

**PROPOSITION FOR 2ND ONLINE CONSTITUTIONAL LAW MEMORIAL WRITING
COMPETITION, 2019¹**

1. India's power sector is one of the most diversified in the world and is undergoing a significant change that has redefined the industry outlook. Sustained economic growth continues to drive electricity demand in India. The Government of India's focus on attaining 'Power for all' has accelerated capacity addition in the country. At the same time, the competitive intensity is increasing at both the market and supply sides (fuel, logistics, finances, and manpower). In May 2018, India ranked 4th in the Asia Pacific region out of 25 nations on an index that measures their overall power.

2. Sources of power generation range from conventional sources such as coal, lignite, natural gas, oil, hydro and nuclear power to viable non-conventional sources such as wind, solar, and agricultural and domestic waste. Of these, Thermal Power Plants ("**TPPs**") are the principal generators of electricity in India. They produce **63.7%** of electric power in the country.

3. Coal is predominantly used as fuel for electricity generation in the country as it is readily available. India has 7% of world's coal reserve and is ranked third in production of coal. However, combustion of coal emits a wide spectrum of chemicals into the environment, and some of these chemicals such as respirable particulates, Oxides of Nitrogen (NO_x) and Sulphur (SO₂), transitional metals and hydrocarbons are potentially harmful for human health. An estimated 240 million tons of coal with 35- 45% of ash content is consumed annually by the thermal power plants in India.

4. As per the estimate calculation of Central Pollution Control Board ("**CPCB**"), 4,24,650 tons of carbon dioxide, 3311 tons of SO₂ and 100 million tons of ash are generated daily from these plants. Emissions of CO₂, SO₂ and particulate matter from coal-based power plants

¹ The Proposition has been prepared by **Mr. Saunak Kumar Rajguru**. No personal contact with the author would be permitted under any circumstance. For any clarification with respect to the proposition, the same can be sought following the procedure mentioned in the Rules for the competition.

represent 82%, 89% and 82% of total emissions of these pollutants, respectively, from the industrial sector. As a matter of consequence, coal-based thermal power plants are considered as major contributors to ambient air pollution.

5. Since many of these pollutants are hazardous for human health, emissions from coal based thermal power plants can impair the health of their employees as well as people living nearby. Besides, the emissions can inflict damage to the crops, forests, ecosystem, building materials, biodiversity and can mediate atmospheric changes including global warming because of the presence of significant amount of greenhouse gases (such as CO₂, SO₂ and NO_x) in emissions.

6. The Ministry of Environment, Forest and Climate Change ("**MoEF**") has enacted various legislations to regulate the power industry and the most important of them being the Environment Protection Act, 1986 ("**Act**"). The Act enlists multiple special agencies and other statutory authorities to overlook compliance to various environmental legislations and policies. Accordingly, CPCB, which was initially constituted under the (i) Water (Prevention and Control of Pollution) Act, 1974 and (ii) Air (Prevention and Control of Pollution) Act, 1981 was, *vide* MoEF's Notification dated 10th July, 2002, conferred statutory powers in terms of Section 5 of the Act to directions to any industry for violation of rules relating to hazardous emissions.

7. Taking note of the growing need to implement strict pollution control measures, the MoEF, on 07.12.2015, issued Notification No. S.O. 3305 (E) in exercise of its powers under Section 6 and Section 25 of the Act, notifying Environment (Protection) Amendment Rules, 2015 ("**Amended Rules**") which amended the earlier Environment (Protection) Rules, 1986 ("**Principal Rules**"). The Amended Rules envisaged stricter emission limits *inter alia* for SO₂ and NO_x.

8. The Amended Rules created unrest in the entire power sector. The power producers, both the Central Sector (such as Indian Thermal Power Corporation Ltd.² etc.) and the Private Generators in the country were concerned with respect to the implementation of the

² For the purpose of this competition, kindly assume Indian Thermal Power Corporation Ltd. as a Government of India undertaking.

Amended Rules. Council of Power Producers³ (“**CPP**”), on its representative capacity, took up the issue with MoEF *vide* letter dated 01.01.2017 in the following terms: -

“While the Council of Power Producers appreciate the positive efforts on behalf of the MoEF in making efforts towards combating pollution from thermal power plants, however, it may be noted that the recent MoEF Notification dated 07.12.2015 prescribing stricter emission norms inter alia for SO₂ and NO_x is difficult to be complied with by the thermal power producers.

It may be noted that the prescribed limits require installation of additional pollution control measures which would scale up the capital cost of the projects by manifold. In this regard, the following may be noted: -

- (i) For meeting the emission stands of SO₂, wet-type Flue-Gas Desulphurization (“FGD”) with forced oxidation having minimum designed SO₂ absorption efficiency of 95% is required as the optimum technology.*
- (ii) The permissible limit of NO_x would not achievable without implementation of Selective Non-Catalytic Reduction (“SNCR”) with a minimum designed reduction efficiency of 35%.*

Accordingly, the implementation of the said technologies would tune up to 1000 Crores of capital investment for the power projects. Such an additional expenditure was not envisaged by the power producers while bidding for these projects. Accordingly, there will be massive additional expenditure to be incurred by these power producers for complying with the Notification. The same has a probability of rendering the power producers as a Non-Performing Asset, considering the fact that most of the power producers are already under huge debts.

Therefore, in view of the afore-said factors, it is requested that MoEF should reconsider its decision and withdraw the said Notification.”

9. Accordingly, the MoEF took cognizance of such letter from the CPP and on 16.06.2017 requested the Environment Pollution (Prevention and Control) Authority (“**EPCA**”) i.e. an authority constituted under Section 3(3) of the Act, to submit its Report on the viability and practicability of the compliance to the MoEF’s Notification dated 07.12.2015. In view thereof, EPCA submitted its report on 31.12.2017 affirming the concerns raised in CPP’s letter dated 01.01.2017 and recommended MoEF to withdraw its Notification dated 07.12.2015.

³ For the purpose of this competition, kindly assume Council of Power Producers as the representative body of all power producers in the country (both private and central sector).

10. Subsequently, MoEF, on 09.02.2018, released a Notification withdrawing the emission limits stipulated in Notification dated 07.12.2015 and reinstated the earlier standards for emission of SO₂ and NO_x.

11. Friends of Environment (an NGO) has various branches in the country and has been involved in raising awareness about pollution control since 1999. The said NGO has a dedicated group named 'Air Cabinet' which specifically engages itself with various scientific and statistical studies with respect to the change in climatic conditions especially arising out of air pollution. 'Air Cabinet' has been studying the impact on the ambient air quality due to harmful emissions from thermal power plants since 2005.

12. On 21.09.2018, 'Air Cabinet' through Friends of Environment decided to invoke the jurisdiction of the Hon'ble Supreme Court of India under Article 32 of the Constitution assailing MoEF's decision to withdraw Notification dated 07.12.2015. The resolution dated 21.09.2018 *inter alia* seeks to request the Hon'ble Court to direct MoEF to re-notify the stricter emission standards.

Re: Draft

13. Draft a Petition under Article 32 of the Constitution of India to be filed on behalf of 'Air Cabinet' through Friends of Environment requesting Court's interference in the matter.

14. You are given the liberty to choose your own issues. You are advised to rely on: -

- (a) All applicable Legislations including Rules therein.
- (b) Judgments of the Courts *viz.* Supreme Court, High Court, National Green Tribunal, International Court of Justice, International Tribunals etc.
- (c) Reports, Statistics, Scientific Reports etc. (credible sources and acknowledged sources).
- (d) Any other applicable law.

Note: The Draft has to be prepared only from the side of the Petitioner. No draft is required to be made from the side of the Respondent for the purposes of this competition.