

ISSN 2582 - 4805



CMR UNIVERSITY

SCHOOL OF
LEGAL STUDIES, BENGALURU.

**CMR UNIVERSITY
JOURNAL FOR
CONTEMPORARY LEGAL
AFFAIRS**

(Peer Reviewed & Refereed)
Listed in UGC - Care (Group I)

1

Volume 4 | Issue 1 | August 2022

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ENVIRONMENTAL JURISPRUDENCE IN REFERENCE TO RIGHT TO BREATHE: A COMPARATIVE ANALYSIS

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Introduction

Air pollution is affecting the lives of millions of people as it results in various respiratory diseases. The risks related to air pollution are unevenly distributed and poor people living in slums are more exposed to the risk and at the same time women, children and senior citizens are the main stakeholders.¹ The metropolitan cities where the pollution domes have become a peculiar feature at the time of sunset and in the early morning have accelerated this problem. The pollution domes do not permit the fresh air to come inside and create breathing hazards for everyone. According to UN Special Rapporteur Report of 2018, the right to breathe clean air can be achieved by making strong legislations to tackle air pollution, by using renewable sources of energy and by avoiding the use of fossil fuels and by taking stringent measures against the construction of new fossil fuel plants along with the use of cleaner electric vehicles.²

1. Causes Of Air Pollution

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¹ DIETER HELM AND CAMERON HEPBURN, *THE ECONOMICS AND POLITICS OF CLIMATE CHANGE* 60 (Oxford University Press 2009).

² John H. Knox & David R. Boyd, Report of the Special Rapporteur on the Issue of Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment, SOCIAL SCIENCE RESEARCH NETWORK (May 4, 2022, 5:00 PM), <https://papers.ssrn.com/abstract=3287944>.

While some of the causes of air pollution are the result of natural calamities and processes, others are due to the actions of human beings.³

The causes of air pollution can be classified as under:

1.1 Natural Causes

The natural causes of air pollution are the result of natural phenomena which are not the result of human actions. The forest fires, dust storms and volcanic eruptions are some of the natural causes of air pollution.

1.2 Man Made Causes

The man-made causes of air pollution are the result of human actions which adversely affects the atmosphere. The emissions from automobiles, release of effluents from industries, spraying of pesticides to increase crop production along with burning of waste in household areas are some of the man-made causes of air pollution.

1.2.1 Pollution of Air: Role of Countries

Both developed as well as developing world are contributing to increasing rates of air pollution and are consequently contributing to global warming and climate change. The major cause of air pollution in developed countries is energy production because most of the energy production in developed countries comes from coal. The major causes of air pollution in developing countries are coal based thermal plants, emissions from automobiles, air conditioners, traditional modes of clearing the land specifically slash and burn technique used in agriculture, waste burning in residential areas and traditional ways of cooking along with the use of inorganic fertilizers in agriculture. The developing and underdeveloped countries are lacking proper technology to control the pollution.

³ PARAMJIT S. JASWAL & NISHTHA JASWAL, ENVIRONMENTAL LAW 250 (Allahabad Law Agency 2019).

2. Impact Of Air Pollution

The impact of air pollution varies from person to person depending upon the level of exposure and poor people along with women, children and old-aged people are more vulnerable. The people who work in open sites are more prone to irritation of the eyes and throat and respiratory diseases like asthma and chronic lung diseases.

2.1 Impact On Marginalized Sections

2.1.1 Impact on Women

Women are exposed to the major impact of air pollution on a daily basis due to the use of traditional methods of cooking.⁴ In addition to this domestic pollution, millions of women have to step out of the house to earn bread and butter. As an estimate, more than 50% of working women are employed as unskilled labor at construction sites and in industrial undertakings.⁵ These workplaces contribute to occupational diseases which have a detrimental impact upon health of women especially asthma, skin diseases and respiratory problems that have a direct causal relation with employment.

2.1.2 Impact on Daily Wagers

Daily wagers, especially skilled and unskilled labour working in hazardous industries suffer from occupational diseases due to air pollution on a daily basis. Since these people are poor and have low income, they cannot afford to buy necessary equipment and air purifiers to lessen the effect of air pollution.

2.1.3 Impact on Children

⁴ JODY M. PRESCOTT, ARMED CONFLICT, WOMEN AND CLIMATE CHANGE 57(Routledge 2019).

⁵ Kalpana Devi & U.V. Kiran, Status of female workers in Construction Industry in India: A review, 14(4) IOSR JOURNAL OF HUMANITIES AND SOCIAL SCIENCE 27,30(2013).

School going children of all the age groups, due to their tender age are more prone to air borne diseases. The children are forced to breathe contaminated air while travelling from their homes to schools and they become exposed to the risk of respiratory problems.

2.1.4 Impact on Old Aged People

The old-aged people as well as the people who are already suffering with any chronic disease or respiratory problems are at the high risk of multi organ failure, lung damage and coronary diseases. Moreover, the immunity of the old people is weak which further enhances the impact and risk of being affected with air borne diseases among them.

3. Right To Breathe: A Basic Human Right

Right to breathe is one of the basic human rights. Every person has a right to breathe fresh air as it is part of *Right to Life*. If there is violation of the right to breathe clean air, then it has an adverse impact upon the enjoyment of other human rights, especially on right to life and right to healthy surroundings.⁶ It is the duty of nations of the world to provide such an environment where people of the country may enjoy a pollution free environment.

4. Efforts At International Level To Control Pollution

Air pollution is not the problem of one country but contributed by all the countries of the world. Therefore, the appropriate solution to combat this problem lies in the unified strategy at the world level where all the countries of the world have to make a commitment to control and prevent pollution. At the same time, efforts at the national level are equally important to support the integrated efforts at the international level. There is a requirement to enact significant environment protection laws and policies to be framed at the national level. The United Nations Framework

⁶ P LEELAKRISHNAN, ENVIRONMENTAL LAW IN INDIA 201 (Lexis Nexis 2019).

Convention on Climate Change (UNFCCC) is the international treaty which recognizes the need at international platform to take steps to control Greenhouse Gas Emissions and to lessen the adverse effects of climate change.⁷ Further, special requirements of the developing countries must be taken into account and more burden to mitigate climate change is on developed countries since they had been engaged in industrialization for decades and had polluted the environment more.⁸ The Kyoto Protocol introduced the concept of emissions trading and allowed developed countries to buy emission units from developing countries in case they have exhausted their emission units but still they want to engage themselves in the industrialization process.⁹ It has named seven greenhouse gasses and aimed at taking efforts to reduce them. It was one of the initial steps to control global warming and paved the way for future agreements. The Paris Agreement had set the goal of restraining the increase in global temperature below 2 Degree Celsius.¹⁰ The agreement was based on the requirement of voluntary National Determined Contributions in which each country had to voluntarily set up the targets to mitigate climate change and had to submit the report regularly to show the progress in achieving its target. ¹¹ It further laid emphasis on transfer of finance and technology from developed countries to developing countries.¹² It also recognized the need of educating and training the people of poor countries so that they are well versed in understanding the

⁷ The United Nations Framework Convention on Climate Change, May 9, 1992, S. Treaty Doc. No. 102-38.

⁸ Ibid

⁹ Kyoto Protocol to the United Nations Framework Convention on Climate Change, Dec. 10, 1997, 2303 U.N.T.S. 162.

¹⁰ The Paris Agreement to the United Nations Framework Convention on Climate Change, Dec. 12, 2015, T.I.A.S. No. 16-1104.

¹¹ Ibid

¹² Ibid

use of technology transferred to them.¹³ The Glasgow Pact laid emphasis on the need of complete ban on usage of coal and also removal of subsidies on fossil fuels provided by governments of different nations in their respective countries.¹⁴ A critical evaluation of the progress reports put forward by the countries shows that they have not achieved their targets which were promised by them. The idea of climate justice is at the central theme of this conference and it recognized that the poor and marginalized sections of the society are more vulnerable to the adverse effects of climate change. Further, use of renewable sources of energy should be promoted and the use of fossil fuels should be minimized.

5. Efforts At National Level: Comparative Study

5.1 United States Of America

The Clean Air Act in the United States is a major legislation for controlling the deteriorating air quality.¹⁵ The two main sources causing deteriorating air quality are mobile sources and stationary sources.¹⁶ Under the mobile sources, emissions from the vehicles are covered whereas emissions from factories and coal based plants are covered under stationary sources.¹⁷ The amendments in this statute were made in the year 1977 and 1990. The Amendment of 1977 provides for controlling deteriorating quality of air in those areas where air quality standards are applicable and also specifies guidelines for sources in non-attainment areas.¹⁸ An area is called a

¹³ Ibid

¹⁴ GLASGOW CLIMATE PACT, <https://unfccc.int/documents/310497> (last visited April 28,2022),

¹⁵ The Clean Air Act, 42 U.S.C. § 7401 et seq. 1970 (United States of America).

¹⁶ THE CLEAN AIR ACT 1970, UNITED STATES OF AMERICA, <https://www.epa.gov/laws-regulations/summary-clean-air-act> (last visited February 16,2022).

¹⁷ Ibid

¹⁸ THE CLEAN AIR ACT 1970, UNITED STATES OF AMERICA, [https://en.wikipedia.org/wiki/Clean_Air_Act_\(United_States\)](https://en.wikipedia.org/wiki/Clean_Air_Act_(United_States)) (last visited February 16,2022).

nonattainment area if it fails to achieve the standards of air quality mentioned under the Statute. It also provides for restricting the emissions from automobiles and various action plans were introduced by the state to achieve the air quality standards under this amendment. The Amendment of 1990 formulates plans for controlling the effects of acid rain and also to remove chemicals and hazardous substances which leads to depletion of the Ozone layer.¹⁹ Under the Clean Air Act, the Environment Protection Agency officials got the requisite power from the Clean Air Act and established the National Ambient Air Quality Standards (NAAQS). All States of the United States must follow NAAQs and they have to maintain the air pollution below the limits fixed by the statute, otherwise they are subjected to heavy fines and penalties.²⁰

5.2 European Union

The European Union enacted a Directive to check the adverse effects of air pollution and to assign roles for member States of the European Union to check the deteriorating air quality.²¹ Under this directive, a uniform approach for evaluating the air quality is followed by taking factors of population and ecosystem into consideration.²² This Directive suggests that steps should be taken to avoid harmful air pollutants at every level and standards should be set to improve air quality where it is low and to maintain it where it is good. There should be free flow of information to the public and information should be used to analyze long-term trends of air pollution in order to reduce it. This Directive requires that the air

¹⁹ Id

²⁰ the clean air act 1970, united states of america, <https://www.britannica.com/topic/clean-air-act-united-states-1970>(last visited february 16,2022).

²¹ directive 2008/50/ec of the european parliament and of the council on ambient air quality and cleaner air for europe.

²² ibid

pollutants do not exceed the permissible levels.²³ The permissible levels specified in the Directive are the minimum values that European Union member states must strive to achieve and member states can formulate more stringent standards by way of national legislations if they desire so.²⁴ It is observed that member states of the European Union are not complying with the prescribed air quality standards and discretion with the member states poses a problem as they have failed to implement the Air Quality Standards at domestic level by enacting national legislations.²⁵

5.3 India

5.3.1 Constitutional Safeguards

The Constitution of India provides a golden triangle for the environment. Right to life under Article 21 is one of the most significant fundamental rights and the right to clean the environment is an integral part of Right to Life.²⁶ The right to life would be worthless if there is no pollution free environment. Series of Directive are provided under Directive Principles of State Policy so that the State may make the policies for effective protection of natural resources, wildlife and ecology in order to ensure a healthy environment to its citizens.²⁷ The Constitution of India provides an express fundamental duty on its citizens to protect, preserve and safeguard our natural resources.²⁸

5.3.2 Legislative Safeguards

²³ karolina kuklinska & lidia wolska, air quality policy in the u.s. and the eu – a review, 6(1) atmospheric pollution research 129,137(2015).

²⁴ *ibid*

²⁵ delphine misonne, the emergence of a right to clean air: transforming european union law through litigation and citizen science,30(1) review of european, comparative and international environmental law 34, 45(2021).

²⁶ SHYAM DIVAN AND ARMIN ROSENCRANZ, ENVIRONMENTAL LAW AND POLICY IN INDIA 49 (Oxford University Press 2011).

²⁷ INDIA CONST. art. 48A.

²⁸ INDIA CONST. art. 51A(g).

The Air (Prevention and Control of Pollution) Act, 1981 was enacted for giving effect to international agreements as provided under the Constitution of India.²⁹ This Act gives vast powers to the State Boards to declare the areas as “Air Pollution Control Areas” if in that area the fuel is used in an uncontrolled manner and degrades the air quality. The Board can ban the use of fuel and other items which are likely to degrade air quality in such areas.³⁰ However, there is no restriction on the use of appliances and fuel which are duly approved by the competent authorities. The new industrial plants can be opened or operated in such areas only by the permission of the State Boards. The Board has the power to stop a person from causing air pollution by writing an application to the Court. The Board is empowered to enter into the establishment and to carry out inspection with the view to confirm that standards laid down by it are followed by the persons.³¹ The Board can authorize any person to obtain information from the person carrying out industrial activity and he has the power to check the veracity of the information provided by the industrialist.³² The State Board has also been vested with the power to take samples of air by following the prescribed procedure mentioned under the Air Act.³³ The order passed by the State Board is appealable and the appeal must be made within thirty days from the date on which the order is communicated to him.³⁴ The Act makes it clear that directions given by

²⁹ DR. S.C. TRIPATHI, ENVIRONMENTAL LAW 177(Central Law Publications 2019).

³⁰ The Air (Prevention and Control of Pollution) Act,1981, §19, No. 14, Acts of Parliament,1981(India).

³¹ The Air (Prevention and Control of Pollution) Act,1981, § 24, No. 14, Acts of Parliament,1981(India).

³² The Air (Prevention and Control of Pollution) Act,1981, § 25, No. 14, Acts of Parliament,1981(India).

³³ The Air (Prevention and Control of Pollution) Act,1981, § 26, No. 14, Acts of Parliament,1981(India).

³⁴ The Air (Prevention and Control of Pollution) Act,1981, § 31, No. 14, Acts of Parliament,1981(India).

the Central Government and State Board must be followed by the concerned persons.³⁵

5.3.3 Role of Judiciary

The Supreme Court in an M.C Mehta case³⁶ showed its regret that the Union of India showed an indifferent attitude on the issue of conversion of commercial vehicles to CNG. The court did not accept the plea of the government that the CNG was in short supply and it was unable to supply adequate quantities.

In yet another case of M.C. Mehta, commonly known as the 'Taj Trapezium Case' the issue that was raised was regarding the the air pollution caused by refineries near Taj releasing sulphur dioxide and other pollutants in the air and further leading to the formation of the sulphuric acid which combines with moisture to form 'acid rain' and it had a damaging effect on the Taj.³⁷ Based on the NEERI Report and Varadarajan Committee reports, a Public Interest Litigation was cognized by the Supreme Court. While delivering the judgment, the Court observed that emissions generated by the coke/coal consuming industries are air pollutants. They have a damaging effect on the Taj and on the people living in the Taj Trapezium Zone. In this case, Justice Kuldip Singh formulated the very important principles namely Precautionary and Polluters Pay principle so that more effective preventive and anticipatory measures may be taken by the State. In every case, where the alleged industry is in question, the onus is on the industrialist to prove that his actions do not harm the environment.

³⁵ The Air (Prevention and Control of Pollution) Act, 1981, § 31A, No. 14, Acts of Parliament, 1981 (India).

³⁶ M.C Mehta v. Union of India, AIR 2002 SC 1696.

³⁷ M.C Mehta v. Union of India, AIR 1997 SC 734

In a relevant case, the Supreme Court held that smoking in public places indirectly deprives the non-smokers of their right to life guaranteed under Article 21 and smoking affects the rights of passive smokers and hence has to be prohibited in public places.³⁸

While delivering the judgment, it was observed by the Court that a day after Diwali celebrations, the presence of air pollutants reached the maximum levels.³⁹ The Court held that such a polluted environment violates the right to health along with the right to breathe clean air which are implied fundamental rights under Right to Life. The Central Pollution Control Board was directed to submit a report on the harmful materials being used in the manufacturing of firecrackers and their contribution to air pollution. In another case where pollution due to crackers was in question, it was held by the Supreme Court that only green crackers which do not cause air pollution can be allowed and the sale of the same must be regulated strictly and the licensed sellers may be allowed to sell them.⁴⁰ The Court held that manufacture and sale of other crackers will be prohibited. It was also suggested that awareness campaigns were required to be organized in schools and colleges to make students aware about the harmful effects of firecrackers on air.

6. Conclusion And Suggestions

6.1 Conclusion

The right to breathe clean air is the implied fundamental right and an essential part of dignified life protected under Right to Life. Air pollution is a problem that can be prevented through taking precautionary steps. There is a need to move from brown economy to green economy by

³⁸ Murli S. Deora v. Union of India, AIR 2002 SC 40.

³⁹ Arjun Gopal v. Union of India, (2017) 1 SCC 412.

⁴⁰ Arjun Gopal v. Union of India, 2018 (II)SCALE 283.

motivating the institutions that are responsible for carbon emissions. A shift in the mindset of the people is required regarding the way of generating electricity, ways of transportation and ways of crop production. It is possible by creating awareness in society. Awareness campaigns as well as strong implementation mechanisms can only ensure the effective furtherance of goals of environmental laws in India. There should be proper implementation of various treaties and legal enactments dealing with air pollution in various countries. The businesses should contribute towards protecting the environment by adopting eco-friendly techniques of manufacturing and distribution. There is a need to enhance the role of indigenous communities and tribal people while acquiring their resources and laws should be formulated in simple language so that these people can understand and protect their rights. Green Awards should be given to those individuals who came forward to motivate and sensitize other people to come forward in protecting nature. Switching over to clean energy is the need of the hour for all countries.

7.2 Suggestions

Some important suggestions in furtherance of goals of pollution free environment are as under:

- i. Intelligible exploitation of resources is required. There should be replacement from non-renewable to renewable resources for production of energy.
- ii. Use of fuel for domestic purposes should be replaced with biogas plants.
- iii. Proper monitoring of industries and refineries should be ensured.
- iv. Traditional ways of slash and burn agriculture should be replaced with eco-friendly methods of production and harvesting.

- v. Solar panels should be made mandatory both in domestic as well as industrial sectors.
- vi. The Polluters Pay principle and Precautionary principle should be strictly applied against the wrongdoers who are responsible for air pollution.
- vii. Afforestation shall be promoted and the periodical maintenance of the trees should be ensured.
- viii. The concept of Extended Producer Responsibility in case of batteries and e-waste should be imposed.
- ix. The National Green Building Code should be formulated and properly implemented so that buildings should be made environmentally friendly.
- x. We should inculcate the habit of reusing and recycling the products. We all need to imbibe the value of taking care and respecting the environment and watching what we do. Educational Institutes should take a pledge to become green colleges.
- xi. There is a need to put a check on the tendency of online websites which use a lot of paper in packaging of products which are ordered online.