative Measures and Control of Air Pollution In India: Retrospect And Prospect, (thesis 2005) north-west Bengal University, Darjeeling <https://ir.nbu.ac.in/bitstream/123456789/278/15/179146.pdf>

⁵⁹ Sec 23 (1) of Air pollution Act 1981

⁶⁰ Sec 22(4) of Air Act 1981

⁶¹ Sec 20 of NGT Act 2010.

⁶² See, M .c Mehta vs, union of India, 1987 SCR (1) 819, AIR 1987 965

are required to follow them⁶³. An appeal against such directions of the central pollution control Board or Board lies before the Appellate Authority⁶⁴ and an appeal against an order of the Appellate Authority lies before the National Green Tribunal.⁶⁵ Failure to comply with its provision attracts fines and penalties along with imprisonment which is taken up on case to case basis.

The penalties and punishments prescribed in the Act have to be imposed by a court of law and cannot be levied by the State Boards directly. A complaint against the alleged offence must be filed in a court not inferior to that of a Metropolitan Magistrate or a Judicial Magistrate First Class by the concerned State Board, or an officer authorised by it⁶⁶. Any individual other than the Board can make a complaint against an alleged offence, thanks to a 1987 change that increased public involvement in the law's execution. However, such a person must give the Board sixty days' notice of his or her intention to go to court. The Board is required by law to supply the complainant with all relevant reports in its possession.⁶⁷ It also empowers the Central and State governments to frame Rules regarding specific issues related to Air pollution. Thus, the law legislated is a well-rounded law with the authorities, powers and procedures, and penalties with adequate means of implementation. The effectiveness lies in the will to implement to protect the environment.

1. RULES FRAMED UNDER THE AIR PREVENTION AND CONTROL OF POLLUTION ACT, 1981

Several Rules have been enacted to tackle various kinds of Air pollution under the Air Prevention and Control of Pollution Act, 1981 which empowers the Government to frame rules. These are under Schedule I which lays down *standards for emission or discharge of environmental pollutants* from 1-114 kinds of industry. Under Schedule III, it lays down *Ambient Air Quality Standards* in Respect of Noise. Under Schedule IV, it lays down *Standards for Emission of Smoke, Vapour, etc. from Motor Vehicles*. Under Schedule VII, it lays down provisions for National Ambient Air Quality Standards. The others include *The Noise Pollution (Regulation and Control) Rules, 2000* (as amended to date), *The Ozone-Depleting Substance (Regulation and Control) Rules, 2000* (as amended to date), and *The Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996*. (as amended to date), The scheme on *Labelling of Environment-Friendly Products (Eco-Mark)* (as amended to date), *The Regulation Of Lead Contents In Household And Decorative Paints Rules, 2016* (as amended to date), *The Regulation of Polychlorinated Biphenyls Order, 2016*.

2. JUDICIAL INTERPRETATION OF THE AIR LAW

The judicial interpretations are based on fundamental rights and fundamental duties enshrined in the Directive Principles of the State policy. The right to constitutional remedies may be granted under Articles 32 and 226 where Public Interest Litigation may be adopted for those cases where they affect the public at large. Some of these cases, where the Supreme court judicially interpreted various cases to protect human health and the environment are enumerated hereafter. In the case of *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh*⁶⁸(Dehradun- Mussorie Hills quarrying case), the first environmental case in India, the court ordered the shutting down of all mining activities within the city limits and identified limited areas, where mining would be allowed only for essential reasons. In the case of *Sachidanand Pandey v. State of West Bengal*⁶⁹, the Supreme Court laid down with the height of buildings interfering with the flight of the migratory birds not being present and would cause no danger to the flight paths were after due consideration given clearance for construction and not being violative of the law as well as fundamental rights and duties. In the case of *M/s. Abhilash Textiles v.*

⁶³ Sec 31A of Air Act 1981.

⁶⁴ Id sec 31.

⁶⁵ See supra note 39.

⁶⁶ Sec 22A, Air Act 1981.

⁶⁷ Id. Sec 43 (2)

⁶⁸ AIR 1982 SC 652

⁶⁹ AIR 1987 SC 1109

*Rajkot Municipal Corporation*⁷⁰, the Supreme Court laid down, that the filth and the bad odours emanating from the untreated discharge from industries were posing health problems to the people and environment. The court ordered for installation of treatment plants or shutting down of these industries in case of non-compliance. In the case of, *Indian Council for Enviro-Legal Action v. Union of India*⁷¹ the Supreme Court laid down that, damages should be paid not only for the damage to the people as their right to life under Article 21 is affected, but also for the restitution of the environment as long as it's possible by conducting an environmental assessment for the loss caused to it. In the case of, *M.C. Mehta v. Union of India*⁷² (Taj Trapezium case), the Supreme Court brought out the shutting down and relocation of all industries, emanating smoke and black soot because of the use of coke/coal for running them. It sought for use of cleaner fuels like CNG for future uses. It also made it mandatory to the establishment of green belts around the Industrial areas. In the case of, *M.C. Mehta v. Kamal Nath*,⁷³ the Supreme Court questioned the violation of the laws to the detriment and degradation of the environment and why an additional fine should not be paid besides the amount assessed for the damage to the environment. In the case of *M.C. Mehta v. Union of India*⁷⁴ (CNG Vehicles case), Supreme Court ordered the immediate shutting down of all public and private transport buses running on diesel fuels and allowed only vehicles running on CNG to be used for all public transport system. In the case of, *Murli S. Deora v. Union of India*,⁷⁵ the Supreme Court banned smoking in public areas as smoking affects the health of those who smoke but it indirectly affects those in the vicinity of such people and they indirectly become passive smokers which affect their right to life. In the case of *T. N. Godavarman Thirumulkpad v. Union of India*,⁷⁶ the Supreme Court laid down that activities like mining in forest areas thereby affecting the right to life of those inhabitants of the forests so should be prohibited. In the case of *M.C. Mehta v. Union of India*⁷⁷ (Closure of industries in Delhi), the Supreme Court ordered the shutting and relocation of all industries using diesel and other fuels for running industries. In the case of, *Forum, Prevention of Environment & Sound Pollution v. Union of India*,⁷⁸ the Supreme Court laid down guidelines for noise pollution and demarcated zones in the municipalities where noise is allowed only up to certain levels and time. Areas like hospitals and schools are to be declared as the no noise zones. In the case of, *Karnataka Industrial Area Development Board v. C. Kenchappa*⁷⁹ the Supreme Court allowed areas to be allotted to various entities as an Institutional area for Industries and did not allow industrial activities to be conducted based on the principle of Sustainable Development.

IV. ROLE OF NATIONAL GREEN TRIBUNAL IN CHECKING AIR POLLUTION

While criminal liability for air pollution is covered by the Indian Penal Code, 1860, the Criminal Procedure Code, 1973 and the Indian Evidence Act, 1872, the National Green Tribunal Act 2010, provides for civil liability for acts causing air pollution besides providing the statutory appellate mechanism against orders of the Board as discussed above. The National Green Tribunal has original jurisdiction over all civil cases raising a substantial question relating to the environment, including enforcement of any legal right relating to the environment. Such a question must arise from the implementation of seven laws listed in the Schedule to the NGT Act including the Air Act. Serious environmental questions include incidents where there is a clear breach of a written law that influences or is likely to affect the community at large rather than just an individual or a group of individuals, that the gravity of environmental damage is significant or that the damage to public health is extensively tangible, or the applicant could show that the repercussions are being caused by a particular act or a point source of pollution. The Tribunal can order relief and compensation for pollution victims, as well as the reinstatement of damaged

⁷⁰ AIR 1988 Guj. 57

⁷¹ AIR 1996 SC 1446

⁷² AIR 1997 SC 734

⁷³ (1997) 1 SCC 388; AIR 2000 SC 1997; AIR 2002 SC 1515.

⁷⁴ AIR 2002 SC 1696

⁷⁵ AIR 2002 SC 40

⁷⁶ AIR 2005 SC 4256

⁷⁷ (2006) 3 SCC 399

⁷⁸ AIR 2006 SC 348

⁷⁹ AIR 2006 SC 2038

property and the environment of the area⁸⁰. the Tribunal can issue interim orders including granting an interim injunction or stay, and orders requiring any person to cease committing or causing any harm to the environment. The Tribunal can execute its order as a decree of a civil court, and for this purpose, it has all the powers of a civil court, and the order of the Tribunal may be challenged before the Supreme Court. Some of its later judgements are for the protection of the air as a natural resource against pollution. The Tribunal has used its powers to issue a variety of orders to tackle the issue of air pollution. In a matter concerning environmental damage, particularly air pollution, the NGT, in April 2015, banned 10-year-old diesel vehicles in NCR because their emissions are found to be carcinogenic. Subsequently, in July 2016, NGT ordered the de-registration of 15 to 10-year-old diesel vehicles in Delhi in a phased manner. Further, the 2018 guidelines for scrapping motor vehicles in Delhi prepared by the city's transport department provide that diesel, petrol, and CNG vehicles more than 15 years old are to be scrapped.

V. CIVIL LIABILITY FOR ENVIRONMENTAL MATTERS

After the Air Act was legislated and brought into force in 1981, air pollution cases were dealt with the Indian penal law along with provisions of the criminal procedural law for *nuisance*. Section 133 of the criminal procedure code was invoked to take action and file a criminal complaint about nuisance. This was reflected in the court decisions of *Municipal Council, Ratlam v. Vardichand*,⁸¹ where the court ordered the removal of the nuisance or face strict criminal punishment. This invoking of the criminal law was done for ten years where in the case of *State of Madhya Pradesh v. Kedia Leathers & Liquor Ltd*,⁸² the Supreme Court clarified that enactment of the Air Act, 1981 does not automatically repeal the criminal Provisions of section 133. Each of these provisions has a separate field of applicability. Section 268 of the IPC defines the offence of Public Nuisance and actions causing air pollution could potentially be brought within the definitional ambit. Section 278 makes the act of voluntarily vitiating the atmosphere and making it noxious to the health of persons, an offence punishable with a fine. In the case of *Tata Tea Ltd v. the State of Kerala*,⁸³ the Supreme Court laid down that the environmental laws have a special purpose for enactment whereas Section 133 is more general and therefore cannot be invoked for environmental matters. This decision was affirmed in the case of *Abdul Hamid v. Gwalior Rayon Silk Manufacturing Co. Ltd*.⁸⁴ Therefore, civil liability can be invoked as per the provisions of the law for environmental matters. As in any other civil suit, a declaration, injunction or any other appropriate remedy may be sought where there are dangers of public nuisances or other wrongful acts affecting or likely to affect the public at large. Interestingly, in such cases, persons filing the suit need not prove that special damage has been caused to them by such public nuisance or other wrongful acts⁸⁵. Thus, persons causing air or noise pollution or causing public nuisance are liable for prosecution, however, the penalty under this head is very less and is meagre i.e., merely Rs, 200⁸⁶. In another landmark case of *B. Venkatappa v. B. Lovis*⁸⁷, the Andhra Pradesh court While upholding the lower court's mandatory injunction directing the defendant to close the holes in a chimney facing the plaintiff's property noted that the smoke and fumes that materially interfered with ordinary comfort were enough to constitute an actionable nuisance and that actual injury to health did not need to be proven. The fact that the nuisance existed before the complainant inhabited his premises does not absolve the offender unless he can demonstrate that he had gained a right to perpetuate the nuisance complained of against the complainant⁸⁸.

⁸⁰ Shibani Ghosh, 'Reforming the Liability Regime for Air Pollution in India', IV Environmental Law & Practice Review (forthcoming 2015), available at https://www.cprindia.org/system/tdf/working_papers/Shibani%20Ghosh_Reforming%20the%20liability%20regime%20for%20air%20pollution%20in%20India_WPDEC2015.pdf?file=1&type=node&id=5006&force=1 (last accessed on 20/5/2022)

⁸¹ (1980) 4 SCC 162

⁸² AIR 2003 SC 3236

⁸³ 1984 Ker. L. J. 645.

⁸⁴ 1989 Criminal Law Journal 2013

⁸⁵ P.S Jaiswal & Nistha Jaiswal, "Environmental Law: Environment Protection, Sustainable Development and The Law, 3rd ed., Allahabad Law Agency, Faridabad, p.21

⁸⁶ *Id.* at 22

⁸⁷ A.I.R. 1986 AP 239.

⁸⁸ *Id.*

VI. MAJOR GAPS IN AIR POLLUTION LEGAL REGIME

Based on the above analysis it can easily be concluded that while there are good laws to address the problem of air pollution but there are certainly some loopholes and lacunae in our legal system which need to be rectified immediately to handle the problem. The author has identified a few legal gaps and deficiencies in the existing legal framework regulating air quality in the country as under-

- The Boards can now go to the National Green Tribunal as an aggrieved person to seek restitution for environmental harm and compensation, but this only addresses part of the problem.
- Although the Tribunal has broad jurisdiction over air pollution, it is limited to civil cases. The Tribunal cannot determine criminal liability and cannot punish imprisonment or criminal fine.
- Civil jurisdiction may not be enough in circumstances of aggravated pollution, frequent violations of standards, and persistent inaction in the face of obvious evidence of negative environmental consequences.
- In some situations, a criminal conviction resulting in jail time and reputational damage may be a required legal solution to appropriately punish the offender while also preventing further polluting behaviours.
- Despite its limited jurisdiction, judicial action is not a long-term solution for maintaining the country's air quality, or any other environmental concern for that matter. Controlling air pollution necessitates, among other things, suitable rules governing pollution sources such as transportation, building, and industry, as well as proper monitoring and enforcement procedures and substantial inter-agency cooperation. The Indian judiciary, including the National Green Tribunal, has little jurisdiction over these responsibilities.
- Without a doubt, the judiciary has played a significant role in environmental governance in India, but the judiciary lacks the time and capacity to formulate environmental policies that adequately address local, regional, and global environmental problems, and then effectively monitor their implementation, primarily because the executive remains indifferent to blatant transgressions of the law.
- The Tribunal may be more equipped than conventional courts to resolve environmental disputes and supervise compliance with its rulings, but its decisions are problematic when they include policymaking. Such orders raise concerns regarding judicial orders' enforceability and effectiveness, as well as judicial decision-making processes.
- These existing Acts failed the litmus test in every way. Either criminal penalties are insufficient, insufficiently proportionate, or the criminal justice system is not properly aligned.

VII CONCLUSION AND SUGGESTIONS

Realising the need to introduce reform the environment ministry has set up a high-level committee to propose and monitor solutions to air pollution, which has risen to dangerous levels in and around Delhi, raising serious health concerns. Furthermore, the High-level Committee reviewing environmental laws has concluded that the present regime of laws and institutional setup is not capable of tackling the scale of air pollution that the country is witnessing, and is likely to experience shortly suggesting the amendment of an Environmental Laws in the country which may inter-alia, encourages the gradation of fines based on the severity of the offence. A note of caution may be recorded at this point. The author suggests the following suggestions after carefully analysing the existing legislation governing air pollution in the country:

1. First, while evolving the legislation, health risks should be kept in mind the problem creates, as this is such an urgent issue that if not addressed properly, it would harm the people's health to the point that it will be impossible to reverse the situation.

2. laws must fix accountability for everyone dealing in an activity that may cause air pollution and for violations of laws there should be a credible threat of prosecution.
3. Second, the provisions for trials, punishments and sanctions must be fast and expeditious and the fine levied must be proportionate to the damage done to the environment.
4. Third, there should be established strong and effective nodal authorities to monitor the applicability of laws at all levels. in the country. These authorities must be able to revise standards and technical protocols regularly to respond to evolving environmental threats on the same patterns. Examining the legal frameworks of other countries on the same topic may be done to identify a reasonable solution.
5. The nodal authorities established to check pollution should be strengthened institutionally and should be made financially independent and secure. The ability to impose administrative fines, for example, would merely broaden their current discretionary powers. It would be necessary to make efforts to limit the potential for abuse of these powers by establishing proper monitoring and accountability procedures.
6. Fourth, there must be a mechanism for fast dissemination of information interchange inside the authorities, as well as between authorities and state governments or other regulatory bodies, so that swift action may be taken.
7. While redesigning laws, transparency should be prioritised; that is, there should be no room for corruption and malpractice within the authorities, as this hurts law enforcement.
8. The ministry should ask affected state governments to implement the Graded Response Action Plan (GRAP)⁸⁹ to battle pollution. The plan includes control of road and construction dust, garbage burning, power plant and industrial emissions and vehicular movement⁹⁰.
9. It's even more problematic if the law in question is three decades old, requires numerous agencies at the federal and state levels to work successfully in collaboration and independently, and affects a large number of stakeholders.
10. The State Boards may also revoke consent or refuse to renew consent. However, they cannot impose fines or damages that are commensurate with the environmental damage caused by the unit to initiate urgent and immediate remedial measures.
11. Existing enforcement authorities should be supplemented with the ability to levy administrative fines, cancel bank guarantees, and levy environmental damages to promote prompt and effective deterrence.
12. Nodal authorities should be given the power to impose financial fines for environmental damage. The State Boards should have the authority to impose financial penalties for violations of hazardous waste management regulations.
13. Criminal prosecution would remain as an option; but resorted to only in a small percentage of cases for instance, when other enforcement actions fail to produce the desired result or the environmentally harmful actions were extremely grievous.
14. power to be given to the boards to impose administrative fines, this would give the State Boards the necessary flexibility to customise their responses to environmentally harmful activities based on various (pre-determined) criteria. These criteria could be relevant policy goals, nature and gravity of the offence, track record of defaulter, social and economic implications of alternative policy instruments, etc
15. Govt. should enhance the allocation budget in every financial year so that measures suggested could be implemented practically on the ground and are not meant just to adorn rule books.
16. Depending on the entity's compliance report over time, the Board could adopt various policy measures with varying levels of severity. Enforcement actions that are less severe than closure notices and more quickly implemented than lengthy criminal prosecution are more likely to be used.

⁸⁹ See <https://www.livemint.com/Politics/ly6V6jwCCrpyPKgaH3TPxI/Delhi-air-pollution-After-EPCA-NGT-introduces-action-plan.html>. (last visited on 2nd august 2019).

⁹⁰ See, <https://economictimes.indiatimes.com/news/politics-and-nation/delhi-air-pollution-environment-ministry-forms-high-level-committee/articleshow/61579985.cms>, (last visited on 2nd august 2019)

17. One of the key reasons for the current legal regime's failure to seek compliance is the procedural barriers to establishing a case beyond a reasonable doubt before the court which has diminished the fear of punishment among violators.
18. The polluter pays principle is the cardinal principle of Indian environmental jurisprudence and full attention should be given to it in its application without any fear or favour. On many occasions, it is seen that the principle is violated frequently by polluting units and it must not have been applied with its full force.
19. This core premise of Indian environmental jurisprudence must be reflected in the air quality liability legal regime, which must protect the rights of citizens' "right to pollution-free air." There have been some encouraging advances in terms of state board empowerment.
20. As the government considers tougher penalties for environmental violations as well as measures to address specific sources of pollution, it may be worthwhile to consider a broader reform agenda that strengthens the State Boards' enforcement capabilities, as they are the first line of regulatory authorities
21. While the modest reforms suggested in this essay are not without their risks and costs, it is clear that maintaining the status quo is no longer an option but preventing air pollution by strictly applying the laws and observing the compliance done by the stakeholders implementing those laws is a must.

Besides these, government agencies should look into and study the measures taken by the governments abroad in their respective jurisdiction and curb the pollution successfully and try to implement those models here in India like the one undertaken by the govt. of Delhi in 2016 by introducing the policy of GRAP (known as graded response action plan) which generally comes into action when the emergent situation arises to immediately deal with the air pollution and where stringent actions are to be taken by the government on the direction of EPCA⁹¹(environmental pollution control authority). It is sad and undesirable that inhabitants of the country perceive a judicial venue such as the National Green Tribunal to be their first port of call. A competent and accountable regulatory agency with adequate technical, human, and financial resources is significantly more positioned to design and enforce environmental standards than the judiciary. It is proposed that the statute be changed to give State Boards access to a regulatory mechanism that includes a variety of policy instruments. Currently, the Boards have the authority to issue show-cause notices to defaulting units and, if they do not respond satisfactorily, to issue closure notices or instructions governing power and water supply only which is not enough. Thus, finally, the author after such a great discussion and analysis of existing environmental laws as discussed above can say with a full voice that yes, the time has come to revisit our existing regime of laws curbing air pollution and it should be designed and redrafted in such a manner that it can fulfil the aspirations of 133 crores of Indians.

⁹¹ https://www.cpcb.nic.in/uploads/GRAP_Notification.pdf (last visited 2nd august,2019)