

DOMESTIC LAWS ON POLLUTION

LEGAL FRAMEWORK AROUND POLLUTION

ENVIRONMENT AND CONSTITUTION OF INDIA

The provisions related to environment in the constitution of India are found among Fundamental Duties, Directive Principles as well as Fundamental Rights.

FUNDAMENTAL DUTIES

Article 51-A(g) 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.”

DIRECTIVE PRINCIPLES

Article 48-A of the constitution in Directive Principles focuses on protection and improvement of environment and safeguarding of forests and wild life. This article says: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country” Further, article 47 and 48 also commensurate with the healthy environment. Article 47 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 public health as among its primary duties.” Protection and improvement of environment is necessary for improving the public health. Article 48 directs the state to take steps to organize agriculture and animal husbandry on modern and scientific lines.

FUNDAMENTAL RIGHTS

Under Fundamental Rights (Part-III), Articles 21, 14 and 19 have been used by judiciary to establish Right to clean environment as one of the implied fundamental rights. Article

21 which says: no person shall be deprived of his life or personal liberty except according to procedure established by law”, has been subject to maximum scrutiny by Supreme Court, which has mandated for more than once that the right to environment, free of danger of disease and infection are inherent in this act. The right to healthy environment was first recognized by Supreme Court as inherent in article 21 in the Dehradun Quarrying Case in 1988. In this case, Supreme Court gave direction to stop quarrying under Environment Protection Act. Similarly, the M.C. Mehta vs. Union of India, 1987 case also, the Supreme Court treated the right to live in pollution free environment as a fundamental right inherent under Article 21.

Supreme Court has also interpreted Article 19(1) to tackle the menace of noise pollution. The court has maintained in PA Jacob case 1993 that freedom of speech does not include freedom to use loud speakers or sound amplifiers. Further, Article 19(1) (g) confers the fundamental right over citizens to practice any occupation, trade or business. But this fundamental right is subject to reasonable restrictions and citizens can not practice the business activities that cause health hazards to public. Apart from the above, Supreme Court (Via article 32) and High Courts (Via article 226) have frequently admitted to public interest litigation related to environment.

Air (Prevention and Control of Pollution) Act, 1981

The Parliament enacted the Air (Prevention and Control of Pollution) Act, 1981 to arrest the deterioration in the air quality.

THE NOTABLE POINTS FROM THIS ACT ARE AS FOLLOWS:

The Act makes provisions for the establishing of Central Pollution Control Board (CPCB) at the apex level and State Pollution Control Boards at the state level.

The CPCB advises the Central Government on any matter concerning the improvement of the quality of the air and prevention, control and abatement of air pollution. It also helps to plan

and cause to be executed a nation-wide programme for the prevention, control and abatement of air pollution. It provides technical assistance to and guidance to the State Pollution Control Board. It also lays down the standards for the quality of air.

The SPCBs plan a comprehensive programme for prevention, control and abatement of air pollution and to secure the execution thereof. They also advise the State Government on any matter concerning prevention, control and abatement of air pollution.

Kindly note that according to this act, the “air pollutant” means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment.

WHAT ARE AIR POLLUTION CONTROL AREAS?

This act provides that the State Government may, after consultation with the State Board, by notification declare any area or areas within the State as air pollution control areas. The state government is also powered to make any alternations in the area pollution control areas such as merging the areas. If the state government, after consultation with the State Board, is of opinion that the use of any fuel or burning of any non-fuel material other than an approved fuel, in any air pollution control area or part thereof, may cause or is likely to cause air pollution, it may, by notification, prohibit the use of such fuel in such area.

The further provisions of the act say that no person shall, without the previous consent of the State Board, establish or operate any industrial plant in an air pollution control area. Every person to whom consent has been granted by the State Board, shall comply with the conditions and norms prescribed by the board such as prevention and control of the air pollution. Failure to do so brings penalty including jail term of at least 1.5 years.

AIR QUALITY CONTROL AND MONITORING

Central Pollution Control Board (CPCB) with the help of concerned State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) is monitoring the ambient air quality in the country at 346 stations covering 130 cities and towns. This is done under the National Air Quality Monitoring Programme (NAMP).

Under this programme, Central Government provides funds through CPCB for National Air Monitoring Programme to various SPCBs and PCCs.

The objectives of the NAMP are to determine the status and trends of ambient air quality; to ascertain whether the prescribed ambient air quality standards are violated; to assess health hazards and damage to materials; to continue the ongoing process of producing periodic evaluation of air pollution situation in urban and industrial areas of the country; to obtain the knowledge and understanding necessary for developing preventive and corrective measures and to understand the natural cleansing processes undergoing in the environment through pollution dilution, dispersion, wind based movement, dry deposition, precipitation and chemical transformation of pollutants generated.

Under the NAMP, four air-pollutants viz., SO_x , NO_x , Suspended Particulate Material (SPM) and Respirable Suspended Particulate Matter (RSPM) have been identified for regular monitoring at all the locations.

NATIONAL AIR QUALITY INDEX (NAQI)

The NAQI was prepared by an expert group, set up the Ministry of Environment and Forests, comprising of renowned medical practitioners from hospitals and research agencies.

The index is a part of the government's Swachh Bharat Mission. The index measures eight major pollutants, namely, particulate matter (PM 10 and PM 2.5),

nitrogen dioxide, sulphur dioxide, ozone, carbon monoxide, ammonia and lead. Currently, only particulate matter, nitrogen dioxide and sulphur dioxide.

The index is based on real time monitoring, and the health risks are easily identified through a colour coded system. The risks will be signified through six levels – good, satisfactory, moderately polluted, poor, very poor, and severe. Air quality is qualified as good if the level of air pollution is at least 50% below the permissible limits set by the Pollution Control authorities.

The index will be extended to 46 cities having a population of more than one mn, and 20 state capitals over the next five years.

PURPOSE OF THE NAQI

The NAQI allows for easy dissemination of information pertaining to air quality and risks associated with it. The simplicity of the NAQI also makes it accessible to the common man. The use of the colour coded system makes it easier for people to comprehend instantly.

The index will also update the currently outdated system of monitoring air quality. 246 cities in India monitor their air quality in some form, however, only 16 cities have real time monitoring. Eventually, the index will be expanded to cover cities with a population of more than half a million. The real time information will help the authorities deal immediately and effectively to counter the impacts of the air pollution.

LEGISLATION ON WATER

Water in India is governed under three different Acts: the Environmental Protection Act (1986), the River Boards Act (1956) and the Inter-State Water Disputes Act (1956). Other Acts and Regulations affect water resources in different ways by addressing its importance for

agriculture, biodiversity and conservation and drinking water. These three Acts, however, have the broadest scope in terms of how they affect all aspects of water management.

WATER IN CONSTITUTION OF INDIA

Water is a state subject via Entry 17 of State List, thus states are empowered to enact legislation on subject of water. But this entry is subject to the provisions of Entry 56 of Union List. The specific provisions in this regard are as under Entry 56. Regulation and development of inter-State rivers and river valleys to the extent to which such regulation and development under the control of the Union is declared by Parliament by law to be expedient in the public interest.

Entry 17. Water that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of Entry 56 of List – I.

At the same time, the Articles 131 and 136 of the Constitution have been used by the States frequently for bringing the matters related to inter-State rivers before the Supreme Court via the Special Leave Petitions. Further, Article 143(1) of the Constitution has been used by the Central Government (via President) for seeking opinion of the Supreme Court on the matters related to inter-State rivers, under the advisory jurisdiction of the Supreme Court.

RIVER BOARDS ACT

The regulation and development of inter-state rivers and river valleys was to be entrusted to various River Boards when this Act was adopted in 1956. The River Boards were designed to advise the central government on development opportunities, coordinate activities and resolve disputes. Under their mandate, the Boards were required to provide advice to the government on various issues related to rivers. The Indian government has been unable to constitute a River Board since the Act was enacted, almost fifty years ago.

INTER-STATE WATER DISPUTES (ISWD) ACT, 1956

Interstate River Water Disputes Act, 1956 (IRWD Act) was enacted by the parliament of India under Article 262 of Constitution to resolve the water disputes that would arise in the use, control and distribution of an interstate river or river valley.

ARTICLE 262 OF THE CONSTITUTION HAS MADE THE FOLLOWING PROVISIONS:

The power of legislation conferred upon Indian parliament for adjudication of any dispute or complaint with respect to the use, distribution or control of the waters of, or in, any inter-State river or river valley.

By making a law, the parliament can also provide that neither the Supreme Court nor any other court shall exercise jurisdiction in respect of inter-state water disputes.

Thus, the constitution provides a role to the Central government in adjudicating conflicts surrounding inter-state rivers that arise among the states/regional governments. This Act further has undergone amendments subsequently and its most recent amendment took place in the year 2002.

SCOPE OF THE ACT

IRWD Act is applicable only to interstate rivers / river valleys. If the action of one state affects the interests of one or more other states, then only water dispute is deemed to have arisen under IRWD Act. The action of the state can be of two types:

Actions of a downstream state affecting the interest of an upstream state Actions of an upstream state affecting the interest of a downstream state Here we note that the action of the downstream state's action can affect the upstream state only when the downstream state is bulding a dam or barrage near the boundary or a submerging territory of the upstream state. However, the actions of the upstream state can affect the downstream state in many ways, which includes:

Consumption and storage of water by upstream state On struction in flow of non-flood water by upstream state Alternation in the quality of water due to anthropogenic activities by upstream state These come under the purview of the legal causes of water dispute to the downstream states.