

AS INTRODUCED IN LOK SABHA

Bill No. 336 of 2019

THE AIR (PREVENTION AND CONTROL OF POLLUTION)
AMENDMENT BILL, 2019

By

SHRI GAURAV GOGOI, M.P.

A

BILL

further to amend the Air (Prevention and Control of Pollution) Act, 1981.

BE it enacted by Parliament in the Seventieth Year of the Republic of India as follows:—

1. (1) This Act may be called the Air (Prevention and Control of Pollution) (Amendment) Act, 2019.

Short title,
extent and
commencement.

5 (2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

Amendment
of section 5.

2. In section 5 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the principal Act), in sub-section (2),— 14 of 1981.

(i) for clause (a), the following clause shall be substituted, namely:—

“(a) a full-time Chairman, being a person possessing special knowledge upon obtaining a degree of post-graduation in Environmental Sciences or Environmental Management or a degree of post-graduation in engineering or technology in environmental engineering or an equivalent degree or practical experience relating specifically to environmental protection while possessing a graduate degree in science related to subjects of Geology, Botany, Chemistry, or allied subjects or someone who has rendered remarkable and distinguished service to the cause of environment protection, to be nominated by the State Government.”

(ii) for clause (f), the following clauses shall be substituted, namely:—

“(f) a full-time member-Secretary, being a person possessing special knowledge or practical experience relating specifically to environmental protection, possessing a post-graduation degree in Engineering, Technology, Environmental Engineering, or allied Sciences where Pollution Control forms a component of the curriculum, with a demonstrated knowledge and experience in administering institutions dealing with matters of environment protection, and who has rendered remarkable and distinguished service to the cause of environment protection, to be nominated by the State Government; and

“(fa) two persons to represent organisations or academicians or media representatives or distinguished personalities working for the improvement of the quality of air, or the prevention, control or abatement of air pollution to be nominated by the State Government;”.

Amendment
of section 7.

3. In section 7 of the principal Act, in sub-section (5), for the words “shall be filled by fresh nomination”, the words “shall be filled by fresh nomination made by the State Government in a period as early as practicable but not later than six months from the date of occurrence of such vacancy” shall be substituted.

Insertion of
new section
10A.

4. After section 10 of the principal Act, the following section shall be inserted, namely:— 30

Central
Government
to convene
meeting to
prevent,
control and
abate air
pollution in
the country.

“10A. (1) The Central Government shall convene a joint, cross ministerial meeting on a half yearly basis to track progress, targets achieved, targets missed and new targets to be set to prevent, control or abate air pollution in the country.

(2) The meeting under sub-section (1) shall be convened at such time and place and shall observe such rules of procedure in regard to the transaction of business (including the quorum at the meetings) as may be prescribed. 35

(3) The Union Minister of Environment, Forest and Climate Change shall preside as the Head at the meeting.

(4) The meeting shall host mandatory participation from the Chairman and Member Secretaries of all State Boards as well as cross-ministerial participation and representation from all relevant ministries. 40

(5) The Chairman of the Central Board shall convene and prepare, in such form and time after the meetings as prescribed, its half-yearly report, giving full account of the details of the meeting, points of coordination established, targets achieved, targets missed, new targets set, and an efficiency assessment and performance ranking of the State Boards, and submit a copy to the State Boards and State Governments. 45

(6) Every report published under sub-section (4), complete in all its aspects, shall be made public on Central and State Board websites.”

- 5.** In section 16 of the principal Act, in sub-section (2),— Amendment of section 16.
- (i) for clause (c), the following clause shall be substituted, namely:—
- 5 “(c) co-ordinate the activities of the State Board, resolve disputes among them, and facilitate active sharing of information between State Boards on issues relevant to their functioning, including best available technologies, emission standards, protocols and mechanisms for enforcement, and outcomes of enforcement actions and processes.”
- (ii) after clause (h), the following clause shall be inserted, namely:—
- 10 “(ha) frame emission standards if there is reason to believe and data to provide evidence of new harmful pollutants exacerbating air pollution and inform concerned authorities regarding such evidence.”
- 6.** In section 17 of the principal Act, in sub-section (1), after clause (f), the following clause shall be inserted, namely:— Amendment of section 17.
- 15 “(fa) to frame emission standards if there is reason to believe and data to provide evidence of new harmful pollutants exacerbating air pollution and inform concerned authorities regarding such evidence.”
- 7.** In section 21 of the principal Act, after sub-section (7), the following sub-sections shall be inserted, namely:— Amendment of section 21.
- 20 “(7A) The State Board may require applicants under sub-section (2) of section 21 to submit a bank guarantee at the time of granting of consent which may be forfeited, in full or part, in case conditions included in the consent are not complied with, applicant continues to operate without renewal of consent, if environmental damage is caused by the applicant, or if directions issued under section 31A to the applicant are not complied with.
- 25 “(7B) The amount of bank guarantee to be submitted under sub-section (7A), and the process to be followed in case of forfeiture shall be prescribed by the State Governments in consultation with the State Boards.
- “(7C) Every amount of collected from forfeiture of bank guarantee shall be used by the State Board for rehabilitation and restoration of damage caused by the applicant.”
- 30 **8.** In section 22A of the principal Act, in sub-section (2), for the words, “such order as it deems fit”, the words “such order as it deems fit in an expeditious manner” shall be substituted. Amendment of section 22A.
- 9.** In section 23 of the principal Act, after sub-section (2), the following sub-section shall be inserted, namely:— Amendment of section 23.
- 35 “(2A) On receipt of information with respect to the fact or apprehension of any occurrence of the nature referred to in sub-section (1), the State Board shall ensure the issuing of public health advisories informing the concerned populace of such fact or apprehension and the preventive measures that may be taken thereto.”
- 40 **10.** After section 23 of the principal Act, the following section shall be inserted, Insertion of new section 23A.
- “23A. Where the Central Board or a State Board has reason to believe that air quality has deteriorated exceptionally within a particular region or territory based on available data, they may, if they find necessary, declare a public health emergency, wherein they may exercise the power to contain all such activities, industries, operations, that they consider to be incidental to aforementioned increase in air pollution, including but not limited to directions of closures for a specific period of time as prescribed.” Public Health Emergency.
- 45 **11.** In section 26 of the principal Act, after sub-section (4), the following sub-section shall be inserted, namely:— Amendment of section 26.

“(5) Notwithstanding anything stated in sub-section (2), the Central Government may prescribe any other source for data collection on emissions and the same shall be admissible as evidence in legal proceedings.”.

Amendment of
section 37.

12. In section 37 of the principal Act, in sub-section (1), for the words “six years and with fine” the words “six years and with fine, as well as an environmental compensation for the damage caused due to emissions of air pollutants in excess of prescribed standards” shall be substituted. 5

Amendment of
section 53.

13. In section 53 of the principal Act, in sub-section (1),—

(i) after clause (a), the following clauses shall be inserted, namely:—

“(aa) the timing, place, intervals, composition, procedure to be followed at such meetings, quorum necessary for the transaction of business and other matters incidental thereto under sub-section (1) of section 10A; 10

(ab) the form in which the half-yearly report of the joint meeting may be prepared and published under sub-section (4) of section 10A; and

(ii) after clause (e), the following clauses shall be inserted, namely:— 15

“(ea) determining the use of any new technological development or method of extracting samples from industries, and the manner of such extraction thereto, that are admissible as evidence under the courts, as under sub-section (5) of section 26.”

Amendment of
section 54.

14. In section 54 of the principal Act, in sub-section (2)— 20

(i) after clause (n), the following clause shall be inserted, namely:—

“(na) the details of the bank-guarantee requirements, conditions of forfeiture or encashment, and all other matters incidental thereto, under sub-sections (7A), (7B) and (7C) of section 21;

(nb) the time-period, procedure, industries or polluting agencies to be sent temporary closure notices, and overall region wherein such an emergency is to be declared under section 23A.”; and 25

(ii) after clause (x), the following clause shall be inserted, namely:—

“(xa) determining the nature such environmental compensation, the violations of provisions for which such a compensation needs to be made, and all other matters incidental thereto, under sub-section (1) of section 37.”. 30

STATEMENT OF OBJECTS AND REASONS

An escalating rise in air-pollution has gripped most parts of the sub-continent, raising critical concerns about its impact on human health. Internationally acclaimed research has posited India as housing some of the most polluted cities in the world. The severe impacts of air pollution on human health are finally being recognized, in light of the insurmountable rise of respiratory diseases, reduced life expectancy, and even mortality. According to the World Health Organisation, as many as ninety eight *per cent.* children under five years of age in low and middle income countries like India are exposed to toxic air. As we face an impending health crisis, India's pollution regulatory regime needs to work on an emergency mode to counter the ill-effects of pollution on human health and to prevent any further transgressions. While several programmes and policies exist to counter pollution, the lack of a legal mandate often makes these efforts lax in enforcement. This increases aims at re-energising and empowering the Pollution Control Boards under the Air Act, 1981.

Over the years, the Pollution Control Boards have been unable to act as powerful watchdogs over industries and polluting agencies. These observations have especially been made by the Rajya Sabha's 192nd Committee Report and National Green Tribunal order of 2016 that have questioned and deliberated over the functioning and composition of the Boards. This inefficiency has manifested itself because of certain provisions in the Act that are now dated in scope.

The aim for this Bill is to align the Air Act with contemporary India and to make it more relevant in scope. This Bill attempts to refocus the mandate of the pollution control boards in India towards the detrimental health impacts of rising pollution. With a fresh vision, focused on alleviating the deleterious health impacts of rising pollution, the Bill strengthens the composition and functioning of the Pollution Control Boards. It also integrates the requirement for the Boards to proactively ensure that the public is aware of any impending public health emergency that arises as a result of increasing emissions. In circumstances of extreme pollution emissions, the Bill also empowers the State Boards to declare public health emergencies and temporarily halt all polluting activities within a region. Through provisions that require joint coordination between the State Boards and the Central Board through half-yearly meetings, the Bill also improves the coordination and communication between the two entities.

By including several such changes in the existing Air Act, the legislation gives more teeth to the Pollution Control Boards in dispensing their duty as the first respondents for the menace of air pollution in India.

Hence this Bill.

NEW DELHI;
November 1, 2019.

GAURAV GOGOI

FINANCIAL MEMORANDUM

Clause 4 of the Bill *vide* proposed section 10A stipulates half-yearly joint meetings by the Central Government with the Central Board, the State Boards, and representation from Ministries to prevent, control and abate air pollution. It also provides for publishing reports of the meeting in the Central Board and State Boards on its websites. The Bill, therefore, if enacted would involve expenditure from the Consolidated Fund of India. However, at this stage the recurring and non-recurring expenditure on this count cannot be estimated.

MEMORANDUM REGARDING DELEGATED LEGISLATION

Clause 4 of the Bill *vide* proposed section 10A stipulates half-yearly joint meetings by the Central Government with the Central Board, the State Boards, and representation from Ministries to prevent, control and abate air pollution in such manner as may be prescribed. Clause 10 *vide* proposed section 23A provides for declaration by the State Governments of public health emergency due to deteriorated air quality for such period as may be prescribed. Clause 14 provides that the State Government may make rules regarding the details of the bank-guarantee requirements, conditions of forfeiture or encashment for environmental damage by the industrial plants, etc. As the rules will relate to matters of detail only, the delegation of legislative power is of a normal character.

ANNEXURE

EXTRACT FROM THE AIR (PREVENTION AND CONTROL
OF AIR POLLUTION) ACT, 1981

	*	*	*	*
Constitution of State Boards.	5. (1) *	*	*	*
	(2) A State Board constituted under this Act shall consist of the following members, namely:—			
	(a) a Chairman, being a person, having a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government:			
	Provided that the Chairman may be either whole-time or part-time as the State Government may think fit;			
	*	*	*	*
	(f) a full-time member-secretary having such qualifications knowledge and experience of scientific, engineering or management aspects of pollution control as may be prescribed, to be appointed by the State Governments:			
	Provided that the State Government shall ensure that not less than two of the members are persons having special knowledge or practical experience in, respect of matters relating to the improvement of the quality of air or the prevention, control or abatement of air pollution.			
	*	*	*	*
Terms and conditions of service of members.	7. (1) *	*	*	*
	(2) *	*	*	*
	(3) *	*	*	*
	(4) *	*	*	*
	(5) A casual vacancy in a State Board constituted under this Act shall be filled by a fresh nomination and the person nominated to fill the vacancy shall hold office only for the remainder of the term for which the member whose place he takes was nominated.			
	*	*	*	*
Functions of Central Board.	16. (1) *	*	*	*
	(2) In particular and without prejudice to the generality of the foregoing functions, the Central Board may—			
	(a) *	*	*	*
	(b) *	*	*	*
	(c) co-ordinate the activities of the State and resolve disputes among them;			
	(d) *	*	*	*
	(e) *	*	*	*
	(f) *	*	*	*
	(g) *	*	*	*
	(h) lay down standards for the quality of air;			
	*	*	*	*
	*	*	*	*

17. (1) subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of a State Board shall be—

Functions of State Boards.

(a) * * *

(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;

* * *

21. (1) * * *

Restrictions on use of certain industrial plants.

(2) * * *

(3) * * *

(4) * * *

(5) * * *

(6) * * *

(7) Where a person to whom consent has been granted by the State Board under sub-section (4) transfers his interest in the industry to any other person, such consent shall be deemed to have been granted to such other person and he shall be bound to comply with all the conditions subject to which it was granted as if the consent was granted to him originally.

* * *

22A. (1) * * *

Power of Board to make application to court for restraining person from causing air pollution.

(2) On receipt of the application under sub-section (1), the court may make such order as it deems fit.

* * *

23. (1) * * *

Furnishing, of information to State Board and other agencies in certain cases.

(2) On receipt of information with respect to the fact or the apprehension of any occurrence of the nature referred to in sub-section (1), whether through intimation under that sub-section or otherwise, the State Board and the authorities or agencies shall, as early as practicable, cause such remedial measure to be taken as are necessary to mitigate the emission of such air pollutants.

* * *

26. (1) * * *

Power to take samples of air or emission and procedure to be followed in connection therewith.

(2) * * *

(3) * * *

(4) When a sample of emission is taken for analysis under sub-section (1) and the person taking the sample serves on the occupier or his agent, a notice under clause (a) of sub-section (3), then,—

(a) in a case where the occupier or his agent willfully absents himself, the person taking the sample shall collect the sample of emission for analysis to be placed in a container or containers which shall be marked and sealed and shall also be signed by the person taking the sample, and

(b) in a case where the occupier or his agent is present at the time of taking the sample but refuses to sign the marked and sealed container or containers of the sample of emission as required under clause (c) of subsection (3), the marked and sealed container or containers shall be signed by the person taking the sample,

and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or specified under sub-section (7) of section 28 and such person shall inform the Government analyst appointed under sub-section (1) of section 29, in writing, about the wilful absence of the occupier or his agent, or, as the case may be, his refusal to sing the container or containers.

* * * *

Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A.

37. (1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A, shall, in respect of each such failure, be punishable with imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine, and in case the failure continues, with an additional fine which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure.

* * * *

Power of Central Government to make rules.

53. (1) The Central Government may, in consultation with the Central Board by notification in the Official Gazette, make rules in respect of the following matters namely:—

(a) the intervals and the time and place at which meetings of the Central Board or any committee thereof shall be held and the procedure to be followed at such meetings, including the quorum necessary for the transaction of business thereat, under sub-section (1) of section 10 and under sub-section (2) of section 11;

(b) * * *

(c) * * *

(d) * * *

(e) the functions to be performed by the Central Board under clause (j) of sub-section (2) of section 16;

* * * *

Power of State Government to make rules.

54. (1) * * *

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

(a) * * *

* * *

(n) the authorities or agencies to whom information under subsection (1) of section 23 shall be furnished;

* * * *

(x) the form in which the accounts of the State Board may be maintained under the sub-section (1) of section 36;

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LOK SABHA

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BILL

further to amend the Air (Prevention and Control of Pollution) Act, 1981.

(Shri Gaurav Gogoi, M.P.)