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LAW

Laws relating to prevention of air pollution in India – Part II

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The first part of this article dealt with genesis of laws regulating the air pollution in India, the powers and functions of the Pollution Control Boards (both Central & State), and the power of the State Government under the Act to deal with air pollution. The second part deals with the working of the Act and the penalties under it.

Consent – In order to control air pollution, the Act has declared certain areas as ‘Air Pollution Control Area’ and the Act has made it mandatory for an entrepreneur to obtain consent from the SPCB, if he is running or establishing any industry or process, which discharges pollutants into air and polluting the air in an ‘Air Pollution Control Area’. SPCB may either grant consent or reject the application for reasons to be recorded in writing. Generally, the Consent Application is disposed off within 4 months of receipt of the same.

The consent can be obtained in two phases :

Prior Consent: Prior consent from the SPCB[1] is to be obtained before establishing an industry or process in an ‘Air Pollution Control Area’. The prior consent is generally granted with certain conditions and the said conditions can further be modified or new ones can be added. A person seeking consent has to apply in Form I along with the applicable fees. The SPCB may send its official for site visit and further information and clarification can be sought orally or in writing.

Consent to Operate: The second type of “Consent” is required from the SPCB once the industry or process plant is established by the entrepreneur with the required pollution control systems. The consent to operate is given for a particular period and it needs to be renewed regularly.

Any consent by SPCB generally requires the compliance with the following conditions [2]:

- a) Control equipment of such specification as the SPCB may approve.
- b) Control equipment is required be kept at all times in good running condition.
- c) Chimney, wherever necessary, of such specifications as the SPCB may approve.
- d) Any other conditions specified by the SPCB.

If any of the conditions specified in the consent are not adhered by the Industry, the SPCB may also revoke previous consent to the industry after giving a reasonable opportunity of being heard.

Inspection by SPCB – SPCB has the power to give its officer(s) the right of entry and inspection, at the premise of any entity, to check any violations of the Act[3]. The officer is vested with the power to take sample of air or emission. Section 26 describes the procedure of collection of sample, wherein it is prescribed that, the sample of emission is to be taken by the officer in presence of the agent or the occupant, and sample is required to be placed in a marked and sealed container. Thereafter, the agent or occupant is required to sign the marked container which will be counter signed by the officer before sending the sample to the analyst/laboratory. The report from the laboratory is sent to the occupier as well as to the State Board. This report is used as evidence before the SPCB and the Courts.

Appellate Process – Every State is required to constitute an Appellate Authority to dispose of any appeal against an order of the SPCB[4]. A person aggrieved by any order of SPCB can file an appeal within thirty (30) days the Appellate Authority[5]. Further, a person aggrieved by the order of Appellate Authority can appeal to the National Green Tribunal under Section 3 of the National Green Tribunal Act, 2010.

Role of Civil Courts – The Act stipulates the Civil Courts not to entertain any suit, which the Appellate Authority is empowered to decide[6]. Therefore, an aggrieved person can only challenge an order of SPCB before the Appellate Authority. The Civil Court can take cognizance of any offence only if the complaint is made by a Board or any authorized officer of the Boards. Furthermore, no Court inferior to a Metropolitan Magistrate or a Judicial Magistrate of First Class can try any offence falling under the Air Act.

It may be noted that if in any particular area the emission is more than the prescribed limit than as per Section 22A, the SPCB can approach the Court to restrict any such person or entity causing pollution.

Penalties – The Air Act prescribes for the penalties as well as imprisonment for the offences committed under the Air Act. Please see the table below :

Sr. No	Offence(s)	Punishment & Penalties
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1.	Section 37 – failure to comply with Section 21 (failing to obtain prior consent before operating in ‘Air Pollution Control Area’ or violates any condition(s) of the granted consent)	Imprisonment of 1 year and 6 months and fine. For continuing failure, fine upto Rs. 5000 per violation If violation continues beyond one year, imprisonment can be increased from 2 years upto 7 years with fine.
2.	Violation of Section 22 (discharges air pollutants more than the prescribed standards of air quality from any industrial plant)	Same as above
3.	Violation of any direction(s) issued under Section 31-A by the Central Government/CPCB/SPCB	Same as above
4.	Section 38: • Destroys, damages, defaces, etc. of any notice, boards, etc. placed by SPCB/CPCB • failing in furnishing any information to Board or officer under Air Act; • failing in intimating the occurrence of emission of air pollutants in excess of the standards; or • giving any false information, or if makes any false statement.	Imprisonment of 3 months or fine upto Rs. 10,000
5.	Section 39: contravention of any of the provisions of Air Act or any order or directions issued there-under, for which no penalty has been elsewhere provided in Air Act	Imprisonment upto 3 months or with fine upto Rs 10,000 or with both.

Offences by the Company [7] – The Act provides that if any offence under the Act is committed by a company, then the officer, directly in charge of the affairs of the company, as well as the company, are deemed guilty for such offence committed.

Offence by Government Department [8] – The Act stipulates that if any provisions of the Act is violated by a Government Department, the Head of Department is deemed guilty.

Air Act – A critical overview

The primary criticism is that the Act has not made India into a less polluted country. This may be due to a variety of reasons including the lack of infrastructure for the Ministry of Environment and Forests, the SPCB and the CSCB, insufficient manpower with the Government for effectively implementing the Act, lack of political will, etc. Further, the industry also did not come forward with developing new technologies to combat air pollution. Some critics have attributed the reason for this behavior of the industry to the lesser quantum of punishment for the offences mentioned in Act. The industries choose to pay the penalties rather than complying with the provisions of the Act, as the penalties seemed to be many times cheaper than the profits made during the period of violations.

Bibliography

- The Air (Prevention and Control of Pollution) Act, 1981
- Air (Prevention and Control of Pollution) Rules, 1982
- The WHO, Ambient (outdoor) air pollution in cities database 2014

[1] *Section 21 of the Air Act*

[2] *Section 21 (5) of the Air Act*

[3] *Section 26 (1) of the Air Act*

[4] *Section 30 (2) of the Air Act*

[5] *Section 31 of the Air Act*

[6] *Section 46 of the Air Act*

[7] *Section 40 of the Air Act*

[8] *Section 41 of the Air Act*