

# 20

YEARS OF

# EPCA

LESSONS FOR  
THE NEW

Evaluating the effectiveness  
of the Environmental  
Pollution (Control and  
Prevention) Authority for  
National Capital Region in  
Controlling pollution and  
improving the quality of  
environment

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# SUMMARY

On 3-10-2018, the Ministry of Environment, Forest and Climate Change issued a Notification under the Environment (Protection) Act, 1986, reconstituting the Environment Pollution (Prevention and Control) Authority (EPCA). The reconstituted EPCA has a significant larger number of Civil Society Groups and experts from institutions such as AIIMS, IIT, JNU, Centre for Energy Environment and Water (CEEW), TERI, Shakti Sustainable Energy Foundation, Centre for Policy Research among others. The inclusion of a much wider section of experts and institutions in EPCA is a welcome step given the fact that till now EPCA had a very limited civil society representation.

The critical question arises as to whether the reconstituted EPCA will be able to serve as an effective Authority for preventing and controlling pollution in the National Capital Region (NCR). Based on publicly available information and RTI questions, our analysis reveals that EPCA has failed to function as an effective Authority for prevention and control of pollution. Firstly, despite having powers to issue Directions under Section 5 of Environment (Protection) Act, 1986 ('EP Act') and file criminal Complaints under Section 19 of the EP Act, EPCA has not issued a single direction or filed any Complaint before any Court in the last two decades. Though the law has empowered it as an 'Authority' under the EP Act, EPCA has essentially functioned as an advisory body to Government and assisting the Supreme Court. Secondly, EPCA's public engagement has been almost non-existent, though the issue at hand is that of public health. Thirdly, though EPCA has powers to hear Complaints filed by environmental groups and concerned citizens, EPCA neither has a mechanism to adjudicate on citizens Complaints nor has it issued any orders based on Complaints filed by Citizens.

If the reconstituted EPCA is to become an effective Authority to prevent and control pollution, it must not follow in the footsteps of the earlier EPCA. After all, one must not forget that it is not just the lack of proactive legal action that is testimony of the failure of EPCA, the fact that National Capital Region has become a pollution hotspot in the last two decades despite having a dedicated Authority to prevent and control Pollution, is a reason itself for the reconstituted EPCA to not follow the precedent set by the earlier EPCA.

# INTRODUCTION

The National Capital Region (NCR) of Delhi is today acknowledged as a pollution hotspot with some of the world's most polluted places located either within or in proximity of the NCR. There is thus a need to examine the reasons for the breakdown of environmental governance in the region which has led to this environmental crisis. The action's initiated by the Government and the Courts, whenever there is an environmental emergency, must be seen in the background of what has worked and what has failed in the past so that we can learn from shortcomings.

The NCR is unique in comparison to other polluted landscapes in the Country - it has a dedicated Authority which has been functioning for the last two decades with the specific objective of 'protecting and improving the quality of the environment and preventing and controlling environmental pollution in the National Capital Region'

Yet, rather than any improvement in quality of environment, all available data shows that massive decline in environmental quality both in terms of air quality and water quality. Whereas, most discussions have concentrated on the failure of Pollution Control Boards as well as other Government agencies in controlling pollution, there has hardly been any substantial discussion on the performance of an Authority which was created to 'protect and improve the quality of environment'. It is an irony that the National Capital Region has emerged as a global pollution hotspot in the last one decade despite having an Authority with a specific mandate to 'protect and improve the environment'.

This Paper examines the functioning of the special Authority created to deal with environmental issues in the National Capital Region - the Environment Pollution (Prevention and Control) Authority ('EPCA'). Few critical question arises:

- Has the EPCA performed as per its statutory mandate ?
- Why despite having a special Authority, the environmental pollution situation has only deteriorated in the last few years ?
- Why despite having the EPCA, with a mechanism to deal with citizens complaint, concerned people are still approaching the Constitutional Courts and the National Green Tribunal to deal with pollution ?
- How proactive is EPCA in dealing with environmental violators ?
- How transparent and accountable is EPCA in terms of its functioning ?
- What ails the EPCA and what needs to be done ?

This paper aims to address the above question. The analysis is based on information available on the website of EPCA, as well as applications filed under the Right to Information Act before the EPCA.

## EPCA AS A SUPREME COURT COMMITTEE OR GOVERNMENT BODY OR AUTHORITY

EPCA, is a Central Government constituted Authority<sup>1</sup> for the National Capital Region in compliance with the Supreme Court order dated 7<sup>th</sup> January, 1998 in Writ Petition 13029/1985 (M.C.Mehta vs Union of India)

Thus EPCA is not a Supreme Court Committee but rather a Authority created by the Central Government under power vested under Section 3 (3) of the Environment (Protection) Act, 1986. Unlike the Central Empowered Committee (CEC) which is a Committee of the Supreme Court formed as per directions in T.N Godavarman Thirumulpad Versus Union of India [W.P (C) 202 of 1995] for forest and wildlife issues, EPCA is a creation of the Central Government and has to function under the 'control and supervision' of the Central Government. It is required under the order constituting it to furnish a "Progress Report" about its activities once in a month to the Central Government. However, in response to specific query made under RTI, EPCA could not furnish any 'Progress Report' submitted to the Central Government. The website of EPCA also does not contain any Progress Report. Reports submitted to Supreme Court is not a substitute for Progress Reports submitted to Central Government.

## CONSTITUTION OF EPCA

EPCA is headed by a – former Secretary to the Government of India who was appointed in 1998. Even the reconstituted EPCA is headed by the same person. This is perhaps the longest ever appointment in any Statutory Committee/ Authority in the Government of India. Without casting any doubt on his commitment or his contribution, one may question as to why, when there is fixed terms and retirement terms for all positions and functions in the Government including Statutory Commissions and Authorities, an herculean task of protecting and improving the quality of environment, can be led by only one person for the last two decades? One may point out the disturbing practice of Chairpersons in environmental committees/ Authorities to continue to occupy public offices for disproportionately long time. In one way EPCA is no different from the Central Empowered Committee (CEC), which continues to be headed by the same Chairperson (Former Secretary, MoEF) who retired in 2002 from the Government and has continues to hold the post of Chairperson till date. Surely, it is not that wisdom, honesty and commitment is limited only to few people appointed decades back.

In terms of members of the Authority, the issue is no less serious. Civil Society groups were represented through two members: Sunita Narain, Director General of Centre for Science and Environment (CSE) and Vishnu Mathur, Director General, Society for Indian Automobile Manufacturers (SIAM). It is not clear as to whether they were included as Individual Members or Institutional Members. In case it is institutional, there are serious issues with respect to Independence and objectivity with respect to their day to day functioning. The Society for Indian Automobile Manufacturers main role is to promote the growth of automobile industry and its members has in public forum openly stated that they are opposed to any restriction in use of diesel cars.

It is important to point out that the Centre for Science and Environment has been part of being there for the last twenty years, despite the emergence of many civil society groups in the NCR region, it is surprising that only one environmental NGO's is a member of such a long period of

<sup>1</sup> vide Gazette Notification SO 93 (E) dated 29.01.1998

time. The reconstituted EPCA has now addressed this issue by including a range of Civil Society Groups and Institutions in EPCA.

The presence of official representatives in the Authority represents a serious issue of conflict of interest and well as lack of regional representation. To elaborate the point, the following are the official members of the Authority:

- Secretary, Environment & Forest, Government of NCT of Delhi
- Chairperson, New Delhi Municipal Corporation
- Commissioner, South Delhi Municipal Corporation
- Commissioner, East Delhi Municipal Corporation
- Commissioner, North Delhi Municipal Corporation
- CEO, Delhi Jal Board
- Joint Commissioner of Police (Traffic) Delhi Police

It needs to be highlighted that EPCA was formed to improve the quality of environment and preventing environmental pollution in the National Capital Region. The National Capital Region comprises of National Capital Territory of Delhi and districts in Haryana, Uttar Pradesh, Rajasthan. Strangely, both the earlier Notification as well as in the latest Notification, there is not even a single representative from any other state besides Delhi. Whereas, even the Delhi Police and Delhi Jal Board are members, not even one Department or Municipal Corporation of any of the above states is a member of EPCA, despite the fact that places like NOIDA, Ghaziabad, Gurgaon rank high in the pollution index. In such a situation, EPCA can hardly be called as an Authority representing the NCR region, at the most it is an Authority for Delhi, by the representative Delhi and Delhi centric in its approach. This is true not only for Government Officials but also for CSOs' and other Institutions included in the latest Notification. There is not even a single representation from any State other than Delhi with respect to CSO's and other Institutions.

There are also serious issues of conflict of interest. Given the fact that EPCA has been given the power of initiating prosecution i.e. filing complaints under the Environment (Protection) Act, 1986 against those who violate the law, the presence of officials of so many Departments as well as Municipal corporations is a cause of concern. As is seen in India, most violations of environmental law happen due to connivance of enforcement agencies including Municipal bodies. Given this situation, it is unlikely that EPCA will on its own file Complaints before the Magistrate since it will involve, either directly or indirectly, the Members of the Authority itself. This reflects a foundational or structural fault with EPCA itself. This explains why EPCA has not filed a single Criminal Complaint in the last two decades. Unfortunately, this issue of conflict of interest will remain in the reconstituted EPCA as well.

Comparative Chart on the Members of Environment Pollution (Prevention and Control) Authority.

S. No	EPCA Members according to 4 <sup>th</sup> July, 2016 Notification	EPCA Members according to 3 <sup>rd</sup> October, 2018 Notification
1.	Sri. Bhure Lal, ex- Secretary, Government of India, Chairman	Sri. Bhure Lal, ex- Secretary, Government of India, Chairman
2.	Ms. Sunita Narain, Director General, Centre for Science and Environment, New Delhi,	Ms. Sunita Narain, Director General, Centre for Science and Environment, New Delhi,
3.	Secretary (Environment and Forest) Government of National Capital Territory of Delhi,	Secretary (Environment and Forest) Government of National Capital Territory of Delhi
4.	Member Secretary, Central Pollution Control Board, Delhi,	Commissioner - cum - Secretary, Transport Department, Government of National Capital Territory of Delhi
5.	Commissioner - cum - Secretary, Transport Department, Government of National Capital Territory of Delhi	Chair person, New Delhi Municipal Corporation
6.	Chair person, New Delhi Municipal Corporation	Commissioner, East Delhi Municipal Corporation
7.	Commissioner, East Delhi Municipal Corporation	Commissioner, South Delhi Municipal Corporation
8.	Commissioner, South Delhi Municipal Corporation	Commissioner, North Delhi Municipal Corporation
9.	Commissioner, North Delhi Municipal Corporation	Chief Executive Officer, Delhi Jal Board
10.	Chief Executive Officer, Delhi Jal Board	Joint Commissioner of Police (Traffic), Delhi Police
11.	Joint Commissioner of Police (Traffic), Delhi Police	Professor Mukesh Khare, Department of Civil Engineering, Indian Institute of Technology, New Delhi
12.	Professor Mukesh Khare, Department of Civil Engineering, Indian Institute of Technology, New Delhi	Professor Umesh Kulshrestha, Jawaharlal Nehru University, New Delhi
13.	Dr. Atul Kumar Johari, Professor, School of Life Sciences, Jawaharlal Nehru University, New Delhi (Demitted from Office vide Notification of 4 <sup>th</sup> July, 2018	Shri Ajay Kumar Bhagi, Associate Professor, Department of Chemistry, Dayal Singh College, University of Delhi
14.	Shri Ajay Kumar Bhagi, Associate Professor, Department of Chemistry, Dayal Singh College, University of Delhi	Dr. Ajay Mathur, Director General, The Energy Research Institute, New Delhi
15.	Shri Vishnu Mathur, Director General, Society of Indian Automobile Manufacturers	Shri Vishnu Mathur, Director General, Society of Indian Automobile Manufacturers
16.		Professor Arvind Kumar, former Professor of Surgery, AIIMS, New Delhi, presently Chairman Centre for Chest Surgery, Sri Ganga Ram Hospital, New Delhi
17.		Shri Krishan Dhawan, Chief Executive Officer, Shakti Sustainable Energy Foundation, New Delhi
18.		Dr. Arunabha Ghosh, Chief Executive Officer, Centre for Energy Environment and Water, New Delhi
19.		Dr. Navroz K. Dubash, Senior Fellow, Centre for Policy Research, New Delhi
20.		Member Secretary, Central Pollution Control Board

## POWERS OF EPCA AND HOW EPCA HAS EXERCISED IT

EPCA is any Authority under the Environment (Protection) Act, 1986. It has powers under Section 5 of the Act to issue direction. Section 5 specifically provides that the Authority can issue 'directions' in writing to any person, officer or any authority and person and they would be bound to comply with the 'directions'. The power to issue directions include the power to direct for closure, prohibition and regulation of any industry, operation and processes. Further, the Section empowers EPCA to issue directions for stoppage of electricity, water or other services.

In addition to the above actions, EPCA has also been authorised to issue directions with regard to:

1. Standards for the quality of environment in its various aspects,
2. Standards for emission or discharge of environmental pollutants from various sources<sup>2</sup>,
3. Restriction of areas in which any industries, operations or processes of class of industries or process shall not be carried out or shall be carried out subject to certain safeguards,<sup>3</sup>
4. Procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents<sup>4</sup>,
5. Procedures and safeguards for the handling of hazardous substances.<sup>5</sup>

The website of EPCA does not reveal that it has issued any Directions under Section 5 of the Environment (Protection) Act, 1986. The Chairperson of EPCA has often written letters to the Chief Secretaries of various states in the NCR region 'requesting' for compliance. However, there is nothing publicly available as to the action initiated by EPCA. It is important to point out that being an Authority empowered under the Environment (Protection) Act, 1986, EPCA has all the powers which the Central Government enjoys under the Act. The powers under Section 5 of the Act, which are of wide import are normally not delegated to Authorities. This extraordinary power could have been used to take preventive measures so as to both protect and improve the quality of environment.

With respect to Powers under Section 5 of the Environment (Protection) Act, 1986, the National Green Tribunal held that "Section 5 has two distinct and significant features. Firstly, it opens with a 'non- obstante' clause to give an overriding effect to such directions but such directions have to be subject to the provisions of the Act. Secondly, in explanation to Section 5, the scope of the power to issue directions has been described by use of inclusive language. It extends to issuance of directions even for closure, prohibition or regulation of any industry, operation or process. It further goes to the extent of issuing directions with regard to the stoppage or regulation of the supply of electricity or water or any other services. This wide power has been vested in the Central Government with the object to protect and enhance the environmental quality and the Act was enacted with the purpose of providing for the uncovered gaps that existed in the area of major environmental hazards. The Legislature enacted a general legislation on environmental protection which inter alia provided with the power to issue such directions."

With respect to specific queries under the RTI<sup>6</sup>, EPCA specifically responded by stating that it has not issued any directions. It is puzzling to find that despite being vested with such enormous powers, EPCA has been reluctant to issue any directions for with respect to environmental quality, restriction on activities, control over emissions and other subjects. It needs to be

2 Section 7 of Environment (Protection) Act,1986

3 Clause (e) of Section 6 of Environment (Protection) Act, 1986

4 Clause (f) of Section 6 of Environment (Protection) Act, 1986

5 Clause (c) of Section 6 of Environment (Protection) Act, 1986

6 A RTI was filed on 5<sup>th</sup> June, 2018, the reply for the same was received vide no. EPCA/RTI/2018/3460 dated 16<sup>th</sup> July, 2018; Another RTI was filed on 31<sup>st</sup> August, 2018, the reply for which is still not received.



highlighted that EPCA is neither an Advisory body nor is it a recommendatory body, it is a decision making body with powers to issue direction. An appeal against a Direction issued by EPCA lies before the National Green Tribunal under Section 16 of the NGT Act. It is in the last two decades that has seen a massive decline in environmental quality in the NCR region, and EPCA's lack of proactive approach raises important questions with respect to the seriousness with which it has dealt with such crucial issue.

To a specific question sent to Sunita Narain, Member, EPCA as to whether EPCA has initiated any action or filed Complaints before the Court, the following was the response:

“All our reports are available on the site. Please also note that EPCA's main work has been to assist the Supreme Court by preparing reports and also to monitor the implementation of the Court Orders.”

The statement clearly reveals that key members of EPCA are not clear about the mandate of the Authority and why it's called an Authority in the first place. This view of EPCA is not unusual. Authorities under environmental statutes such as the Central Ground Water Authority, the National Tiger Conservation Authority among others have never acted as Authorities despite Statutory provisions and have functioned essentially as Advisory bodies.

## CITIZENS COMPLAINTS

EPCA, apart from having powers under Section 5 of Environment (Protection) Act, 1986 it also has the power to take action suo-motu, or on basis of Complaints made by any individual, representative body or organisation functioning in the field of environment, which may be against any individual, association, company, public undertaking or local body carrying on any industry, operation or process.

The redressal of grievances through Complaints is an important power vested in EPCA. It enables organisation and individuals to approach a specialised body for redressal of their grievances and enables citizens to avail legal remedy without complicated legal procedure or engaging lawyers.

It is therefore surprising, that while Applications on pollution are filed before the Supreme Court, National Green Tribunal as well as the High Court, only rarely hears about complaints being filed before EPCA. EPCA's website does not provide any information on how Complaints have to be filed or how it will be heard or decided. Further, no Report or decision on any Complaint is available on the EPCA website. The RTI's reply of EPCA does not state as to whether any Complaint has been filed or how the same has been responded to.

The failure to serve as an effective grievance redressal forum is a serious shortcoming of EPCA. If an effective Complaint mechanism was worked out, it could well have led to greater citizen involvement in dealing with pollution. The moot question arises as to why EPCA has become ineffective in redressal of citizens grievances. This follows from the earlier question, on why EPCA has failed to issue binding directions under Section 5 of the Environment (Protection) Act, 1986.

The answer may not be difficult to locate. EPCA comprises of representatives of all Government Departments in Delhi who either directly or indirectly have a role in contributing to increased level of pollution. Any move to encourage Complaints will directly impact the Officials who are members of EPCA. The fact is that public faith in an institution depends a lot on how independent it is from executive control. The composition of an Authority must inspire confidence. The existing composition does not inspire confidence and its failure as grievance redressal forum is a testimony

of the Governmental control over its functioning. The same problem exists in the reconstituted EPCA as well as unless it is resolved, it is unlikely to serve as an effective grievance redressal forum.

## COGNIZANCE OF OFFENCES

EPCA has been given powers to take cognizance of any offence under the Act. This principally means that in case any person, individual or agency including the Government violates the provisions of the Environment (Protection) Act, 1986 or any direction issued by the EPCA, it is empowered to file a Complaint before the Judicial Magistrate for appropriate action. The Complaint is in a nature of a Criminal Complaint which if admitted by the Court will lead to a Judicial order enforceable by a Court of law. Again EPCA has never exercised this power. Despite EPCA's having a specific mandate to initiate criminal proceedings. It has failed to exercise this power.

## POWER OF ENTRY, INSPECTION, SEARCH AND SEIZURE

EPCA also has been entrusted with the function of taking all necessary steps for control of vehicular pollution. It also has the powers of entry, inspection, search and seizure under Section 10 of the Environment (Protection) Act, and power to take samples under Section 11 of the Act. In past years of function they have not conducted inspections for industries and where they have conducted no report of such inspection is available on public domain or the measures taken by the Authority if they have been found violating.

## EPCA AND ITS ROLE IN CONTROLLING POLLUTION

Despite its rather vocal advocacy for controlling air pollution at the time of the years air pollution crisis, EPCA, like other agencies like the Pollution Control Boards have failed to exercise the statutory powers vested in them. The standard procedure adopted by EPCA in dealing with pollution comprises of the following:

- Submitting Reports to the Supreme Court;
- Issuing letters to the Government or its agencies requesting for action to be taken for controlling pollution.
- Filing Reports to the Supreme Court

In case of non-compliance of its orders, EPCA has refused to take action either on its own by issuing binding Direction under Section 5 or by filing Criminal Complaint before Judicial Magistrates. It has thus reduced itself to a purely advisory role to both the Government as well as the Court. It heavily relies on the Supreme Court for issuing Directions on the Reports filed by it, rather than issuing Directions on it. The process itself is time consuming and given the burden on the Supreme Court, it is undesirable that an Authority relies on the Supreme Court for its day to day functioning.

As a Public Authority, EPCA's role is even more vague. Part of the reason is that EPCA has not full time dedicated staff. It is a 'part time' Authority. None of the members including the Chairperson or members are full time in EPCA. In comparison, the Central Empowered Committee of the Supreme Court (which was once an Authority but now a Committee of the Supreme Court) has a full time Chairperson and Member Secretary. EPCA's chairperson is heading another important committee of the Supreme Court while its members have either have their own Governmental

responsibilities or responsibilities in the Non Government Organisations or Academic Institutions. This prevents EPCA from fulfilling its mandatory role. The conflict of interest of the members further complicates the situation.

## CONCLUSION

The idea to set up EPCA for the NCR is in itself an acknowledgment of the fact that there are certain 'privileged landscapes' in the Country. The environmental crisis due to pollution or the need to prevent pollution and improve the quality of environment is not something that can be limited only to the NCR. Clearly, there are many Critically Polluted areas around the country, which needs focussed action with respect to controlling pollution. The whole rationale for having a dedicated Authority for NCR is itself questionable unless there are similar Authorities for all polluted areas in the Country. There is no denial of the fact that Citizens in the NCR region, infact have far greater access to enforcement agencies as compared to other parts of India. One must not forget that MoEF&CC, CPCB, NGT, Central Ground Water Authority are all located in the NCR.

Having said that, the manner in which EPCA has functioned in the last two decades clearly reveal that it has not served as an effective body for preventing pollution in NCR. No doubt many of the Reports submitted by EPCA to the Supreme Court have led to strong directions from the Supreme Court as well as action on the ground, however, this is not the only function of the Authority. As the above analysis shows, EPCA has failed to perform as an 'Authority' which is able to take proactive action against violators by initiating legal action or issuing legally binding direction, as well as serve as effective public grievance redressal body. The reconstituted EPCA must not replicate the earlier EPCA. It must function truly as an Authority, in letter and spirit. Its function is not advisory or administrative but quasi-judicial. At the same time, some of the inherent conflict of interest among of the members must be resolved in addition to ensuring that there is adequate representation (of Governments and CSO's) from all the NCR states where the jurisdiction of EPCA exists. It must open its doors to the public and function in a transparent manner so that it fulfils the very reason why it exists. Only then will it be able to justify its existence.

