

**CHAPTER 1**  
**INTRODUCTION**



# CHAPTER 1

## INTRODUCTION

### 1.1. *Scope of the study*

This study deals with the Air (Prevention and Control of Pollution) Act, 1981 (14 of 1981)- briefly, the Air Pollution Act. The Act received Presidential assent on 29th March, 1981 and came into force on 16th May, 1981 under GSR 35(E) dated 15th May, 1981, issued by the Central Government in pursuance of the power conferred by section 1(3) of the Act. The main object of the present study is to draw attention to the salient legal features of the Act and to suggest amendments wherever needed.

### 1.2. *Significance of the Act*

The Air Pollution Act is a specialised legislative measure, meant to tackle one facet of environmental pollution. Its main objectives are the following:-

- (a) to provide for the prevention, control and abatement of air pollution;
- (b) to provide for the establishment of Boards, with a view to carrying out the aforesaid purpose; and
- (c) to provide for conferring on such Boards powers and assigning to such Boards functions relating there to and for matters connected therewith.

### 1.3. *International background of the Act*

The Air Pollution Act has an international background which has important constitutional implications. The Act was passed to implement the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972, in which India participated. The preamble to the Air Pollution Act (in the first paragraph) contains a formal recital of the fact and adds that the decisions so taken were "to take appropriate steps for the preservation of the natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution". The preamble, in the second paragraph, further records that "it is considered necessary to implement the decisions aforesaid in so far as they relate to the preservation of the quality of air and control of air pollution".

The fact that the Air Pollution Act has been passed to implement the decisions taken at the above Conference leads to the important constitutional position, that the legislative power of Parliament consequentially expands in its dimension and by virtue of the decision taken at the above Conference, Parliament acquires competence to make a law necessary to implement the decision, whatever be the position regarding competence to make laws on the subject matter of the decision, with reference to the scheme of distribution of legislative powers between the Union and the States under the provisions of the Constitution. This is a short rough statement of the position resulting from the relevant constitutional provisions, namely, article 253 and Seventh Schedule, Union list, entries, 12, 13 and 14.

In this respect, the Air Pollution Act stands on the same footing as the Public Liability Insurance Act.<sup>1</sup>

#### 1.4. *Territorial extent of the Act*

Unlike the Water Pollution etc. Act, 1974, the Air Pollution Act extends to the whole of India. Providing for all India extent became possible because of the fact that the Act has been avowedly passed to implement the decision taken at the Stockholm Conference.<sup>2</sup>

#### 1.5. *Scheme of the Act*

The scheme of the Act may be dealt with, at this stage. Chapter 1, headed "Preliminary", deals with the short title, extent and commencement of the Act, and definitions, in sections 1 and 2 respectively. The most important definitions are those of the expressions "air pollution", "emission", "industrial plant" and "occupier". Chapter 2 deals with Central and State Boards for the Prevention and Control of Air Pollution, their composition, terms and conditions of service of members, their qualifications and delegation of powers, in sections 3-15. The powers and functions of the Boards themselves are dealt with in Chapter 3 (sections 16-18). The really operative part of the Air Pollution Act begins with Chapter 4 (sections 19-3A). That Chapter is concerned with declaration of "air pollution control areas" (section 19), emissions from automobiles (section 20), restrictions on the operation of industrial plants in air pollution control areas (sections 21, 22 and 22A) and several incidental matters, including ancillary powers (sections 23-27). It also provides for the establishment and recognition of "State Air Laboratories" and Analysts for the purposes of the Act (sections 29-31). An important provision contained in section 31 gives a right of appeal to any person aggrieved by an order made by the State Board. Much more important is the provision contained in section 31A, inserted by the amending Act 47 of 1987, under which a "Board"-which means a Central Board or a State Board, as defined in section 2(g)-can give written directions to any person, officer or authority in the exercise of its powers and performance of its functions under this Act. This power (vide the Explanation to section 31A) includes power to issue certain drastic directions, such as the closure, prohibitions or regulation of any industry, operation or process, or the stoppage or regulation of supply of electricity, water or "any other service". It may be mentioned that by section 39 (as amended in 1987) whoever contravenes any of the provisions of the Act or any order or direction issued under the Act for which no penalty has been elsewhere provided in the Act, shall be punishable with imprisonment upto 3 months or fine upto 10,000 rupees or both. The general provision as to offences by companies (section 40) applies to contravention of a direction issued under section 33A and punishable by virtue of section 39, as it applies to any other offence under the Act committed by a company.

Chapter 5 of the Air Pollution Act (sections 32 to 36) deals with certain financial matters, such as funds, accounts and audit. Chapter 6 (sections 37 to 46)

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1 See P.M. Bakshi, *Public Liability Insurance Act* (ILL, 1992).

2 See paragraph 1.3, *supra*

is titled "Penalties and Procedure". But, in fact, it also contains a section which purports to exclude the jurisdiction of courts to issue injunctions in certain cases (section 46). Incidentally, this Chapter has been extensively amended by the amending Act of 1987. Chapter 7 of the Air Pollution Act (sections 47 to 54) is titled "Miscellaneous". But, in fact, this Chapter also contains certain important provisions (sections 47 to 49) relating to supersession or dissolution of State Boards. It also contains a provision (section 52) giving to the Air Pollution Act an overriding effect over all other laws except the Atomic Energy Act, 1962. The latter Act remains the governing law in relation to radio-active pollution. As regards rule-making power, sections 53 and 54 give the power to Central Government and State Governments respectively. However, the power of the Central Government is confined to specified matters, while the power of the State Government is much wider, because it covers not only the matters enumerated in section 54(2) but also is power to make rules "to carry out the purposes of this Act" as provided in section 54(1).