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Legislation Analysis:

Commission for Air Quality Management in National Capital Region & Adjoining Areas Act, 2021

The national capital region (“NCR”) suffers from extreme air pollution every winter. It has not been effectively controlled despite several existence of several bodies for the purpose. In an attempt to do something different this time, the President promulgated an ordinance in [October](#) 2020 (and [again](#) in April 2021) establishing a commission for air quality management (“Commission”). The Parliament then passed the Commission for Air Quality Management in National Capital Region and Adjoining Areas Act, 2021 (“[Act](#)”) replacing the ordinance promulgated earlier. This article seeks to highlight the relevance of the Act and the functions of the Commission.

Background

The first ordinance considers the circumstances which laid to the establishment of the Commission. Several bodies had been established by courts and governments to curb air pollution in NCR, however they had little success. The committee appointed under the Environment Protection Act, 1986, lacked a “*statutory mechanism for vigorous implementation of measures*”, committees established in *MC Mehta v Union of India*¹ and *Aditya Dubey v Union of India*² were ad-hoc, and the Environment Pollution (Prevention and Control) Authority had limited powers.³ There was a need for a single authority with statutory powers and inter-state coordination to replace these multiple bodies, and therefore, the Commission was established.⁴

¹ WP (C) No 13029/1985 in the Supreme Court.

² WP (C) No 135/2020 in the Supreme Court.

³ Commission for Air Quality Management in National Capital Region and Adjoining Areas Ordinance 2020, preamble.

⁴ *ibid*.

Scope of Application

The Act applies to NCR and to adjoining areas.⁵ NCR includes Delhi, Gurgaon, Faridabad, Rohtak, Sonapat, Panipat Tehsil, Rewari Tehsil, Bulandshahr, Meerut, Ghaziabad, and some Tehsils of Alwar.⁶ Adjoining areas include areas in Haryana, Punjab, Rajasthan, Uttar Pradesh, and areas adjoining NCR from where pollution originates and degrades air quality in NCR.⁷ The Act overrides all other laws and judgments.⁸

Moreover, the Commission has exclusive jurisdiction in the abovementioned areas regarding matters covered by the Act,⁹ and no other authority constituted under a law or under a judicial order has jurisdiction.¹⁰ Environment Pollution (Prevention and Control) Authority now stands dissolved.¹¹ The Commission's orders will also prevail over orders of the governments of Delhi, Punjab, Haryana, Rajasthan, Uttar Pradesh, or their pollution control boards, in case of conflict.¹²

Composition of the Commission

As per section 3 of the Act, the Commission consists of 21 members, with representation from Delhi government and adjoining states governments. For technical expertise, representatives have been included from Central Pollution Control Board, ISRO, NGOs concerning air pollution, and NITI Ayog.¹³ To give adequate consideration to the interest of the businesses and farmers, three stakeholders have been included from agriculture, industry, transport or construction sector.¹⁴ In addition to the 21 members, the Commission may have associate members from various ministries and associations of commerce or industry.¹⁵

Notably, under section 11 of the Act, the Commission is required to have sub-committees at least on:

⁵ Commission for Air Quality Management in National Capital Region and Adjoining Areas Act 2021, s 1(2).

⁶ National Capital Region Planning Board Act 1985, sch.

⁷ Commission for Air Quality Management in National Capital Region and Adjoining Areas Act 2021, s 2(a).

⁸ *ibid* s 28.

⁹ *ibid* s 3(6).

¹⁰ *ibid* s 28(2).

¹¹ *ibid* s 29.

¹² *ibid* s 3(6).

¹³ *ibid* s 3(2).

¹⁴ *ibid* s 3(2)(k).

¹⁵ *ibid* s 3(3).

1. Monitoring and identification.
2. Safeguarding and enforcement.
3. Research and development.

These sub-committees have additional members from pollution control boards, state police forces, and technical experts from reputed institutes. The Commission has also established [another sub-committee](#) for “operationalization of Graded Response Action Plan”.

Power and functions of the Commission

The Act bestows upon the Commission a very broad power “*to issue directions and entertain complaints, as it deems necessary or expedient, for the purpose of protecting and improving the quality of the air*”.¹⁶ The Act essentially makes the Commission a regulatory authority over any activity that causes air pollution in NCR.¹⁷

Section 12 lays down the power and functions of the Commission to align with the threefold objective of the Act mentioned in its preamble. The first objective is coordination with States for air quality problems. For this objective, the Commission has the power under section 12 to do the following:

1. Co-ordinate actions of the State governments and monitor actions against stubble burning.
2. Function as a platform for cooperation between stakeholders “*to monitor, enforce and research on the issues concerning air pollution*”.¹⁸
3. Create a network between technical institutions.
4. Function as a platform for international co-operation and sharing global best practices.

The second objective is research and identification of air quality problems. For this objective, the Commission establishes a sub-committee¹⁹ and has the power under section 12 to do the following:

1. Create and execute a dedicated programme to address air pollution in NCR.
2. Research and investigate problems of air pollution in NCR.
3. Collect and disseminate information regarding air pollution in NCR.

¹⁶ Commission for Air Quality Management in National Capital Region and Adjoining Areas Act 2021, s 12(1).

¹⁷ *ibid* s 12(2).

¹⁸ *ibid* s 12(c)(iv).

¹⁹ *ibid* s 11(1)(c).

4. Create a framework for identification of air pollutant sources on a periodic basis.
5. Spread awareness amongst the society and encourage NGOs.

The third objective is resolution of air quality problems. The Commission has the power under section 12 of the Act to do the following to achieve this objective:

1. Restrict areas in which operations affecting air quality will be prohibited.
2. Lay down parameters for quality of air and emission of pollutants.
3. Lay down manuals, codes, and guidelines.
4. Inspect any premises, operation, or machinery.
5. Issue directions to anyone, including directions to close any industry and stop essential supplies.
6. Take up matters suo motu or upon a complaint.
7. Take samples of air which may be admissible as evidence in legal proceedings.
8. Take steps on the ground to curb air pollution.
9. Train and create a special workforce.
10. Constitute special investigation teams under section 19.

Penalties and appeals

Section 14 of the Act makes it a non-cognizable offence to not comply with any direction of the Commission, punishable with imprisonment up to five years, fine up to ₹1 crore or both. Cognizance of an offence can only be taken upon a complaint by the Commission.²⁰ However, stubble burning and mismanagement of agricultural residue by farmers is explicitly excluded from being an offence.²¹ Instead, under section 15 of the Act, environmental compensation may be imposed on farmers who pollute the air by stubble burning. Under section 18 of the Act, appeals against actions taken by the Commission can be preferred before the National Green Tribunal.

Actions taken by the Commission

²⁰ *ibid* s 14(2).

²¹ *ibid* s 14(1) proviso.

The Commission has issued many [advisories](#) and detailed [directions](#). It has issued advisories on mandating procurement of e-vehicles/zero emission vehicles, on abatement of dust from roads and open areas, on setting up dust control and management cells, and ex-situ stubble management. It has also issued mandatory directions on the following topics:

1. Construction and demolition activities.
2. Stubble burning.
3. Dust control cells.
4. Shifting of industries to PNG cleaner fuels.
5. Adoption of standard protocol for estimation of crop residue burning fire events using satellite data.
6. Ex-situ paddy straw management by utilization in coal based thermal power plants.
7. Radio frequency identification device for decongestion of traffic.

Conclusion

The Act makes the bodies established earlier essentially obsolete, and perhaps for good reason. Despite the existence of multiple bodies, air quality in NCR deteriorated. By establishing the Commission, the central government attempted to address the drawbacks of the bodies established earlier, at least in law. The composition of the Commission seems to ensure inter-state and inter-sectorial coordination, which was missing from previously established bodies, and which has been made an essential function of the Commission.

From a perusal of its directions, the Commission seems to be quite proactive in performance of its functions. It deliberates upon inputs from State governments and organizations like ISRO and NTPC before issuing advisories and directions. It also seeks periodic updates regarding compliance with its directions. In case of non-compliance with any of its directions, the Commission has wide powers to hold accountable the persons responsible, which was not the case earlier. However, while taking actions on-ground falls within the mandate of the Commission, it has not taken any enforcement or punitive action on the ground, at least not within the public domain. The Commission was established only last year, and therefore it may be too soon to say if it succeeded where bodies established previously failed.