

# A Perspective on Securing the Right to Breathe Clean Air in India

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## ABSTRACT

Clean air is the birthright of every citizen in the country. Clean air facilitates the citizen to breathe clean air. Air is one of the Panchabhutas as mentioned in the sacred text Bhagavadgita. Since time immemorial, people across the world have always made efforts to preserve and protect natural resources like air, water, plants, flora, and fauna. The right to a clean and healthy environment is within the ambit of Article 21 of the Constitution of India. An adverse impact on the right to breathe clean air can have disastrous consequences for this generation and generations to come. Clean air is very important for human life and well-being. Scientific research reveals the greatest health effects of air pollution ever. It has now been disputed that inhaling dirty air can cause respiratory illnesses, heart disease, stroke and lung cancer, but new evidence suggests that premature births, diabetes, and brain damage may also happen. It also increases the risk of dying from COVID-19, causing underlying health conditions to make people more likely to develop respiratory illness, early research suggests. It is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people in one hand and the necessity for the preservation of social and ecological balances, avoidance of deforestation, and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives to secure the right to breathe clean air. All the environment-related development objectives should benefit more people while maintaining the environmental balance ensuring the right to breathe clean air. This could be ensured only by strict adherence to sustainable development without which the life of the coming generations will be in jeopardy. The Indian Government has prepared a Clean Air Programme for 102 cities which is the birthright of all the citizens and committed to protect the 5 elements of nature. In this research paper, the author analyses various aspects of governmental policies, judicial response, and the role of mechanism to administer the right to breathe clean air.

*Key words* : Clean air, Supreme Court of India, Breathe, National Green Tribunal

## Introduction

Clean air is the birthright of every citizen in the country. Clean air facilitates the citizen to breathe clean air. Air is one of the Panchabhutas as mentioned in the sacred text of 'Bhagavadgita'. Since time immemorial, people across the world have al-

ways made efforts to preserve and protect natural resources like air, water, plants, flora, and fauna. The right to a clean and healthy environment is within the ambit of Article 21 of the Constitution of India. An adverse impact on the right to breathe clean air can have disastrous consequences for this generation and generations to come. Clean air is

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very important for human life and well-being. Scientific research reveals the greatest health effects of air pollution ever. It has now been disputed that inhaling dirty air can cause respiratory illnesses, heart disease, stroke and lung cancer, but new evidence suggests that premature births, diabetes, and brain damage may also happen. It also increases the risk of dying from Covid-19, causing underlying health conditions to make people more likely to develop respiratory illness, early research suggests. It is primarily for the governments concerned to consider the importance of public projects for the betterment of the conditions of living of the people in one hand and the necessity for the preservation of social and ecological balances, avoidance of deforestation, and maintenance of purity of the atmosphere and water free from pollution on the other in the light of various factual, technical and other aspects that may be brought to its notice by various bodies of laymen, experts and public workers and strike a just balance between these two conflicting objectives to secure the right to breathe clean air. The Indian Government has launched in January 2019 a National Clean Air Programme (NCAP) for 102 cities which is the birthright of all the citizens and committed to protect the 5 elements of nature. In this research paper, the author analyses various aspects of governmental policies, judicial response, and the role of mechanism to administer the right to breathe clean air. The author has framed the following research questions to elucidate the securing the right to breathe clean air in India.

1. Are human activities responsible for the recent observed deterioration of clean air, or might it have caused by some natural process?
2. Does India need stringent policies to bring more framework for the air pollution concerns?
3. Does the orders of mechanism and Judicial Response to right to breathe clean air are adequate?

### **Deterioration of Clean Air**

Most of the world's population is exposed to hazardous substances and waste without their permission, which increases their risk of diseases and disabilities throughout their lives. In some cases, this could be a human rights violation. According to new estimates from the WHO, 12.6 million people died from living or working in an unhealthy environment in 2012 - 1 in 4 of all global deaths due to environmental risk factors such as air, water and soil

pollution, chemical exposures, climate change and ultraviolet radiation contribute to diseases and injuries. Dirty air is causing a global public health crisis. Every minute, a child dies of an illness caused by air pollution. Every minute, ten adults die prematurely due to inhaling dirty air during their lifetime. In total, at least five million deaths a year are greater than the combined deaths from war, murder, car accidents, plane crashes, malaria, tuberculosis, HIV/AIDS and Ebola. More than ninety percent of the world's population lives in areas where air pollution exceeds World Health Organization standards. The blue sky seen in Delhi, Delhi and Mumbai and other polluted cities last year due to the COVID-19 lockdown has provided a tentative but tentative vision of how bright our future will be. If India can move quickly and successfully from fossil fuels and ensure that clean cooking technology is available to all households, those blue skies can change forever instead of forever.

With the tagline "SwachhIndhan, BehtarJeevan" the Indian Government has launched a social welfare scheme "Pradhan MantriUjjwalaYojana" on May 1st 2016. The scheme envisages of smoke free Rural India and aims to benefit five crore families especially the women living below poverty line (BPL) by providing concessional LPG connections to entire nation by 2019. The scheme will increase the usage of LPG and would help in reducing health disorders, air pollution and deforestation. Outdoor air pollution originates from natural and human resources. While natural resources contribute significantly to local air pollution in arid areas prone to forest fires and dust storms, the contribution of human activities exceeds natural resources. Human activities that are major sources of outdoor air pollution, include: a. fuel combustion from motor vehicles (e.g. cars and heavy duty vehicles) b. heat and power generation (e.g. oil and coal power plants and boilers), c. industrial facilities (e.g. manufacturing factories, mines, and oil refineries), d. municipal and agricultural waste sites and waste incineration/burning and eg. residential cooking, heating, and lighting with polluting fuels.

### **Framework for the air pollution concerns**

Some deaths are inevitable. Nothing will be in anyone's hands. Others will stop if blocked. Precautions are preventable. Pollution deaths fall into this category. Air pollution is responsible for 17.8 percent of deaths in the country in 2019. The Lancet

Planetary Health study estimates that 16.7 million people have died from pollution. The World Health Organization has repeatedly stated that air pollution is an invisible killer. The resulting death rate is 86 per million. Rising mortality rate Air pollution is fueling infectious diseases. About 20% of heart disease is caused by air pollution. Air pollution accounts for 19% of all deaths from malignant lung cancer. The risk of asthma is increasing exponentially. Tobacco and alcohol use can also cause deaths. All of these are preventable. Climate change and air pollution are also interrelated. It is a matter of concern that these are causing financial losses to humans as well as increasing the health threat. Governments do not appear to be responding urgently. According to a Lancet study, production losses due to premature deaths due to air pollution will be around Rs 2 lakh crore in 2019. The weak health system in India faces additional challenges in the form of Covid. The President of India has recently signed 'The Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance, 2020. This ordinance stipulates a fine of Rs 1 crore or five years imprisonment for violating air pollution regulations. The emergency was issued in the wake of problems arising out of farmers burning crop waste. Although air quality in metropolitan cities is declining due to industrial and vehicle pollution, no government is enacting strict legislation to curb it. Pollution control boards have been criticized for compromising on the issue due to pressure from industry groups. Pollution levels in water sources near industries and large cities are a case in point. There appear to be instances where governments have weakened and weakened environmental safety guidelines for businesses. It is primarily the responsibility of governments to ensure that all citizens breathe clean air. Governments should be careful not to allow commercial enterprises to carry out any activities that could contaminate the planet. Corporates that commit violations in such a case should be held accountable. Market based solutions are not really out of the question. They in turn benefit the business community. The solution is not the same as setting up air purifiers. Only when the sources of pollution are corrected and development patterns are completely changed can air and land be prevented from becoming polluted. Hon'ble Finance Minister Nirmala Sitharaman has announced a package of Rs 4,400 crore for the year 2020-21 to

tackle air pollution in 102 most polluted cities in India. Under the National Clean Air Program (NCAP) these funds will be used to reduce particles from the 2017 levels by 2024 -30% by 2024, but it is not clear what the budget expenditure will be for the following years. Although the largest allocation the government has ever made to tackle air pollution specifically, it revealed that only half the money was allocated to 15 states (and 42 of them cities) in November in the printing of the fine. The rest will be given in January based on how cities can meet some of the 'performance parameters' that the center is still working on. The Ministry of Environment, Forest and Climate Change has said that Inspection teams constituted to abate dust and related air pollution have levied environment compensation charges of nearly Rs 76 lakh on non-compliant entities. The Environment Ministry also said that compliance with regard to transportation of materials related to Construction and Demolition activities was also checked by the inspecting teams. About 563 vehicles, not in conformance with guidelines were levied environment compensation charges of approximately Rs 25 lakh. The Commission for Air Quality Management has also asked the state pollution boards that such fortnightly drives be continued to enforce compliance of the Construction and Demolition waste management rules and related guidelines to abate dust pollution which contributes significantly to poor air quality in the region .

**(i) Reply in Lok Sabha (Indian Parliament)**

Union Environment, Forest and Climate Change Ministry said that the government has taken several steps for mitigation of air pollution in the country. In a written reply in the Lok Sabha on February 12, 2021, Environment, Forest and Climate Change Minister Prakash Javadekar said, acceptance of the problem is the beginning of the solution. He said, the government has launched a National Clean Air Programme aimed to achieve 20 to 30 per cent reduction in pollutants by 2024 from the level of 2017. He added that the Government has announced plans to improve air quality in more than 100 cities. He informed that steps like BS-VI compliant vehicles, expansion of metro lines, shifting of industries to PNG, waste processing plants and city specific plans have been taken to curb the pollution level across the country.

## Judicial Response

### (i) Vehicular Pollution

In *M.C.Mehta v Union of India*, the Apex Court has issued various interim orders with respect to pollution in the city of Delhi. The petitioner, an Advocate and Chairman of the Environmental Protection Cell filed the petition under Article 32 asking the Court to issue directions for closing down of hazardous industries located in the densely populated areas of Delhi, and for regulation of air pollution caused by automobiles operating in the area of Delhi, and for regulation of air pollution caused by automobiles operating in the area as also the thermal units generating power for the Delhi Electric Supply Undertaking. The Apex Court has passed an order on 14th March, 1991. It was held that the incorporation of protection of environment as an obligation of the State in the Directive Principles and the mandate in Article 51-A to the citizens of India as part of fundamental duty are indications of the Constitutional recognition of importance of environment of life-both flora and the fauna. The Court held that all persons using automobiles should have a fair knowledge of the baneful effect on the community including those who use such vehicles on account of the emission from such vehicles. Until that is done in an effective way the appropriate attitude would not develop and cooperation for reducing pollution would not emerge. A Committee was set up by the Court to look into the problem of vehicular pollution in Delhi and devising methods of solution of the problem. On 12th May 1998, the Apex Court keeping in view of the mandate of Articles 47 and 48 of the Constitution of India, issued directions from time to time with a view to tackle the problem arising of chaotic traffic conditions and vehicular pollution. The Court was not satisfied with the performance of the concerned authorities in tackling the acute problem of vehicular pollution and traffic regulations in Delhi.

### (ii) Stubble burning

In *Aditya Dubey (Minor) and another v Union of India and others*, it was submitted that there is a grave concern about the quality of air in the National Capital Region and that the quality is dropping rapidly. This is due to several factors, including the practice of stubble burning in the neighbouring States of Punjab, Haryana and Western Uttar Pradesh and certain activities in the NCR of Delhi. It was also

submitted that several steps have been taken by the States for stopping stubble burning in the fields of Punjab and Haryana including the development of an App. which can help in identification and notification of the particular field in which someone has burnt stubble. The counsel pointed out that in spite of many measures which are said to have been taken, there is a reported increase in the amount of stubble burning and that is increasing the pollution in NCR of Delhi. The Apex Court considered the suggestion of counsel that a former Judge of this Court who is aware of the problem be appointed to monitor the situation in the States of Punjab, Haryana, Uttar Pradesh and NCR of Delhi, is acceptable. The Apex Court appointed Hon'ble Mr. Justice Madan Lokur, a former Judge of this Court to act as the one-man Monitoring Committee to monitor the measures taken by the States to prevent stubble burning. The Court also directed that the Chief Secretaries of the States of Punjab, Haryana and Uttar Pradesh and NCR of Delhi shall assist Justice Madan Lokur and enable physical surveillance of fields where stubble is likely to be burnt and devise additional means and methods for preventing the burning of stubble. The Court cleared that the appointment of the Committee and the directions in order are not intended to dilute the powers, functions and the authority of any authorities such as EPCA, already created. The object of appointing a Committee is more to facilitate and coordinate the activities of different authorities so that the problem is resolved. The different authorities created by the States/Centre, shall also be free, to carry on their own activities, without feeling muted by the appointment of the Committee.

### (iii) Pollution by use of fire crackers:

In *Tribunal on its own Motion v. Ministry of Environment, Forest and Climate Change and Others*., National Green Tribunal (NGT) Principal Bench at New Delhi, noted the increase of adverse health impact of pollution by use of crackers on Covid-19, aggravating risk to lives and health which has led to ban by the Governments of Odisha, Rajasthan, Sikkim, UT Chandigarh, DPCC and by the Calcutta High Court on sale and use of crackers,, applying the 'Sustainable Development' and 'Precautionary' principles, a case is made out for issuing directions for banning sale and use of fire crackers during November 9 to 30, 2020 in areas where air quality is 'poor', 'very poor' and 'severe'. NGT also viewed

that air pollution aggravates Covid-19, not only crackers are to be banned/restricted depending upon air quality, all States/UTs, PCBs/PCCs must take special initiative to contain air pollution by regulating all other sources to pollution, particularly during Covid-19. NGT imposed a total ban against sale or use of all kinds of fire crackers in the NCR from midnight of November, 9-10, 2020 to the midnight of November 30 - December 1, 2020, to be reviewed thereafter. The cities/towns where air quality is 'moderate' or below, only green crackers be sold and the timings for use and bursting of crackers be restricted to two hours during festivals, like Diwali, Chatt, New Year/Christmas Eve etc., as may be specified by the concerned State. This direction is on pattern of direction of the Hon'ble Supreme Court in (2019) 13 SCC 523 which would be applied to areas moderately polluted or below air quality due to aggravated effect during Covid-19, as already noted.

## Conclusion

Thus, the first research question about the human activities responsible for the recent observed deterioration of clean air is answered. Due to the slight negligent approach of the people in feeling responsibility and the industry holders in the country raising the pollution levels affecting the ozone layer. It might have caused for functioning the natural process. There's an urgent need for investment in strategies to reduce environmental risks in our cities, homes and workplaces. Air pollution can be prevented by investing in robust policies and clean technologies. The second research question with respect need of stringent policies in India to bring more framework for the air pollution concerns has been analysed very carefully. Due to partial implementation of the legislative framework and polices, the problem has been still persisting forever. For decades, governments have viewed air pollution as an environmental problem. Recently it has started to be considered as a health problem. Both of these approaches identify clean air as the policy goal. But policy objectives are not enough because they are weakened by a lack of flexibility, discretion and accountability. There are various policies and programmes that have been implemented in India to address the issue of air pollution. The private sector also has an important role to play in raising awareness with the public sector and other relevant

stakeholders. Businesses can also calculate the air pollution footprint of their products and disclose the same in company sustainability reports. It helps to assess the transparency in their conversations with their customers about the air pollution caused by their activities and to explain the strategies they have adopted to reduce pollution. Solving the problem of air pollution will not only improve public health, but also accelerate climate action and bring India closer to its development goals. The combination of adequate finance and technological innovations will help India move the needle on the air quality issue. Citizens of the Country should participate in the initiatives by adopting pollution mitigating measures. The National Green Tribunal, various High Courts and the Supreme Court of India have been passing appropriate orders to curb out the air pollution keeping in view of the right to breathe clean air recognizing the ambit of Article of 21 of the Constitution of India. Thus, the orders of mechanism and Judicial response to right to breathe clean air are proved to be adequate in India.

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