



## Legal Control of Industrial Pollution in India

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### Abstract

*Human beings are very progressive in nature and to make life easy, they always try to do something new. We developed industries to make our work easy and for the Development of the nation as well. Industrial growth is making work easy and at the same time contributing further to environmental pollution. In India, industrial pollution is a great problem that needs the attention of the people relating to the industry. Industrial pollution must be stopped by any means to the extent possible for the protection of the environment because it is essential to guard our environment against various setbacks. Industrial pollution is badly affecting the environment at the present time. Therefore, in this research, it has been tried to cover the causes and effects of industrial pollution and its legal control.*

**Keywords:** development, industry, pollution, environment, government, law, court, etc.

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### Introduction

Humans are very progressive in nature. To make their work easy they always try to invent something. Machines, factories, and industries are examples of these inventions. In earlier ages, the condition of humans was very miserable. They were living even without homes, clothes, and other businesses, but with time, technology started developing, industries began to flourish and business started coming into man's life and making their work easier. This industrial development started depleting the environment through wastes and pollution causing environmental pollution. It consequently led to environmental depletion at such a pace that the natural forces are unable to restore the balance between various elements of nature.

Pollution is not only one facet of the many-sided environmental problem; it is also the most prominent and immediately pressing environmental concern. It is a highly visible, sometimes detrimental sign of environmental devastation. Pollution threatens human health, natural systems, aesthetic sensibilities and often represents valuable resources out of place. Historically, man has assumed that the land, matter, and air around him would absorb his waste products. The ocean, the atmosphere, and even the earth have been viewed as receptacles of infinite capacity. It is clear now that man may be exceeding nature's capacity to assimilate his wastes.

### Meaning of Pollution

Pollution is an unavoidable consequence that man has brought with the advent of that misconception. According to Lynn White (1967) and Ian Mc Harg (1969), the Judeo-Christian

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ethics taught man that he could do whatever he wished with earth, but authors like Southwick (1976), associated the human population explosion with pollution problems.<sup>2</sup>

Environmental pollution on a global scale has turned into a reality and resulted in drastic changes with the Industrial Revolution. Pollution was not even considered an important issue in comparison to the production targets till scientific research came into play. It was then that the causes of industrial pollution that led to the effects started to come to light. Industrial pollution can be defined as the pollution caused by industrial effluents.

Sec.2(c) of the Environment (Protection) Act,1986 defines “environmental pollution” as the ‘*presence in the environment of any environmental pollutant*’. Further, Sec. 2(b) states ‘*environmental pollutant means any solid, liquid or gaseous substance in such concentration as may be, or tend to be, injurious to environment.*’<sup>3</sup>

### Industrial Pollution

The growth of technology has generated new chemicals at a rate never before experienced. The safety of these new materials is a major cause of concern. The challenge is to assess the hazards of chemicals and to recommend the safe conditions under which we may come into contact with them. Many substances utilized, formulated and manufactured in the industrial environment possess the ability to adversely affect humans. All these substances are called toxic substances. A toxic substance upholds the potential to induce tumours, cancer, or neoplastic effects in men or experimental animals.

Thus ‘industrial pollution’ can be defined as the emission of any solid, liquid or gaseous substance, by industry, in such concentration as may be, or tend to be, injurious to the environment. Industrial pollution is pollution that can be directly linked to industry, in contrast to other pollution sources. This form of pollution is one of the leading causes of pollution worldwide; in the United States, for example, the Environmental Protection Agency estimates that up to 50% of the nation's pollution is caused by industry. Industrial pollution is a serious problem for the entire planet, because of its size and scope.

### Industrial Pollutants

Industrial pollutants are waste material that pollutes air, water, or soil. The severity of a pollutant is mainly determined by three factors: its chemical nature, the concentration, and the persistence. This problem is seen especially in the industrial areas. The heat is produced but the machines are cooled down with water or other coolants and the coolants discharged carelessly in the environment. Such release of effluents causes a rise in the temperature of neighbouring water bodies, thus killing the plants and animals taking shelter in it.

Some industrial pollutants and their sources and effects are listed as follows:

**Table 1, Causes of Industrial Pollution/ Sources and Effects**

SL. No.	Pollutants	Sources	Effects on man
1.	Aldehydes	Thermal decomposition of fat, oil, Glycerol	Irritate nasal and respiratory tracts

<sup>2</sup> <https://www.yourarticlelibrary.com/environment/how-does-the-pollution-originated-according-to-the-certain-authors/3787>

<sup>3</sup> Environment (Protection) Act,1986

2.	Ammonia	Chemical processes, dye making, explosives etc	Inflame upper respiratory passages
3.	Arsines	Acid manufacture containing arsenic, metal industry	Breakdown of RBC, jaundice, kidney failure
4.	Carbon Monoxide	Motor exhausts, burning of fossil Fuel	Breakdown of red blood cells, anaemia
5.	Hydrogen Cyanides	Metal plating, blast furnace, chemical manufacturing	Nerve cell destruction
6.	Phosgenes	Chemical and dye manufacturing	Pulmonary pneumonia
7.	Sulphur Dioxide	Coal and oil combustion	Respiratory ailments
8.	Petroleum and Industrial Hydrocarbons	Off- shore wells, ill tankers, industrial Wastes	
9.	Mercury	Chemical manufacture, caustic soda plants etc.	Minamata disease
10.	Fluoride	Coal-burning power plants, fluorinated water used in industries	fluorosis
11.	Nitrates	Fertilizers	Methemoglobinemia
12.	Cadmium	Zinc Smelters	Itai –itai, kidney malfunction etc

### Types of Industrial Pollution:

The various kinds of pollution are described below along with the particular pollutants relevant to each of them, these are the major forms of Industrial pollution as well:

**Air pollution<sup>4</sup>:** Air pollution is caused when chemicals and particulates are released into the atmosphere. Common gaseous air pollutants include sulphur dioxide, carbon monoxide, chlorofluorocarbons (CFCs) and nitrogen oxides produced by motor vehicles and industries. Photochemical ozone and smog are caused when hydrocarbons and nitrogen oxides react to sunlight particulate matter, or fine dust is characterized by their micrometre size PM<sub>10</sub> to PM<sub>2.5</sub>.

**Soil Pollution:** Soil contamination is caused when chemicals are released by underground leakage or spills. The most prominent soil contaminants are pesticides, herbicides, heavy metals, hydrocarbons, MTBE,<sup>[10]</sup> and chlorinated hydrocarbons.

**Noise pollution:** Such pollution comprises high-intensity sonar, roadway noise, aircraft noise, as well as industrial noise.

<sup>4</sup> Jillian Macenzie and Jeff Turrentine, Air Pollution: Everything you need to know, NRDC, October 31, 2023, <https://www.nrdc.org/stories/air-pollution-everything-you-need-know#whatis>

**Water pollution:** Water pollution is caused by the discharge of wastewater from commercial and industrial waste (intentionally or through spills) into surface waters; discharges of untreated domestic sewage; release of waste and contaminants into surface runoff flowing to surface waters (including urban runoff); waste disposal and leaching into groundwater; eutrophication and littering.

Besides these major pollutions, there are some more types of industrial pollution like light pollution<sup>5</sup>, littering, radioactive contamination<sup>6</sup>, thermal pollution<sup>7</sup>, visual pollution<sup>8</sup> etc. are hazardous for living beings and plants, etc.

Here it is to be noted that industrial revolutions are responsible for the above-mentioned pollution and increased environmental pollution in India as well as the world.

### **Legal Control of Industrial Pollution**

On the one hand, industries play a very important role in the development of the country by providing job opportunities and means of livelihood to the people, but at the same time, certain industries may be harmful to the environment and might pose a danger to the people living around it if proper care has not been taken. Thus, it becomes the liability of the government to curb the problem at the national and international level, and being an important organ of democracy, the judiciary faces the challenge of balancing the need to protect the environment and industrial growth.

### **International Scenario Concerning Regulation and Control of Pollution**

At the International level, many efforts have been made to control environmental/industrial pollution which are given below:

**Stockholm Conference:** In June, 1972, the United Nations Conference on the Human Environment<sub>2</sub> was first held in Stockholm. It led to the emergence of international environmental law. The Declaration on the Human Environment, commonly known as the Stockholm Declaration, set out the principles for various international environmental issues, including natural resource management, pollution prevention, human rights and the relationship between development and the environment. The United Nations Environment Programme was created as a consequence of this conference.

**Burtland Commission:** The Burtland Commission was chaired by Gro Harlem Brutland, the pioneer of sustainable development. It provided the momentum for the first Earth Summit in 1992 i.e, the United Nations Conference on Environmental Development (UNCED) and also for Agenda 21.

**National Conference on Environment and Development:** South Africa's first National Conference on Environment and Development entitled, "Ecologise Politics, Politicise Ecology" was held at the University of the Western Cape in alliance with the Western Cape Branch of the World Conference on Religion and Peace (WCRP) and Cape Town Ecology

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<sup>5</sup> Light pollution includes light trespass, over-illumination and astronomical interference.

<sup>6</sup> resulting from 20th century activities in atomic physics, such as nuclear power generation and nuclear weapons research, manufacture and deployment. (See alpha emitters and actinides in the environment.)

<sup>7</sup> is a temperature change in natural water bodies caused by human influence, such as use of water as coolant in a power plant.

<sup>8</sup> which can refer to the presence of overhead power lines, motorway billboards, scarred landforms (as from strip mining), open storage of trash or municipal solid waste.

Group (CTEG) in 1991. Cheryl Carolus, Ebrahim Rasool, Julia Martin and Faried Esack were the important personalities involved in this conference.

Summit in 2002: In February 1998, some initial informal discussions were held for a possible new Summit in 2002. Derek Osborn hosted these discussions and also co-chaired the preparatory meetings for the Stakeholder Forum and Rio+5 for a Sustainable Future. Also, a set of 10 governments started working informally to draft the possible agenda for a Summit. After the non-papers were produced in 1998 and 1999, it ensured that when the UN Commission met in 2000, it could agree to host another Summit in 2002.

World Summit on Sustainable Development: From 26 August to 4 September, 2002, the World Summit on Sustainable Development, WSSD, or Earth Summit 2002<sup>9</sup> was held in Johannesburg, South Africa. The United Nations had called upon the summit to discuss sustainable development. Ten years after the first Earth Summit, WSSD gathered several leaders from business and non-governmental organizations in Rio de Janeiro. (It was, therefore, also informally nicknamed "Rio+10".)

### **Comparative Experience of Pollution in Different Countries**

There is no uniform practice as adopted by the constitutions of different countries of the world. The *Constitution of Switzerland* (Art.24 (1)), *German Democratic Republic* (Art. 15), *Greece* (Art.24) *Libya* (Art. 35), *Sri Lanka* (Art.24 (4)) etc. provides the duty or obligation of States relating to the environment. The *constitutions of Somalia, Sri Lanka, Nepal, Poland, and the German Democratic Republic* take care of the environmental duty of citizens. Only a few constitutions deal with the right to the environment directly<sup>10</sup>. Provisions relating to control of pollution in different Countries are:

The United Kingdom: There is no framework law in the United Kingdom. Some statutes as the Control of Pollution Act, 1974 deal with several kinds of pollution. More commonly however, each statute deals with a particular kind of environmental problem e.g., Radioactive Substances Act, 1960; Prevention of Oil Pollution Act, 1971; U.K. Environmental Protection Act, 1900 and the Water Resources Act, 1991 etc. These Acts provide mechanisms to control environmental pollution. The Water Act, 1973 obligates duty to the Secretary of State and Minister of Agriculture Fisheries and Food to secure the effective execution of that policy by the bodies responsible.

The United States of America: In the USA there is a codified system of federal law. Many separate acts have been passed by the federal and by State legislatures, and by local authorities. There are Environmental Protection Agencies and the National Pollution Control Council (established by the President).

Sweden: In the Swedish Constitution there is a hereditary monarch. The environmental legislations are the Nature Conservancy Act, 1964; Environmental Protection Act and Environmental Protection Ordinance etc. provide mechanisms to control environmental pollution.

Denmark: In Denmark, there is a parliamentary democracy and a written Constitution. The Environmental Protection Act is the main Act and other legislations are the Sulphur Content

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<sup>10</sup> Environmental Pollution Control by J. McLoughlin & E.G. Bellinger.

of Fuel Act, Chemicals & Chemical Works Product Act, Recycling Act, and Marine Environment Act etc. are environmental protection legislations.

### **Legislative Framework with respect to Industrial Pollution in India**

Indians emphasised greatly on the purity of environment in the ancient and medieval periods. Strict religious orders existed against polluting the watercourses like rivers and public wells. To purify the air, *Yagnas* were often performed when fragrant materials were burnt. Rivers were considered to be sacred. These practices in the context in which they were carried on, significantly differed from the concept of Purity of the environment we are today striving to maintain. As the inherent nature of Pollution itself has undergone a tremendous change, today pollution is no longer viewed from the point of any religious order of sacredness but is looked upon as a Scientific and technological phenomenon. It emerges from the industrialization and urbanization. The answer to its cure does not lie in any religious order or rite; but in self-restraint and adoption of better scientific and technological devices. The major off-shoots of environmental pollution are air, water, and noise. These three are so overlapping and sometimes, inter-linked that one cannot be controlled without controlling the other. It is not possible to discuss here all the three offshoots of environmental pollution, it is decided to take up the legal aspects of control of water pollution only.

There are various programs with certain legislation to combat the problem of Industrial Pollution launched by the Government of India. Industries need to follow the pollution measures as set by various legislations. The industries creating pollution are required to work under the permissible limit according to these laws in India. Disobedience of these pollution laws can lead to closer of industry and criminal prosecution for management including Penal provisions. For the regulation of Industrial pollution in India, certain legislative enactments are given as follows:

### **The Constitution of India:**

The founding father of the Indian Constitution did not show their concern about environmental issues. It was pronounced with the enactment of the Constitution (42<sup>nd</sup> Amendment) Act, 1976 after the recommendation of the Swarn Singh Committee, in the form of Articles 48A and 51A(g).

Apart from Article 21 of the Constitution of India, which guarantees 'Right to Life', Articles 48A and 51A (g) of the Constitution are enumerated as under :

<sup>11</sup>Article 48A states that, “*The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country.*”

<sup>12</sup>Article 51A (g) states that, “*It shall be the duty of every citizen of India – to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.*” Article 253 of the Constitution empowers Parliament to make laws for implementing India’s international obligations as well as any decision made at an international conference, association or other body. Entry 13 of the Union List covers participation in international conferences, associations and other bodies and implementation of decisions made thereat. Therefore Article 253<sup>13</sup> read with Entry 13 apparently gives Parliament the power to enact laws on virtually any entry contained in the State List.

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<sup>11</sup> Article 48(A)

<sup>12</sup> Article 51A (g)

<sup>13</sup> Article 253

Parliament has used this power under Article 253 read with Entry 13 of the Union List of the Seventh Schedule to enact the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The preamble of both Acts states that these Acts were passed to implement the decisions taken at the United Nations Conference on the Human Environment held at Stockholm in 1972.

**Some of the important Pollution Control laws in India are:**

- The Water (Prevention and Control of Pollution) Act, 1974<sup>14</sup>
- The Air (Prevention and Control of Pollution) Act, 1981<sup>15</sup>
- The Environment (Protection) Act, 1986
- The National Environmental Tribunal Act, 1995
- The National Environmental Appellate Authority Act, 1997<sup>16</sup>
- The National Green Tribunal Act, 2010

India launched a "green" court on October 19, 2010 to make polluters pay damages as it steps up its policing of the country's environmental laws. On this occasion, Minister of Environment and Forests, Mr. Jairam Ramesh said that India was only the third country in the world after Australia and New Zealand to set up such a tribunal. He further stated, *"This is the first body of its kind (in India) to apply the polluter pays principle and the principle of sustainable development."*<sup>17</sup>

The Constitution (73rd & 74<sup>th</sup> Amendment) Act, 1992 has given a constitutional status to the Panchayats and the Municipalities respectively and so created three -tier of Government in our Constitutional framework.

**Water (Prevention and Control of Pollution) Act, 1974:** The Central and State Pollution Control Boards were established through this Act. The Act states that the Central Pollution Control Board (CPCB) will serve as an advisory body to the Central Government, as well as the State Pollution Control Boards (SPCBs), on water pollution issues.

**The CPCB**

- The CPCB acts as a coordinating body for activities, trainings and monitoring of SPCBs.
- The CPCB sets the national standards for pollution control.

**The SPCB**

- The SPCB ensures compliance with the CPCB prescribed standards.
- The SPCB monitors compliance and penalises industry violations.

Despite of the CPCB and SPCB, it is also duty of the municipalities and Panchayats to take effective step to control the pollution.

Under the stipulations of the modified 1988 provisions, all information relevant to the 'Public interest' should be made readily available by the SPCB to citizens. The Water (Prevention and

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<sup>14</sup> The Water (Prevention and Control of Pollution) Act, 1974

<sup>15</sup> The Air (Prevention and Control of Pollution) Act, 1981

<sup>16</sup> The National Environmental Appellate Authority Act, 1997

<sup>17</sup> "India sets up 'green court' ", October 10, 2010, <https://www.smh.com.au/world/india-sets-up-green-court-20101020-16spd.html>

Control of Pollution) Cess Act of 1977<sup>18</sup> provides incentives to industry to set up on-site effluent treatment plants.

Concepts such as the 'polluter pays' and the 'precautionary principle' theoretically guide courts with regard to compensation for violating industries. According to prescribed policy, all industrial effluent is required to be treated by a CETP. Effluent is monitored according to certain characteristics, such as Biological Oxygen Demand (BOD). BOD is an indicator of the oxygen demand that effluents have in water. Greater levels of BOD reduce the dissolved oxygen (DO) in water that is required for living organisms. Other indicators used for monitoring effluent are Chemical Oxygen Demand (COD), and Total Dissolved Solids (TDS). Given the variations in both quality and quantity of effluent discharge by industries, the Andhra Pradesh Pollution Control Board (APPCB) has set parameters for incoming effluent into CETPs. This is done to standardize effluents coming in to the CETPs for treatment and discharge. The APPCB has specified that industrial units, which have effluent in excess of 1000mg/l of Biological Oxygen Demand (BOD), be required to pre-treat their effluents on site. Additionally, those industries discharging effluents at the rate of more than 40 kilo litres a day are also required to have their own, on-site, primary treatment plants.

**Water Pollution Cess Act, 1977:** This Act provides for the levy and collection of a cess on water consumed by persons carrying on certain industries and by local authorities, with an objective to augment the resources of the Central Board and the State Boards for the prevention and control of water pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974<sup>19</sup>. A cess is to be levied and collected for the main Act and utilization thereunder from every person carrying on any specified industry and from every local authority. The specified industry has been listed under the First Schedule to the Water Cess Act.<sup>21</sup> Those industries that had installed a suitable treatment plant for the treatment of industrial effluents can get a discount of 70 percent on the cess required to be paid.

**The Air (Prevention and Control of Pollution) Act, 1981:** To ratify the commitment made at the United Nations Conference on Human Environment held in Stockholm in June 1972, this act has been enacted under the Constitution of India<sup>20</sup>. This Act provides for the prevention, control, and abatement of air pollution, for the establishment, with a view to carrying out certain mentioned functions, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith.<sup>21</sup> The state board, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, lays down standards for the emission of air pollutants into the atmosphere from industrial plants and automobiles<sup>22</sup>.

The main features of the Act, provide as a function of the board to inspect, at all reasonable times, any industrial plant, control equipment, or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution<sup>23</sup>. These prescribe standards for emissions to be laid down for different industrial plants with regard to the quantity and composition of emissions and the particulate matter and gases that are released by industry. The state government has the power

<sup>18</sup> The Water (Prevention and Control of Pollution) Cess Act of 1977

<sup>19</sup> The Water (Prevention and Control of Pollution) Cess Act, 1977, No. 36, Acts of Parliament, 1977 (India)

<sup>20</sup> Article 253 of the Constitution of India.

<sup>21</sup> Preamble, The Air Prevention and Control of Pollution) Act, 1981.

<sup>22</sup> Section 17(1)(g), The Air (Prevention and Control) Act, 1981.

<sup>23</sup> Section 17(1)(e), *ibid*.



to declare air pollution control areas after consulting with state boards. In the same manner, the state government can give instructions to ensure standards of emission from automobiles and restrict the operation of certain industrial units and penalties are imposed by the state pollution control board. According to this Act, no person can operate certain types of industries including the asbestos, cement, fertilizer, and petroleum industries without consent of the State Board<sup>24</sup>.

**The Environment Protection Act, 1986:** This Act was enacted under Art. 253 of the Constitution of India. The preamble of the Act embodies purpose of the Act is to implement the commitment made at the United Nations Conference on Human Environment held at Stockholm in June 1972, in which India had actively participated<sup>25</sup>. According to Section 2(a) of the Act, the term Environment include water, air land and the interrelationship between water, air, land and human being, other living creatures, micro-organisms, and plants. This Act seeks to supplement the existing laws on the control of Pollution by enacting general legislation for environmental protection and to fill the gaps in regulations relating to major environmental hazards. It aims at the protection and improvement of the Environment with sustainable means and methods with the prevention and control methods. This Act prescribes the restriction of the areas in which any industries, operations, or processes or class of industries, operations, or processes shall not be carried out or shall be carried out subject to certain safeguards<sup>26</sup>. It provides for inspection of any premises, plant, equipment, machinery, manufacturing or other processes, materials, or substances and giving, by order, of such directions to such authorities, officers, or persons as it may consider necessary to take steps for the prevention, control, and abatement of environmental pollution.<sup>27</sup>

**Environment (Siting for Industrial Project) Rules, 1999:** The rules are made by the Central Government in the exercise of its powers.<sup>28</sup> The Environment (Siting for Industrial Projects) Rules, 1999 enumerates provisions relating to restricted areas to be abstained for siting of industries, preventive and precautionary measures to be taken for site selection as also the aspects of environmental protection that should have been adopted during the implementation of the development projects related to industries. This policy provides that indiscriminate expansion of the existing industries and setting up of new industrial undertakings within the prescribed limits of metropolitan cities and larger towns shall not be permitted.<sup>29</sup> Industrialists will have to submit a comprehensive Environmental Impact Assessment Report having details on the nature and location of the industrial project nature and the location. The industries will be required to submit a half-yearly progress report on the installation of pollution control devices to the respective State Pollution Control Boards.<sup>30</sup>

**National Environment Appellate Authority Act, 1997:** In exercise of the powers conferred under Art. 123 of the Constitution of India, the President of India promulgated an ordinance to provide for the establishment of a National Environment Appellate Authority (NEAA) to hear appeals with respect to restriction in areas in which any operations, industries, or processes shall not be carried out or shall be carried out subject to certain safeguards under the

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<sup>24</sup> Section 17(1), The Air (Prevention and Control) Act, 1981.

<sup>25</sup> Preamble, Environment Protection Act, 1986.

<sup>26</sup> Section 7, Environment Protection Act 1986.

<sup>27</sup> Section 6, *ibid*.

<sup>28</sup> by Clause (v) of sub-section (2) of Section 3 of the Environment (Protection) Act, 1986

<sup>29</sup> Mohammed Nasim, *Environment Law in India*, Wolters Kluwer, p.98

<sup>30</sup> [http://www.indiaenvironmentportal.org.in/content/447783/environment-siting-for-industrial-projects-rules-1999/\(visited on November 17,2023\)](http://www.indiaenvironmentportal.org.in/content/447783/environment-siting-for-industrial-projects-rules-1999/(visited%20on%20November%2017,2023))

Environment (Protection) Act, 1986<sup>31</sup>. This ordinance has been replaced by the National Environment Appellate Authority Act, 1997. According to this Act, any person who feels aggrieved by an order granting environmental clearance in the areas in which any industries, operations or processes shall not be carried or shall be carried out subject to certain confines, may file an appeal to the Authority within 30 days from the date of such order. However, the Authority may entertain an appeal beyond this period if there was sufficient cause for delay in filing the appeal. The Authority is required to dispose of the appeal within 90 days from the date of filing of the appeal and may extend it for reasons to be recorded in writing.<sup>32</sup> According to Section 19 of the Act; whoever fails to comply with any order made by the Authority, he shall be punishable with imprisonment for a term which may extend to 7 years, or with fine which may extend to one lakh rupees, or with both.

**The National Green Tribunal Act, 2010:** The National Green Tribunal has been established under the National Green Tribunal Act 2010 for proper and expeditious disposal of cases relating to environmental problems and conservation of forests and other natural resources including enforcement of the rights relating to the environment and providing relief and compensation for damages to persons and property and matters connected therewith or incidental thereto<sup>33</sup>. The Tribunal shall not be bound by the procedure laid down under the Code of Civil Procedure, 1908, and of law of evidence, but shall be guided by principles of natural justice. According to Section 17(1) of the National Green Tribunal Act, 2010 in case of death of, or injury to, any person (other than a workman) or damage to any property or environment has resulted from an accident or the adverse impact of an activity or operation or process, under any enactment specified in Schedule I, the person responsible shall be liable to pay such relief or compensation for such death, injury or damage, under all or any of the heads specified in Schedule II, as may be determined by the Tribunal<sup>34</sup>.

### Important Judicial Decisions:

Judicial pronouncements regarding the control of industrial pollution are:

*Rural Litigation & Entitlement Kendra, Dehradun V. State of U.P.*<sup>35</sup> was the first case of its kind in the country regarding environmental and ecological balance.

*In Municipal Council, Ratlam V. Vardhichand*,<sup>36</sup> Shri Vardhichand filed a case for removing unhygienic conditions amounting to public nuisance as Art.47 makes paramount principle governance that steps are taken for the improvement of public health as amongst its primary duties. The right of petitioner was challenged. The Court observed that, “Why drive common people to public interest action? Where Directive Principles have found statutory expression in Do's and Don'ts the court will not sit idly by and allow municipal government to become a statutory mockery. The law will relentlessly be enforced and the plea of poor finance will be poor alibi when people in misery cry for justice. The dynamics of the judicial process has a new 'enforcement' dimension not merely through some of the provisions of the Criminal Procedure Code (as here), but also through activated tort consciousness. The officers in charge and even the elected representatives will have to face the penalty of the law

<sup>31</sup> Environment (Protection) Act, 1986, No. 29, Acts of Parliament, 1986 (India).

<sup>32</sup> Section 11, National Environment Appellate Authority Act, 1997.

<sup>33</sup> <http://envfor.nic.in/rules-regulations/national-green-tribunal-ngt>(visited on November 17,2023).

<sup>34</sup> National Green Tribunal Act, 2010, No. 19, Acts Parliament, 2010 (India).

<sup>35</sup> AIR 1985SC358

<sup>36</sup> (1980) 4 SCC 162

*if what the Constitution and follow-up legislation direct them to do are defied or denied wrongfully. The wages of violation are punishment, corporate and personal.”*

In the case of *Shubhash Kumar v. State of Bihar*<sup>37</sup>, effluents of industrial process had caused water pollution and the court passed in the right to ‘full enjoyment of life’ which According to the court included ‘enjoyment of pollution free water and air’.

In *R.L.E.K. v. State of U.P.*, *Banvasi Seva Ashram v. State of U.P.*<sup>38</sup>, *Bangalore Medical Trust v. B.S.Mudeppa*, cases the Indian Judiciary not allowed generally right to environment would be subjugated by the right to development.

*Indian Council for Enviro-Legal Action and Ors. v. Union of India and Ors*<sup>39</sup>, the petitions filed by an environmentalist organisation brings to light the woes of people living in the vicinity of chemical industrial plants in India. It highlights the disregard, nay, contempt for law and lawful authorities on the part of some among the emerging breed of entrepreneurs, taking advantage, as they do, of the country's need for industrialisation and export earnings. The viewed that, the ultimate idea is to integrate and balance the concern for environment with the need for industrialisation and technological progress.

*M.C. Mehta v. Union of India*<sup>40</sup> ( Bhopal Gas Tragedy Case) the absolute liability principle was laid down by the Supreme Court (Bhagwati, J.), which implies no individual or production line can elude from the obligation for their carelessness towards the environment. The Bhopal Gas catastrophe was the most noteworthy mechanical calamity in the world that took place at a Union Carbide pesticide plant in the Indian city of Bhopal, Madhya Pradesh. On 3 December 1984, at midnight, the plant inadvertently discharged Methyl Isocyanate (MIC) gas, exposing more than 500,000 individuals to MIC and other chemicals. The primary official prompt death toll was 2,259. The government of Madhya Pradesh has affirmed a total of 3,787 deaths related to the gas release. Others estimate 8,000-10,000 died within 72 hours and 25,000 have since died from gas-related diseases, making it the deadliest man-made natural catastrophe in history.

*Charan Lal Sahu v. Union of India*<sup>41</sup> In the Bhopal MIC Leak Case, the number of affected persons was large, so the state was allowed by the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 to file a writ for compensation on behalf of a large number of peoples to avoid the burden of the Court by a large number of writs petitions.

On July 14, 2010 Chlorine gas leaked from the Sewri industrial area on land owned by the Mumbai Port Trust, and nearly 76 people were treated in hospital.

The effects of air pollution are obvious. The brilliant white hue of the famous Taj Mahal is slowly fading to a sickly yellow. In southern India, rice crop yields are falling as brown clouds block out more and more sunlight. In the “Taj Mahal Case” a very strong step was taken by the Supreme Court to save the Taj Mahal from being polluted by fumes and more than 200 factories were closed down.

<sup>37</sup> AIR 1991 SC 420

<sup>38</sup> (1986)4SCC753

<sup>39</sup> AIR1996SC1446

<sup>40</sup> AIR 1988 SC 1037

<sup>41</sup> AIR 1980 SC 1480

*M.C. Mehta v. Union of India*<sup>42</sup> By the earlier order passed by the Supreme Court, the noxious and hazardous industries and heavy and large industries ('H' category) were shifted out of Delhi. Some of extensive industries ('F' category) were also shifted out of Delhi, but non-polluting 'F' category industry were still operating in Delhi. The question before the Supreme Court was that – what should be done about remaining 'F' category and 'A' to 'E' category? The Court has given time of four months to 'F' category, five -month period to 'B' to 'E' category and 18 months to 'A' category.

*M.C. Mehta v. Union of India*<sup>43</sup> In this case the river Ganga, 'the greatest holy river of the world' and 'the life sustainers of a large part of Northern India' was subjected to catastrophe by a cluster of tanneries generating large quantities of waste water. Venkata Ramaiah, J. has put right to clean water of pedestal, calling it an imperative goal 'for mankind'. The S.C. has held that, we are conscious that closure of tanneries may bring unemployment, loss of revenue but life, health and ecology have greater importance to the public.

There were numerous cases recorded in NGT which brought up an issue against the staggering expansion in contamination in the Singrauli district. One of the milestone cases was documented by Advocate on Record in Supreme Court of India Ashwali Kumar Dubey versus Union of India and Ors.. Being the Appellant, he documented an Original Application No.276 of 2013 preceding the Hon'ble National Green Tribunal. As a result of this application, NGT composed a five Member Core Committee in 2014 to review the whole territory where Thermal Mining, Cement Plants, Coal Mining, Aluminum and hazardous plants and Stone Crushers were situated in the District of Singrauli, Madhya Pradesh and Sonbhadra, Uttar Pradesh. In 2015 the Committee presented the last report to NGT to which it reasoned that genuine degree of contamination is in the Singrauli Region and much endeavour are needed to handle the Environment Hazards. After that in 2018, the execution application was documented before NGT by the appellant. It was seen that NGT has given a progression of guidelines to improve the ecological nature of the city, nonetheless, the execution of the NGT's guidelines on the ground, remains uncertain. The headings were not consented properly. NGT just gave bearings concerning the Fly Ash produced by the Power Plants in July 2020. Be that as it may, the other different bearings given by the Hon'ble NGT were not investigated. In September 2020, a request was petitioned for the equivalent.

In the case of *Samayak Jain vs State of Madhya Pradesh* (on 9 October, 2023) it was held that, water pollution is a relatively new phenomenon, and one can safely utter that it is solely the result of industrial waste and sewage waste and area of river Narmada within the Dindori city limits, therefore, the pollution from industrial sources in River Narmada is not anticipated<sup>44</sup>.

In *Narmada Bachao Andolan vs. Union of India*<sup>45</sup>, it was indicated that when the effect of a project is known beforehand, then the principle of sustainable development would be operative which will ensure that mitigative steps are and can be taken to maintain the ecological balance. "*Sustainable development means what type or extent of development can take place which can be sustained by nature/ecology with or without mitigation.*"

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<sup>42</sup> (2004) 6 SCC 588

<sup>43</sup> AIR 1988 SC 1037

<sup>44</sup> <https://indiankanoon.org/docfragment/188255021/?formInput=industrial%20pollution>.

<sup>45</sup> 2000(10) SCC 664.

Further, in the case of *Rajiv Ranjan Singh v. State of Bihar*<sup>46</sup> the Patna High Court has held that failure to protect inhabitants of the locality from the poisonous and highly injurious effects of the distillery's effluents and fumes amounted to an infringement of the inhabitants' right guaranteed under Articles 14, & 21 read with Articles 47 & 48-A of the Constitution. In the case of *Vellore Citizen Welfare Forum v. Union of India*<sup>47</sup> (Tamil Nadu Tanneries Case) the Supreme Court has held that considering the Constitutional provisions contained in Articles 21, 47, 48-A, 51-A(g) and other statutory provisions contained in the Water (Prevention and Control of Pollution) Act, 197, Air (Prevention and Control of Pollution) Act, 1981 the Environment (Protection) Act, 1986 and the "Precautionary Principle" and the "Polluter Pays Principle" are contained in the environmental law in India<sup>48</sup>.

### Conclusion

Pollution is an unavoidable curse of civilization or rather industrial development so as to say. With the advent of technology, there has been a paradigm shift in the concept of man being a part and parcel of nature to that of one who claims to be independent of nature. Though the Central Government by statutory provisions and judiciary by directing in many cases, tried to control pollution, but it remained on paper only.

India ranked 7th in the Climate Change Performance Index of the year 2023. It was one rank up from the previous year *i.e.* 2022, and also remained among the highest performers, according to the report released in Dubai during the global climate talks COP28 on Friday (December 8, 2023).<sup>49</sup>

India has adopted various command and control approaches that set standards to curb industrial pollution with motive. The success of pollution control policy in India to control and combat pollution has been limited due to poor monitoring and enforcement of environmental laws by the pollution controlling agency and boards which in turn is due to the slow response of courts in enforcing actions sought by state PCBs, financial constraint of the Boards, low penalties for non-compliance, widespread corruption and preponderance of small-scale units that have scarcity of any financial, technical, and managerial capabilities for treating their effluents. Therefore, there is a need for proper observation of various regulations and guidelines prescribed for Industries followed by proper implementation of laws to achieve the goal of the best economy with a green and clean nation. Therefore, to achieve the goal of the Burtland Commission, *i.e.* sustainable development, it is the duty of the Central Government, the State Government, and the citizens to make a balance between the development and the environment and to use the environment in such a way that it will remain harmless for the next generation.

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<sup>46</sup> AIR 1992 Pat. H.C.

<sup>47</sup> AIR 1996 S.C.

<sup>48</sup> "Principle of Environmental Law in India", De Facto IAS, 26 February, 2020,

<https://www.defactolaw.in/post/principle-of-environmental-law-in-india>

<sup>49</sup> <https://www.indiatoday.in/india/story/india-ranks-7th-on-climate-change-performance-index-up-1-spot-from-last-report-2473903-2023-12-09>, visited on February 4, 2024.

