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## AIR DEPLETION: A NATIONAL THREAT

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### 1. INTRODUCTION:

According to the World Air Quality Report 2023 of PM2.5 Concentration Ranking by the Swiss Organization IQAir, India has been ranked as the third worst polluted country out of 134 countries in the world, following Bangladesh and Pakistan. The country's air quality is degrading each day possessing a major threat to human beings in ways of health diseases such as asthma, stroke, cancer and mental health complications. It has even impaired cognitive development in children. These health hazards have costed the Indian Economy so much that it has lost its output from morbidity attributable and premature death, accounting the economic loss of 1.36% of India's Gross Domestic Product<sup>1</sup>.

### 2. GENESIS OF LEGISLATION IN INDIA:

The early personalities who recognized the importance of preserving the environment and being compassionate about, were the Maratha Emperor Shivaji and the Prime Minister of Magadh, Kautilya; also known as Chanakya<sup>2</sup>. Laws which had been passed prior to the Indian Independence were: The Oriental Gas Company Act of 1857<sup>3</sup>, The Bengal Smoke Nuisance Act of 1905<sup>4</sup>, The Indian Boilers Act of 1923<sup>5</sup>, Indian Petroleum Act, 1934<sup>6</sup>, followed by the Motor Vehicles Act of 1939<sup>7</sup>.

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<sup>1</sup> DRISHTI IAS, <https://www.drishtiiias.com/daily-updates/daily-news-editorials/advancing-air-pollution-control-in-india> (last visited Jun. 7, 2024).

<sup>2</sup> Christian Viollati, Chanakya, Ancient History Encyclopedia <https://www.ancient.eu/Kautilya/> (last visited Jun. 7, 2024).

<sup>3</sup> Oriental Gas Company Act, 1857 (5 of 1857)

<sup>4</sup> The Bengal Smoke Nuisances Act, 1905 (Ben. 3 of 1905)

The Air Act of 1981<sup>8</sup>

The Stockholm International Conference on Human Environment in 1972 made to adopt the 42<sup>nd</sup> Constitutional Amendment in the year 1977, which came into effect on 3<sup>rd</sup> January, 1977. The said amendment has added Article 48A<sup>9</sup> to the Directive Principles of State Policy and is expressly stated as, “The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.” In 1981, The Air (Prevention and Control of Pollution) Act served to be the first act wholly and solely passed for the prevention and abatement of air pollution. The Air Act has been enacted on the same lines as to the Water Act, for the prevention of water pollution<sup>10</sup>.

#### SCOPE OF AIR ACT, 1981

The Air (Prevention and Control of Pollution) Act is a comprehensive legislation that includes all the aspects related to the conservation of the air pollution in the nation. Under this act two boards have been set up i.e., Central Pollution Control Board (CPCB) and State Pollution Control Board (SPCB).

Central Pollution Control Board advice the central government for control and for the abatement of air pollution. The CPCB also prescribes the Standards for Air Quality and also executes nation-wide program for prevention and control of air pollution in India.

On the other hand, State Pollution Control Board advices the State government for matters concerning air pollution. It collaborates with CPCB to train individuals involved in the prevention methods of air pollution and to organize mass education program.

The brutal Bhopal Gas Tragedy in 1986, marked the Parliament to pass the Umbrella Act, for many such rules and laws i.e. the Environment Protection Act, 1986<sup>11</sup>, on 23<sup>rd</sup> May, 1986. The Motor Vehicle Act, 1988 specified the vehicular emission standards to curtail down the CO (Carbon Monoxide) effects. Alongside, The Municipal Solid Waste (Management and Handling) Rules, 2000 were put in force through which ambient air quality monitoring has been made mandatory at the landfill sites.

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<sup>5</sup> The Indian Boilers Act, 1923 (5 of 1923)

<sup>6</sup> The Indian Petroleum Act, 1934 (30 of 1934)

<sup>7</sup> The Motor Vehicles Act, 1939 (4 of 1939)

<sup>8</sup> The Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)

<sup>9</sup> INDIA CONST. art. 48A.

<sup>10</sup> A. Brisman, Stockholm Conference, 1972, Encyclopaedia of Global Justice, Springer (2011)

<sup>11</sup> The Environment (Protection) Act, 1986 (29 of 1986).

### 3. CURRENT SCENARIO:

India being one of the largest Democratic Nation in the world and is also the first amongst all the countries to include amendments to curb down the depletion of the environment. Articles such as Article 39<sup>12</sup>, 42<sup>13</sup>, 47<sup>14</sup>, 48<sup>15</sup> and 49<sup>16</sup> were there acting indirectly for the protection of the environment. Moreover, Article 48-A of the Directive Principles of State Policy and Article 51-Ag<sup>17</sup> of Fundamental Duties mentioned under the Constitution of India to protect the environment coupled with preserving the air quality.

In these times, the Right to Life under Article 21 of the Constitution has been judicially interpreted as right to live in a pollution free environment and the right to clean air. Subsequently there were a lot more legislation made by the legislature to provide a healthier and cleaner environment. Currently, many private organizations and NGOs have also been carrying weight for the clean air drive.

### 4. JUDICIAL RESPONSES FOR THE ENVIRONMENTAL PILs:

The Supreme Court of India has passed several landmark Judgments in response to a handful of PILs filed by environmental activists, resulting in the closure of hazardous polluting industries.

1. Union Carbide Corporation vs. Union of India: The tragedy which occurred on 3 December 1984 in which Methyl Isocyanate was leaked out of the Union carbide pesticide plant. The gas was highly poisonous as a result the government of India enacted Public Liability Insurance Act, 1991 making it necessary for the industries to get insurance so that the premium of the insurance may be utilized to provide compensation to the victims. In this case the review petition under Article 137 and writ petition under Article 32 of the Indian Constitution were raised for the legal validation of fundamental issues of the victims of the disastrous Bhopal Gas Tragedy. The Supreme Court in this case, reiterated the principles of strict liability and absolute liability.

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<sup>12</sup> INDIA CONST. art. 39.

<sup>13</sup> INDIA CONST. art. 42.

<sup>14</sup> INDIA CONST. art. 47.

<sup>15</sup> INDIA CONST. art. 48.

<sup>16</sup> INDIA CONST. art. 49.

<sup>17</sup> INDIA CONST. art. 51-A, cl. g.

2. *M.C Mehta vs. Union of India*<sup>18</sup>: According to Article 48A and 51A of the Directive Principles of State Policy The Absolute Liability Principle was initiated, by the Supreme Court, in this case which means any industry involved in hazardous activities causing harm to the people around or environment would be held liable for the cause.

In Delhi air pollution Case, the writ petition was filed by M.C Mehta in the year 1985 under Article 21 of the Constitution of India in regard to increase in the transmission of highly poisonous gases which were being allowed to pass into the atmosphere. The writ was filed regarding the increase in the pollution because of the industries located in the residential area of Delhi. The court passed several orders time to time to retard the air pollution. These orders include; 168 industries falling in 'Ha' and 'Hb' categories which were hazardous, along with 513 industries falling under 'H' category 43 Hot Mix Plants, 246 brick kilns falling under category 'H', 21 arc/induction furnaces falling under 'H' category industries under the Master Plan of Delhi (MPD-2001) were directed to shut down its functioning and operation in Union Territory of Delhi. However, those industries could relocate to another place in the National Capital Territory of Delhi by changing its technology so as to protect the environment from getting depleted<sup>19</sup>.

The role of judiciary can further be elucidated from the observation made in Ganga Pollution Tanneries Case by Justice Singh. The court in conclusion highlighted that the closure of tanneries may bring loss of revenue and unemployment but Right to life have greater accordance to people.

The Right to life incorporated in the Constitution of India does not disappoint the feasible qualitative life but in regard to setting standards for air and taking actions for the vulnerable, the court may not restrict itself from using its innovative power so as to safeguard the life and liberty of public. Also, the Constitutional Provision of right to life Article 21<sup>20</sup> isn't absolute even. It is a two-way process, if the State guarantees the safety of life to its voters, then voters should also owe an obligation to respect the holiness of the State.

## 5. INITIATIVES TAKEN BY THE INDIAN GOVERNMENT:

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<sup>18</sup> *M.C. Mehta v. Union of India*, [1987] 4 SCC 463

<sup>19</sup> Staff, NGT notice to ASI on pollution near Taj Mahal, *The Outlook Scroll* (last visited Jun.7, 2024).

<sup>20</sup> INDIA CONST. art. 21.

The government is executing the National Air Quality Monitoring Programme (NAMP) which consists of Six hundred and Ninety-One (691) manual operating stations, covering Twenty-Nine (29) states and Four (4) Union Territories. Besides, CNG, LPG etc., for narrowing down vehicular pollution, cleaner and alternative fuels such as ethanol blending, and universalization of BS-IV have been introduced.

A Graded Response Action Plan for the control of air pollution has been notified in regions of Delhi NCR. The plan specified for controlling the emission of particulate matter and preventing PM10 and PM2.5 to go beyond 'moderate' national Air Quality Index (AQI) category. Additionally, the CPCB (Central Pollution Control Board) has issued certain set of guidelines under Section 18(1)(b) of Air (Prevention and Control of Pollution) Act 1986.<sup>21</sup>

Recently, a national initiative i.e. SAFAR (System of Air Quality and Weather Forecast and Research) Portal has been introduced by the Ministry of Earth Science (MoES). SAFAR monitors the air quality of a city taking into consideration the overall pollution level.

## 6. CONCLUSION:

India being a developing country which has raised its level of excellence in every field should have to shine in its environment protection methods as well. In order to enhance the air quality certainly the legislations have to be amended and requires for the development in air quality managements of the country. There is a compelling need to have alternative strategies for city building by controlling private motorized vehicular movements in the city, which has been in practice by way of odd-even number plate formula. Likewise, some cities have no-car day on specific days, behaving as a good intervention.

Promoting public awareness by integrating pollution guides and various standard operating procedures which the city residents can exercise, may serve a healthier substitute. The nation must urgently address air pollution issues by controlling industrial emission and sustainable urban planning for sustainable future as the need for action is pressing.

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<sup>21</sup> Astutya Prakhar & Raj Shekhar, Air Pollution and the Constitution of India: A Critical Analysis of the Right to Clean and Healthy Environment, Manupatra, 5(2017)