
SHOULD AIR POLLUTION IN INDIA BE DECLARED A NATIONAL PUBLIC HEALTH EMERGENCY

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ABSTRACT

In India, the air pollution has evolved from being an environmental problem to a deadly epidemic public health issue, with some constitutional fears that are not at all hypothetical. Each year millions of lives are being lost prematurely while our life expectancy is getting reduced. This paper illustrates that the air pollution is, indeed, a national public health emergency (along with a number of other equally serious ones) and should be treated as such: with the priority it deserves and not as a problem we will deal with later on. It looks at provisions in the Constitution and their meaning as interpreted by courts as well as the statutory framework to demonstrate how unchecked pollution may impinge upon the right to live with dignity enshrined in Article 21 of the Constitution. The study also calls into doubt the extent to which current laws and policies are limited and, particularly, enforced, and governance is dispersed across too many desks. It then has a hard look at the Disaster Management Act as a viable legal instrument for ensuring coordinated action that can be effective. I conclude that stating air pollution as a public health emergency is not only a matter of government inclination, but it is also a constitutional requirement that is needed to protect health, to increase accountability and to assert fundamental rights.

Introduction

The air pollution crisis in India has shifted from a seasonal problem to a continuous health disaster that is responsible for about two million deaths annually.¹ The PM2.5 levels of 50.6 micrograms per cubic metre, in 2024 is more than ten times the suggested limit set by the World Health Organization², urging immediate legal and constitutional action. It is not just an issue of administration but directly concerns the very basic right to life which is protected by Article 21. This article investigates the declaration of air pollution as a national public health emergency from the standpoint of both constitutional acceptance and necessity in practice.

Constitutional Foundations: The Right to Breathe

India's environmental protection derives from Articles 21, 48A, and 51A(g). The judiciary has read Article 21's life guarantee broadly, recognizing that meaningful life requires environmental quality. In *Subhash Kumar v State of Bihar*³, the Supreme Court held that the right to life includes enjoying pollution free air and water, observing that citizens have recourse to Article 32 for removing pollution detrimental to life itself.

More recently, in the groundbreaking *MK Ranjitsinh v Union of India*⁴, the Court recognized for the first time that freedom from climate change's adverse effects is integral to Articles 21 and 14. This decision acknowledged that pollution threatens not just health but dignity and equality itself.

The Statutory Maze: Laws Without Teeth

India's air pollution control system has multiple laws but the structure shows more flaws than safety measures. The Air (Prevention and Control of Pollution) Act, 1981 gives Pollution Control Boards the authority to set standards and ensure compliance.⁵ However, the Act is mainly concerned with industrial sources of pollution and does not tackle the issue of vehicles, agricultural fires, and construction activities that together contribute the most to the pollution

¹ "Air Pollution in India Linked to Millions of Deaths' (ScienceDaily, 13 December 2024) <https://www.sciencedaily.com/releases/2024/12/241211190055.htm> accessed 17 January 2026."

² "Air Pollution in India: Statistics & Facts' (Statista) <https://www.statista.com/topics/12351/air-pollution-in-india/> accessed 17 January 2026."

³ "Subhash Kumar v State of Bihar (1991) 1 SCC 598."

⁴ "MK Ranjitsinh & Ors v Union of India & Ors (2024)"

⁵ "The Air (Prevention and Control of Pollution) Act 1981, s 22."

of the atmosphere.⁶ Enforcement remains inadequate, with negligible prosecutions even during severe pollution episodes.

The Environment (Protection) Act, 1986, enacted after Bhopal Gas Tragedy, grants Central Government broad authority over environmental quality.⁷ The Act's wide-reaching mandate facilitates regulation according to the needs, but this flexibility has not been effective in bringing about positive changes.

The National Clean Air Programme (NCAP), launched in 2019, targets a 40% reduction in PM10 concentrations by 2025 to 2026 across 131 cities.⁸ Despite its ambitions, evaluations reveal that city action plans lack scientific rigor, legal backing, and accountability mechanisms.⁹ The Graded Response Action Plan (GRAP) for the National Capital Region provides stage wise emergency responses linked to Air Quality Index levels¹⁰, yet its geographical limitation and enforcement challenges constrain its effectiveness.

This elaborate statutory framework has failed not in design but in execution. Fragmented authority, weak enforcement, and bureaucratic inertia have rendered these laws largely symbolic.

The Human Cost: Beyond Statistics

Behind those numbers lurks a tragic story. India's ten most polluted cities, however, had nearly 7.2% of its daily deaths during that year due to PM_{2.5}, according to a study published in The Lancet Planetary Health. 5 exceeding WHO guidelines.¹¹ Each increase of 10 microgram per cubic metre in PM_{2.5} that mortality scaling resulted in 8.6% more deaths 1.5 million per annum by Indian standards and a staggering 16.6 million when internationally standardised to

⁶ "India's 40 Year Old Law to Combat Air Pollution Languishes as the Crisis Intensifies" (Mongabay India, 10 November 2020) <https://india.mongabay.com/2020/11/indias-40-year-old-law-to-combat-air-pollution-languishes-as-the-crisis-intensifies/> accessed 17 January 2026."

⁷ "The Environment (Protection) Act 1986, s 3."

⁸ "Goals Set Under NCAP" (Press Information Bureau, 15 September 2024)

<https://www.pib.gov.in/PressReleasePage.aspx?PRID=2043004> accessed 17 January 2026."

⁹ "National Clean Air Programme (NCAP) for Indian Cities: Review and Outlook of Clean Air Action Plans" (ScienceDirect, 10 November 2020) <https://www.sciencedirect.com/science/article/pii/S2590162120300368> accessed 17 January 2026."

¹⁰ "Graded Response Action Plan (GRAP)" (Insights on India, 11 November 2025)

<https://www.insightsonindia.com/2025/11/11/graded-response-action-plan-3/> accessed 17 January 2026."

¹¹ "Suganthi Jaganathan and others, 'Estimating the Effect of Annual PM_{2.5} Exposure on Mortality in India' (2024) 8(12) The Lancet Planetary Health e987."

WHO guidelines.¹²

However, those figures litter cover a real person. Children developing asthma. Construction workers and street vendors who are exposed for hours without any protection. Elderly citizens gasping in hospitals. Pregnant women carrying babies already burdened by toxic exposure.

The economic toll mirrors human suffering. Air pollution cost Indian businesses 95 billion dollars in 2019, nearly three percent of GDP and twice annual public health expenditure.¹³ This is not merely an environmental issue but a fundamental barrier to development and justice.

The crisis particularly violates our constitutional commitment to equality. Marginalized communities lack resources for air purifiers or quality healthcare. Informal workers face prolonged exposure without protection. Poor children suffer developmental consequences perpetuating intergenerational inequality. Economic status determining pollution vulnerability violates Article 14's equality guarantee.

Judicial Interventions: Necessary but Insufficient

The judiciary through its decision has taken measures in the area of environmental protection. The Supreme Court, in its interventions, relied on the concepts of sustainable development, the polluter pays principle, and the precautionary principle, which were eventually acknowledged as part of Indian environmental law in *Vellore Citizens Welfare Forum v Union of India*.¹⁴ In the case *MC Mehta v Union of India*¹⁵, the Court imposed an absolute liability threshold on dangerous operations.

In October 2024, the Court reaffirmed that the right to live in a pollution-free environment is a basic human right and that it is the duty of the governments to ensure the people's right to live with dignity in clean air.¹⁶

Most importantly, a petition has been filed which calls for the qualification of Air Quality Index

¹² "Air Pollution in India Linked to Millions of Deaths' (n 1)."

¹³ "Mounting Economic Costs of India's Killer Smog' (France24, 24 November 2024) <https://www.france24.com/en/live-news/20241124-mounting-economic-costs-of-india-s-killer-smog> accessed 17 January 2026"

¹⁴ "Vellore Citizens Welfare Forum v Union of India (1996) 5 SCC 647."

¹⁵ "MC Mehta v Union of India (1987) 1 SCC 395."

¹⁶ "India Top Court Upholds Constitutional Right to Pollution Free Environment' (JURIST, 26 October 2024) <https://www.jurist.org/news/2024/10/india-top-court-upholds-constitutional-right-to-pollution-free-environment/> accessed 17 January 2026."

readings over 250 as disasters according to the Disaster Management Act, 2005.¹⁷ This legal move can be a game-changer by granting emergency powers that would allow for working together across different areas.

Yet judicial interventions have inherent limits. Courts lack enforcement machinery and cannot substitute for executive will. Implementation gaps persist, and bureaucratic lethargy dilutes court orders. The Union Health Ministry's 2025 claim that no data links air pollution to deaths, despite overwhelming evidence, reveals a disturbing disconnect between judicial recognition and executive accountability.

Emergency Powers: The Legal Pathway Forward

Declaring air pollution a national public health emergency would activate crucial statutory mechanisms, primarily the Disaster Management Act, 2005. In Section 2(d), disaster is characterized by any natural or man-made events that cause significant death, human suffering, or environmental destruction, which are more than the affected community can bear. The yearly death toll from air pollution estimated at two million, together with 1.4 billion people being exposed to hazardous levels of pollution¹⁸, very clearly meets the above definition.

The declaration of an emergency would give the National Disaster Management Authority the power to direct responses by the different levels of government, procure resources, and issue directives that must be followed. The Act is very important as it also provides for preventive measures and not just reactive responses, which is already aligned with the need for the pollution control to be proactively implemented.

The Air Act's Section 18(2) allows the Central Government to take emergency measures if State Boards fail and very serious emergencies occur.¹⁹ Section 5 of the Environment (Protection) Act gives the power to issue mandatory orders for eco-friendly compliance.²⁰ The declaration of an emergency would not only make the enforcement more powerful but also bypass the opposition from the states.

¹⁷ "Delhi NCR Air Pollution: Declare AQI Above 250 as Disaster Under Disaster Management Act: Plea in Supreme Court" (LiveLaw, 13 November 2025) <https://www.livelaw.in/top-stories/delhi-ncr-air-pollution-declare-aqi-above-250-as-disaster-under-disaster-management-act-plea-in-supreme-court-309857> accessed 17 January 2026."

¹⁸ "Air Pollution in India Linked to Millions of Deaths" (n 1)."

¹⁹ "The Air (Prevention and Control of Pollution) Act 1981, s 18(2)."

²⁰ "The Environment (Protection) Act 1986, s 5."

However, emergency powers demand careful balancing against federal principles and economic realities. Industrial shutdowns disproportionately burden vulnerable daily wage workers. Implementation must include social safety nets to prevent deepening inequality. Emergency measures should be time-bound, subject to parliamentary oversight, geographically limited, and transparent in decision-making and resource allocation.

Long Term Solutions: Beyond Emergency Measures

Emergency measures address crisis situations quickly while sustainable air quality requires a long-term commitment and a complete overhaul of the system. India has to have one national air quality management law integrating different state laws with specific mandates, penalties, and enforceable deadlines, and a national air quality commission that is independent.

Interventions source-specific must be aggressive: electric vehicles' adoption must be drastic, clean technology must be imposed on the industries, and coal must be replaced by renewable energy. Pollution Control Boards should be given more power through increasing their capacity, providing them with proper funding and granting them freedom to operate. The common air quality issues of the Indo-Gangetic Plain should be handled by regional airshed authorities across state borders.

The infrastructure for monitoring must cover cities with a population of more than one hundred thousand with data available to the public in real-time. Economic tools like pollution taxes, emission trading, and green financing can bring about market-based solutions. The training of communities and local governance will be crucial in garnering the necessary grassroots support.

Crisis response has to result in the establishment of a permanent institutional capacity that makes such situations rare exceptions rather than the rule.

Conclusion: A Constitutional Imperative

Extreme air pollution in India has caused a paradoxical situation where the government has to recognize the situation as public health emergency due to the two million deaths every year as well as 5.2 years of average life expectancy lost and economic losses that constitute a national public health emergency that demands recognition.

According to Article 21 which guarantees the right to breathe clean air, the situation can be declared an emergency under the Disaster Management Act, 2005. Such situation can be declared an emergency under the Act which will mean that there will be coordinated actions, mobilization of resources and also it would communicate strongly the government's commitment to this life-threatening issue.

Nevertheless, simply the declaration is not enough. It is necessary to take actions such as: enactment of new laws, introduction of more effective measures, institutional reforms, enhanced monitoring, and greater public involvement.

India is currently at a very critical juncture. A strong decision can avert a catastrophe; still equals sentencing millions to an earlier death. The future generation is entitled to the right of clean air and the Constitution of India claims it.