

CHAPTER 2
PRELIMINARY AND DEFINITIONS:
SECTIONS 1 AND 2

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2.1. *Section 2: scope and contents*

Section 2 of the Air Pollution Act contains 15 definitions. Of these, the definitions contained in clauses (f), (g), (l), (m) and (o) are formal definitions, meant to shorten the language of substantive sections. They define the expressions "Board", "Central Board", "member", "occupier", "prescribed" and "State Board", respectively.

The other 10 definitions contained in section 2, however, deal with matters having an indirect substantive impact. This substantive impact of the definitions becomes manifest when one reads them with the substantive provisions of the Act.

2.2 *Section 2(a): "air pollutant"*

Section 2(a) of the Air Pollution Act defines the expression "air pollutant" as meaning 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. It may be noted that the Environment Protection Act, 1986 contains a comprehensive definition of the expression "environment".¹

2.3. *Section 2(b): "air pollution"*

Section 2(b) defines "air pollution" as meaning the presence, in the atmosphere, of any "air pollutant". The latter expression has been already defined in section 2(a). The one component of air pollution as defined in section 2(b) is atmosphere. Not having been defined, this word will be interpreted according to its ordinary meaning. Incidentally, it may be mentioned that under section 278 of the Indian Penal Code, whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, is punishable with fine upto 500 rupees.

The origin of the word 'atmosphere' is of interest. 'Atmosphere' was coined by a 17th century scientific writer from Greek 'Atmos' (vapor) 'sphaira' (sphere), to denote the envelope of gases surrounding our sphere, the earth.

Some problems of interpretation may possibly arise in applying the definition of the expression "air pollution" as to "noise".² Section 2(a) includes 'noise' in the definition of air pollutant. It may be recalled that 'noise' was inserted in 1987. The question may arise whether noise can be said to be 'present' in the atmosphere. Strictly speaking, noise is any sound which causes discomfort. Sound is not

1 See P.M. Bakshi, *Environment (Protection) Act, 1986* (Indian Law Institute, 1992), Chapter 2.

2 c.f. paragraph 2.10 *infra*.

ordinarily spoken of as 'present'. Of course, the point is mainly of verbal nature and would not (it is hoped) affect the enforcement of the law.

It may be mentioned that so-called "acid rain" (which is really "acid air") would definitely fall within the definition of "air pollution". This pollution is caused by burning enormous quantities of coal and oil, which, in turn, generate vast amount of polluting gases. Air borne by products of certain industrial processes adds to the pollutant. The floating up of the gas up the chimney is the main cause, because coal and oil are both fuels which contain a certain amount of sulphur, which is released on combustion and rises into the air as sulphur dioxide gas.¹ Nitrogen contained in the fields is similarly released as nitrogen oxides. The process of burning converts some nitrogen from the air into nitrogen oxides. The pollutants escaping from the furnace (i) linger in the vicinity and then drift to earth or (ii) mix with water in the clouds and fall as localised rains or snow or slip or (iii) hitch a ride to wherever the wind current takes them, eventually falling to earth as dust, rain, snow or mist. The expression "acid rain" was first used in 1872, to describe rain in Manchester, but the phenomenon is much older. In the U.K., it has occurred since the 13th century when glass makers of London imported coal from Newcastle to replace the wood in their stoves.

2.4. Section 2(c): "appliance"

Section 2(c) contains a definition of the expression "approved appliance". It means any equipment or gadget used for the burning of combustible material or for generating or consuming any fuel, gas or particulate matter and approved by the State Board for the purposes of the Act. Probably, the definition has section 19(4) in mind.

2.5. Section 2(d): "approved fuel"

"Approved fuel" is defined in section 2(d) as meaning fuel approved by the State Board for the purposes of this Act. It would have been better, if such definitions expressly mentioned the section of the Act under which the approval is contemplated. It appears that the legislature has section 17(3) in mind.

2.6. Section 2(e): "automobile"

Section 2(e) of the Air Pollution Act defines "automobile" as meaning any vehicle, powered either by internal combustion engine or by any method of generating power, to drive such vehicle by burning fuel. Section 20 of the Act is important in this connection. It gives the State Government power to give instructions for ensuring that the standards for emission from automobiles, laid down by the State Board under section 17, are complied with.

2.7. Section 2(f) and (g): "Board" and "Central Board"

Section 2(f) and 2(g) contain definitions of the expressions "Board" and "Central Board" respectively.

1 Steve Esworth, *Dictionary of the Environment*, Paladion Books (1990), page 1.

2.8. Section 2(h): "chimney"

Section 2(h) defines "chimney" as any structure with an opening or outlet from or through which any air pollutant may be emitted. Section 21(5) (iv) of the Act lays down that consent of the State Board to any industrial plant may be given, *inter alia*, on the condition of a chimney of a particular specification being erected or re-erected.

2.9. Section 2(i): "control equipment"

Section 2(i) contains a long definition of the expression "control equipment". But the central idea is to refer to equipment that controls the emission of air pollution. The expression "control equipment" occurs, for example, in section 21(5) (i), (ii) & (iii) and in section 21(5), second proviso and section 21(6).

2.10. Section 2(j): "emission" : amendment needed

Section 2(j) of the Air Pollution Act defines "emission" as meaning any solid or liquid or gaseous substance, coming out of any chimney, duct or flue or any other outlet. Section 20, 22 and 22A are some of the sections which use this expression. It occurs also in section 2(i) which defines "control equipment". There is a point of grammar which must be raised in this connection. Section 2(j) defines "emission" as meaning any *substance* coming out of any chimney etc. But then its focus is not on the *process* of emission, but on that which is emitted. Now, the sections of the Air Pollution Act mentioned above as containing the word "emission" seem to be using the word to indicate the process rather than the end substance that emerges. Thus, section 20 empowers the State Board to ensure that standards for the emission of air pollutants from automobiles are complied with. What is meant in section 20 and in the connected section 17(1) (g), is the act, process or operation of giving out something. What is intended to be referred to, is the action of discharging something into the atmosphere and not the substance discharged. The definition of "emission" therefore needs to be changed in its form.¹

The definition could be revised as under:

" "emission" means the emergence of any solid, liquid or gaseous substance, *including noise*, out of any chimney duct or flue or other outlet."

Now noise should be specifically mentioned, in view of the fact that section 2(a), which defines "air pollutant", was amended in 1987 so as to include noise.²

It may also be mentioned that the Environment (Protection) Act, 1986 and rules made thereunder, have managed without such a definition, though the word is used in rule 3(1), Environment (Protection) Rules, 1986.

2.11. Section 2(k): "industrial plant"

Section 2(k) defines 'industrial plant' as meaning any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. The expression occurs, for example, in sections 21(1) and 22.

1 Point for amendment.

2 see paragraph 2.3. *supra*

2.12. *Section 2(l): "member"*

Section 2(l) defines the expression "member".

2.13. *Section 2(m): "occupier"*

Section 2(m) of the Act (as amended in 1987) provides that "occupier", in relation to any factory or premises, means the person who has control over the affairs of the factory or premises and includes, in relation to any substance, the person in possession of the substance. The expression "occupier" occurs, for example, in section 25, section 26(4) and section 26(5). In section 23, the expression used is "person in charge of the premises".

2.14. *Section 2(n): "prescribed"*

Section 2(n) defines the word "prescribed".

2.15. *Section 2(o): "State Board"*

Section 2(o) defines the expression "State Board".