

Q-15012/01/2022-CPW
GOVERNMENT OF INDIA
MINISTRY OF ENVIRONMENT, FOREST & CLIMATE CHANGE
(CP DIVISION)

IIInd Level, Prithvi Wing,
Indira Paryavaran Bhawan
Jor Bagh Road,
New Delhi-110003
Dated: 30.06.2022

NOTICE FOR PUBLIC CONSULTATION

Subject: **Proposal for amendment in Air (Prevention and Control of Pollution) Act, 1981-reg.**

The Air (Prevention and Control of Pollution) Act, 1981 came into force on 29th March, 1981. The Air (Prevention and Control of Pollution) Act, 1981 is one of the main legislation to control and prevent the air pollution in India.

2. In order to decriminalize the existing provisions of the Air (Prevention and Control of Pollution) Act, 1981, this Ministry is examining the proposals to make amendments in the Air (Prevention and Control of Pollution) Act, 1981 based on inputs received from various stakeholders. Accordingly, a brief note on the proposal under consideration for amendment in the Air (Prevention and Control of Pollution) Act, 1981 is enclosed herewith as **Annexure** for comments/suggestions from the general public, Government of States and Union Territories, industry associations, and other persons and entities concerned.

3. In view of the above, it is requested that comments / suggestions on the above may be sent **on or before 21.07.2022.** The comments / suggestions may be sent by e-mail in MS-Office Word file to the following ID:

cpair.comments-mefcc@gov.in

4. The subject of the e-mail should be "Comments/ suggestions on the proposed amendment in the Air (Prevention and Control of Pollution) Act, 1981".

5. Alternatively, comments / suggestions may also be sent by post to the following address:

Sh. Ved Prakash Mishra
IInd Level, Prithvi Wing,
Indira Paryavaran Bhawan
Jor Bagh Road, New Delhi-110003

The envelope may kindly be superscribed on the top with "Comments/ suggestions on the proposed amendment in the Air (Prevention and Control of Pollution) Act, 1981".



(Ved Prakash Mishra)

Director

Tele: 011-2081 9402

E-mail: mishra.vp@gov.in

Encl.: As above.

**Note for consultation on proposal to make amendment in the Air
(Prevention and Control of Pollution) Act, 1981**

The Air (Prevention and Control of Pollution) Act, 1981 was enacted under Article 253 of the Indian Constitution and came into force on 29th March, 1981. The Act consists of 54 Sections in 7 Chapters. The Air (Prevention and Control of Pollution) Act, 1981 is one of the main legislation to control and prevent air pollution in India. It also mandated the State Pollution Control Boards for the prevention and control of air pollution.

2. In case of any non-compliance or contravention of the provisions of the Air (Prevention and Control of Pollution) Act, 1981, various penal provisions have been described in Act, such as that of non-compliance of the provisions of the Section 21 and 22 of the Act or directions issued thereunder, the violator will be punishable with imprisonment for a term which shall not be less than 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 such failure continues after the conviction of the first such failure. Further, if the violation continues beyond a period year, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to 7 years and with fine.
3. In this regard, concerns were raised with regard to the decriminalization of existing provisions of the Air (Prevention and Control of Pollution) Act, 1981 in order to reduce compliances by weeding out fear of imprisonment for simple violations under existing law.
4. The substantive changes in the proposed amendment of the Air (Prevention and Control of Pollution) Act, 1981 are on the following lines:
 - i. Contravention or non-compliance of the provisions of the Air (Prevention and Control of Pollution) Act, 1981 would be dealt with through imposing penalty through an Adjudicating Officer. However, violations under Section 21 of the Act, related to prior consent to establish / operate would attract criminal liability.

- ii. The violations pertaining to sections 22, 31A, 38 and 39 are proposed to be dealt with through imposition of financial penalties replacing prosecution in court of law.
- iii. Creation of fund wherein, the amount of penalty imposed by the Adjudicating Officer while adjudicating the damage to environment shall be remitted which will be known as “**Air Pollution Remediation Fund**”.
- iv. The financial penalties so levied, may be utilised for the purpose of reparation / compensation for the affected parties.
- v. The Central Government through the proposed Amendment will be authorised to issue notification of exempting certain categories of Industries such as Green Industries / Non-Polluting Industries mandated to obtain prior Environmental Clearance under EIA Notification, from the requirement of obtaining prior consent before establishing / operating such industrial unit under section 21 of the Air (Prevention and Control of Pollution) Act, 1981.
- vi. The Central Government has been authorised to prescribe guidelines on the matters related to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area, including the mechanism for time-bound disposal of the application made under the Air (Prevention and Control of Pollution) Act, 1981.

5. The details of the amendment proposed in the relevant sections of the Air (Prevention and Control of Pollution) Act, 1981 is appended below for comments/suggestions.

Comparison Chart of the Amended Provisions vis-à-vis Original Provisions in the Air (Prevention and Control of Pollution) Act, 1981

Section which prescribes criminal punishment	Details about the Provision	Proposed Amendment	Comments
THE FOLLOWING SECTIONS ARE PROPOSED TO BE SUBSTITUTED / AMENDED / INSERTED			
Amendment of Section 2		In Section 2 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the Principal Act of this Chapter, the following shall be inserted after sub-clause (j), namely: - (ja) "Fund" means Air Pollution Remediation Fund established under Section 36A.	
Section 21- Restrictions on use of certain industrial plants.	Proviso is proposed to be inserted in the amendment by authorizing Central Government for issuing notification for exempting certain categories of industries from the requirement of obtaining prior consent before establishing any industrial unit. Through this	In Section 21 of the Air (Prevention and Control of Pollution) Act, 1981 (hereinafter referred to as the Principal Act of this Chapter), for sub-section (1), the following shall be substituted, namely: -	

	<p>provision, the Central Government may exempt certain non-polluting/green industries and those industries requiring prior EC as per EIA notification under Environment (Protection) Act, 1986 from the requirement of obtaining consent to establish/operate under the provision of Air Act.</p>	<p>“(1) No person shall establish or operate any industrial plant in an air pollution control area without the previous consent of the State Board subject to the procedures specified in sub-section (2) to (7):</p> <p>Provided that the Central Government may, by notification in the Official Gazette exempt certain categories of industrial plants from the provisions of this sub-section.”</p>
	<p>Insertion of New Section</p>	<p>In the Principal Act, after section 21, the following section shall be inserted, namely: -</p> <p>“21A. (1) The Central Government may, by Notification in the Official Gazette prescribe guidelines on the matters relating to the grant, refusal or cancellation of consent by any State Board to establish or operate any industrial plant in an air pollution control area, including the mechanism for time</p>

		<p>bound disposal of the application made under section 21 or validity period of such consent.</p> <p>(2) Every State Board, in discharge of its functions for the purposes of grant, refusal or cancellation of consent under section 21 shall be guided by the guidelines as may be made by the Central Government from time to time in this behalf under sub-section (1).”</p>	
<p>Insertion of New Section</p>		<p>35A. The Central Government shall prepare its annual report in relation to Air Pollution Remediation Fund giving a full account of its activities define under this Act in such form, <u>as may be prescribed</u>, for each financial year during the previous financial year and forward a copy thereof, within four months from the last date of the previous financial year, to the Central Government which shall cause the annual report and the audit</p>	

	<p>report given by the Comptroller and Auditor-General of India to be laid before each House of Parliament.”.</p>	
	<p>AIR POLLUTION REMEDIATION FUND</p> <p>36A. (1) The Central Government may, by notification in the Official Gazette, establish a fund to be known as the Air Pollution Remediation Fund (hereinafter in this Chapter referred to as the “Remediation Fund”).</p> <p>(2) Where an Adjudicating Officer imposes penalty or additional penalty, as the case may be, under section 37, 38 or section 39 or the penalty imposed in furtherance of an order of an Adjudicating Officer, the penalty so imposed and paid by the contravener shall be credited to the Remediation Fund established under sub-section (1).</p>	<p>Insertion of New Section</p>

		<p>(3) The Central Government may prescribe the manner in which the Remediation Fund shall be administered, the manner in which money shall be drawn from the Remediation Fund and any other matters connected therewith or incidental thereto for the administration of the Remediation Fund”.</p>	
<p>Insertion of New Section</p>		<p>36B Penalty amount to be credited to Air Pollution Remediation Fund.</p> <p>In the principal Act, after section 36A, the following section shall be inserted, namely: -</p> <p>36B. Where any penalty or additional penalty, as the case may be, is imposed under the provisions of this Act, the amount of such penalty shall be credited to the Air Pollution Remediation Fund established under section 36A.</p>	

Insertion of New Section

In the principal Act, after section 36B, the following section shall be inserted, namely: -

Accounts and audit of the Fund

36C. (1) The Central Government shall maintain separate accounts and other relevant records in relation to the Air Pollution Remediation Fund and prepare an annual statement of accounts in such form, as may be prescribed, in consultation with the Comptroller and Auditor-General of India.

(2) The accounts of the Fund shall be audited by the Comptroller and Auditor - General of India at such intervals as may be specified by him and such audited accounts together with the audit report thereon shall be forwarded annually to the Central Government.

<p>Section 37 - Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31A — (1) whoever fails to comply with the provisions of section 21 or section 22 or directions issued under section 31A.</p> <p><i>Section 21 – Restrictions to use of certain industrial plants.</i></p> <p><i>Section 22 - Persons carrying on industry, etc., not to allow emission of air pollutants in excess of the standard laid down by State Board.</i></p> <p><i>Section 31 A - Power to give directions.</i></p>	<p>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.</p>	<p>For section 37 of the principal Act, the following shall be substituted, namely: -</p> <p>Penalty for contravention of provisions of section 22 or directions issued under section 31A.</p> <p>37. (1) Whoever fails to comply with the provisions of section 22 of the directions issued under section 31A, shall be liable to pay penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.</p> <p>(2) Whoever continues the contravention of the provisions of the Act referred to in sub-section (1), shall be liable to pay an additional penalty, which shall not be less than five lakh rupees but which may extend to five crore rupees.</p>	
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<p>Section 37 (2) - If the failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction.</p>	<p>Punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.</p>	<p>(3) If the contravention of the provisions of the Act referred to in sub-section (1) continues beyond a period of one year, the person who contravenes shall be liable to an additional penalty, which shall not exceed five crore rupees, in addition to the penalties imposed under sub-section (1) and sub-section (2).</p>	
<p>Section 38. Penalties for certain acts. — Whoever— (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the</p>	<p>Punishable with imprisonment for a term which may extend to three months or with fine which may extend to [ten thousand rupees] or with both.</p>	<p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”</p>	
		<p>For section 38 of the principal Act, the following section shall be substituted, namely: - “38. Whoever- (a) destroys, pulls down, removes, injures or defaces any pillar, post or stake fixed in the</p>	

<p>ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board; or</p> <p>(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act; or</p> <p>(c) damages any works or property belonging to the Board; or</p> <p>(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such officer or other employee for the purpose of this Act, or</p> <p>(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the</p>	<p>ground or any notice or other matter put up, inscribed or placed, by or under the authority of the Board, or</p> <p>(b) obstructs any person acting under the orders or directions of the Board from exercising his powers and performing his functions under this Act, or</p> <p>(c) damages any works or property belonging to the Board, or</p> <p>(d) fails to furnish to the Board or any officer or other employee of the Board any information required by the Board or such</p>
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<p>officer or other employee for the purpose of this Act, or</p> <p>(e) fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the State Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23, or</p> <p>(f) in giving any information which he is required to give under this Act, makes a statement which is false in any</p>	<p>apprehension of such occurrence, to the State Board and other prescribed authorities or agencies as required under sub-section (1) of section 23; or</p> <p>(f) fails in giving any information which he is required to give under this Act, makes a statement which is false in any material particular,</p> <p>shall be liable to pay penalty which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees.</p> <p>(2) Whoever continues the contravention of the acts referred to in sub-section (1), shall be liable to pay an additional penalty which may extend to 1 lakh rupees for everyday during which such contravention continues.”</p>	
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<p>material particular, or (g) for the purpose of obtaining any consent under section 21, makes a statement which is false in any material particular</p>	<p>Section 39 - Penalty for contravention of certain provisions of the Act.—Whoever contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been elsewhere provided in this Act</p>	<p>Punishable with Imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.</p>	<p>In the principal Act, for section 39, the following section shall be substituted, namely: -</p> <p>“39. If any person contravenes any of the provisions of this Act or any order or direction issued thereunder, for which no penalty has been provided for in this Act, which shall not be less than one lakh rupees, but which may extend to fifty lakh rupees, and where such contravention continues, he shall be liable to pay an additional penalty which may extend to 1 lakh rupees per day.”</p>	
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Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”

In the principal Act, after section 39, the following section shall be inserted, namely: -

Imposition of penalty by Adjudicating Officer.

“39A. (1) The Central Government, for the purposes of determining the penalties under sections 37, 38 and section 39, may designate the District Magistrate having jurisdiction over the area or any other Officer to be an Adjudicating Officer, to hold an inquiry for the purpose of determining the quantum of penalty, in such manner, as may

be prescribed by the Central Government:

Provided that the Central Government may appoint as many Adjudicating Officers as may be required for a jurisdiction.

(2) Where more than one Adjudicating Officer is being appointed for a jurisdiction, the Central Government shall specify in the order regarding the matters and places with which such officers shall exercise their jurisdiction.

(3) The Adjudicating Officer shall conduct an inquiry after giving the person a reasonable opportunity of being heard in the matter, and if, on such enquiry, he is satisfied that the person has contravened the provisions of the Act, he may impose such penalty by an order, as he thinks fit in

accordance with the provisions of sections 37, 38 or section 39, as the case may be.

Punishment for failure to pay penalty.

39B. Where a person fails to pay the penalty or the additional penalty, as the case may be, imposed upon him under the provisions of this Act, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to twice the amount of the penalty imposed under the provisions of this Act or with both.

(2) Where any offence under sub-section (1) has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of

the business of the company, as well as the company, shall be deemed to be guilty of such offence and he shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in sub-section (1), if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(3) Notwithstanding anything contained in sub-section (2), where an offence has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or

other officer of the company, such director, manager, secretary or other officer shall also have deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. -For the purposes of this section, -

(a) "company" means anybody corporate and includes a Limited Liability Partnership firm or other association of individuals;

(b) "director", in relation to a firm, means a partner in the firm."

Punishment for non-compliance of provisions of section 21.

39C. Any person, who fails to comply with the provisions of section 21, shall be punishable with imprisonment which may extend to three years or with fine

which may extend to five crore rupees.

Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such person shall be liable to pay the penalty equal to the amount of the damage caused.”

39D. (1) Any person aggrieved by the order passed by the Adjudicating Officer under the provisions of this Act, may prefer an Appeal to the National Green Tribunal established under section 3 of the National Green Tribunal Act, 2010.

(2) Every Appeal under sub-section (1) shall be filed within sixty days from the date on which the copy of the order made by the Adjudicating Officer is received by the aggrieved person.

<p>Amendment Section 40</p>	<p>of</p>	<p>(3) The National Green Tribunal may, after giving the parties to the appeal an opportunity of being heard, pass such order as it thinks fit, confirming, modifying or setting aside the order appeal against.</p>	
		<p>In the principal Act, for section 40, the following section shall be substituted, namely</p> <p>40. Where any company contravenes any provision of this Act, such company shall be liable to pay the penalty for each such contravention which shall not be less than five lakh rupees and may extend to five crore rupees:</p> <p>Provided that where the amount of the damage caused due to such contravention or non-compliance by that person is more than the amount of penalty, such company or body corporate shall be liable to pay the penalty equal to the amount of the damage caused.</p>	

<p>Amendment Section 41</p> <p>of</p>	<p>In the principal Act, for section 41, the following section shall be substituted, namely</p> <p>41. Where contravention of any provision of this Act has been committed by any department or agency of the Central Government or any State Government and such contravention is attributable to any neglect on the part of the officer concerned, such officer and if contravention is committed on the instruction of senior officer or Head of the Department, such senior officer or Head of the Department, as the case may be, shall be liable to pay the penalty not exceeding two lakh rupees for each such contravention.</p>	
<p>Section 53- Power of Central Government to make rules</p>	<p>Amendment of Section 53</p>	<p>In section 53 of the principal Act, in sub-section (1), after clause (g), the following clause shall be inserted, namely: -</p>

“(h) the manner of establishment and maintenance of Air Pollution Remediation Fund under sub-section (3) of section 36A;

(i) the manner of holding inquiry by the Adjudicating Officer under sub-section (1) of section 39A;

(j) the guidelines related to exempting the green industries / non-polluting industries from the provisions of this sub-section (1) of section 21;

(k) the guidelines on the matters relating to the grant or refusal of consent by any State Board for the establishment of any industry, operation or process, or treatment and disposal system or to the bringing into use of a new or altered outlet including the mechanism for time bound disposal of the application made under section 21 or validity

		period of such consent under section 21A."	
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