



VIDHIKIRAN

An Initiative by Legal Department, WCL

*A testament of academic
pursuit, legal acumen
and professional excellence*



TEAM LEGAL DEPARTMENT
Western Coalfields Limited, Nagpur



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पी० एम० प्रसाद
अध्यक्ष-सह-प्रबंध निदेशक

P. M. Prasad
Chairman-Cum-Managing Director



कोल इण्डिया लिमिटेड
COAL INDIA LIMITED

(Govt. of India Enterprise)
Premises No. 04 MAR, Plot No. AF-III
Action Area - 1A, New Town, Rajarhat
Kolkata - 700 163
CIN : 123109WB1973GOI028844

(An ISO 9001:2015, ISO 14001 : 2015 & ISO 26001:2011 Certified Company)

MESSAGE

As a civilized society we are all governed and guided by established laws. Laws, as a set of rules enforced by various governing authorities are crucial for systematic functioning of the society as they maintain order, protect rights, resolve conflicts, promote justice, and ensure all citizens live peacefully and equitably.

The coal mining industry is bound by many laws that cover the entire gamut of land, environment, safety, welfare, employment, disciplinary among others. It is imperative and important that officials dealing in these matters are periodically updated of the latest inclusions. Annual journals, seminars, workshops are useful communication tools for these knowledge updates.

I am glad to note that the Legal Department of Western Coalfields Limited has taken the initiative of publishing an Annual Journal "Vidhikiran" and is coming out with its second edition. This serves as a valuable resource for executives across all disciplines sparking meaningful conversations and contributes to a more informed legal culture in the organization. Especially, featuring thought provoking articles from legal experts.

While congratulating the legal team of WCL, I offer my Best Wishes for the success of the Journal.

P. M. Prasad
(P. M. Prasad) 09/04

Kolkata
09.04.2025

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डॉ. विनय रंजन
निदेशक (मा. सं.)
Dr. Vinay Ranjan
Director (H R)



5 DECADES OF UNEARTHING ENERGY

कोल इण्डिया लिमिटेड
COAL INDIA LIMITED
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A Govt. of India Enterprise
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MESSAGE

It is great pleasure to know about the release of the 2nd edition of "Vidhikiran", the Annual Journal of WCL Legal Department. This publication represents our ongoing commitment to enhancing legal awareness and providing in-depth analysis on a wide range of legal topics that are integral to our industry.

We extend our sincere congratulations and best wishes to all contributors and those involved in bringing this edition to life. May "Vidhikiran" continue to serve as a valuable resource, fostering intellectual exchange and advancing our collective understanding of the legal challenges and opportunities within the coal sector.

We look forward to the continued success of this esteemed publication and the meaningful insights it will provide to all its readers.

(Dr. Vinay Ranjan)

जय प्रकाश द्विवेदी
अध्यक्ष-सह-प्रबंध निदेशक

Jai Prakash Dwivedi
Chairman-cum-Managing Director



वेस्टर्न कोलफील्ड्स लिमिटेड
(भारत सरकार का मिनरी रत्न-श्रेणी-9 उपक्रम)

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FOREWORD

"In the pursuit of energy and progress, it is knowledge that lights the way."

The coal sector remains the backbone of India's energy security, powering industries, households, and economic growth. At Western Coalfields Limited, we recognize that while coal fuels the nation, knowledge and innovation fuel the future of the coal industry itself. In this spirit, I am proud to present the 2025 edition of our Research Journal *Vidhikiran* a significant milestone in our continuous journey of learning and excellence that began with the first publication in 2024.

Research has always played a pivotal role in shaping resilient, forward-looking organizations. In the coal industry, where operational challenges, regulatory frameworks, and societal expectations evolve constantly, the ability to anticipate change and respond thoughtfully is indispensable. Particularly within the legal domain, robust research underpins sound decision-making, ensures compliance, and safeguards the organization's interests while upholding fairness and transparency.

Vidhikiran is not merely an academic exercise; it is a testament to our collective commitment to embed a culture of inquiry, critical thinking, and continuous improvement within Western Coalfields Limited. By encouraging officers to delve deep into legal concepts, explore operational challenges, and articulate their insights, we are cultivating a workforce that is informed, responsible, and proactive. Over the past one year, the journey of *Vidhikiran* has mirrored our organizational aspirations — to nurture intellectual growth, to value informed perspectives, and to bridge the gap between knowledge and action. Each edition has strengthened our belief that research is not separate from the workplace; rather, it is integral to every role we perform, every decision we take, and every responsibility we shoulder.

I firmly believe that fostering research-based thinking among employees enhances organizational resilience, improves problem-solving abilities, and promotes a sense of ownership and engagement across all levels. *Vidhikiran* stands as a symbol of that endeavour — to inspire every member of Western Coalfields to see research not as an obligation, but as a vital part of professional excellence and service to the nation.

I commend all the authors for their scholarly contributions and congratulate the entire team for their meticulous efforts in bringing *Vidhikiran* to fruition. May this publication continue to inspire, to provoke thought, and to reinforce our collective commitment to the highest standards of learning, leadership, and operational excellence.


(Jai Prakash Dwivedi)

अनिल कुमार सिंह
निदेशक तकनीकी (संचालन)

Anil Kumar Singh
Director Tech. (Operation)



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MESSAGE

In today's dynamic landscape, legal awareness is indispensable for any organization, particularly one as operationally diverse and strategically significant as Western Coalfields Limited. From contractual obligations and statutory compliance to policy formulation and dispute resolution, a strong legal foundation is essential for responsible and sustainable governance.

I am truly pleased to witness the initiative undertaken by the Legal Department in the form of **Vidhikiran**, a publication that promises to illuminate the current legal frameworks and industry-relevant scenarios. This effort demonstrates a deep commitment to fostering a legally informed work culture within WCL. More than just a resource, it is a valuable reference designed to empower employees by enabling them to navigate legal procedures with clarity and confidence. Furthermore, it serves as a powerful reminder that legality, integrity, and transparency must remain at the core of all our decisions and actions.

I wholeheartedly commend the Legal Department for their dedication in bringing this vital initiative. I am confident that **Vidhikiran** will prove to be an invaluable guide for employees across all levels of our organization, contributing to a more legally aware and responsible workforce.

(Anil Kumar Singh)

बिक्रम घोष
निदेशक (वित्त)

Bikram Ghosh
Director (Finance)



वेस्टर्न कोलफील्ड्स लिमिटेड
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MESSAGE

It is with immense pride and satisfaction that I present the 2025 edition of Vidhikiran, the annual legal magazine of the Legal Department of Western Coalfields Limited. This publication marks yet another milestone in our collective pursuit of fostering a culture of knowledge, analytical thinking, and intellectual engagement within our organization.

In today's dynamic and highly regulated business environment, the coal sector operates at the confluence of multiple legal, financial, environmental, and societal obligations. For a public sector enterprise like Western Coalfields Limited, which plays a pivotal role in the nation's energy security, adherence to the highest standards of legal and financial governance is not merely a matter of compliance—it is a fundamental duty. In this context, initiatives like Vidhikiran become vital instruments in our efforts to deepen institutional understanding, promote interdepartmental learning, and build a workforce that is informed, responsible, and responsive to change.

Every financial transaction, contractual arrangement, policy formulation, and regulatory disclosure must stand on solid legal footing. It is here that the role of a proactive and research-oriented Legal Department becomes evident. When officers engage in research and writing, they not only enhance their own expertise but also contribute to a larger body of institutional knowledge that strengthens the organization as a whole.

Moreover, Vidhikiran is a reflection of our shared values: a commitment to transparency, accountability, and continuous improvement. It represents the Legal Department's vision to move beyond routine advisory roles and become a strategic partner in the organization's long-term success.

Director (Finance)
Western Coalfields Limited

आनंदजी प्रसाद

निदेशक तकनीकी (योजना/परियोजना)

Anandji Prasad

Director Tech. (Project & Planning)



वेस्टर्न कोलफील्ड्स लिमिटेड

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MESSAGE

"Legal knowledge is not just a shield against risk—it is a strategic asset that empowers organizations to act with confidence, integrity, and foresight."

It gives me immense pleasure to learn that the Legal Department of Western Coalfields Limited is launching the Legal Journal-**VIDHIKIRAN, Volume II**. This initiative reflects WCL's commitment to promoting legal awareness, intellectual growth, and a culture of compliance and excellence within the organization.

Legal knowledge plays a pivotal role in the coal industry, particularly for an organization like Coal India Limited (CIL), which operates within a complex framework of environmental regulations, land acquisition laws, labor legislations, and contractual obligations. With evolving policies and judicial interventions shaping the energy sector, a deep understanding of legal provisions is essential for ensuring compliance, minimizing risks, and safeguarding the organization's interests.

I extend my best wishes for this visionary step and for the continued success of this endeavor. This journal will serve as a cornerstone for interdisciplinary dialogue, legal scholarship, and strategic foresight—propelling WCL toward a future marked by resilience, innovation, and legal empowerment.

(Anandji Prasad)

डॉ. हेमंत शरद पांडे
निदेशक (मानव संसाधन)

Dr. Hemant Sharad Pande
Director (Human Resources)



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MESSAGE

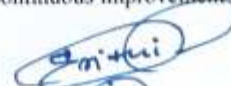
"Organizations that nurture inquiry today build resilience and leadership for tomorrow."

At Western Coalfields Limited, we have always believed that research is not an end, but a journey — a journey towards greater understanding, stronger governance, and responsible growth. It is with great pleasure that we present the 2025 edition of our Legal Research Journal- *Vidhikiran*, an embodiment of this belief and a tribute to the spirit of inquiry that defines our organization. This year's collection brings together a diverse range of scholarly contributions that touch upon both operational realities and wider legal principles.

Topics such as "Interpretations of Section 26 of the CBA Act, 1957" and "Environmental Clearance of Coal Mines: A Brief Study of Applicability of EIA Notification 1994" speak directly to the unique challenges of the coal mining sector. Issues central to employee welfare and administration — "Implementation of Disability Laws in India: A Legal Perspective", "Legal Perspective on Forfeiture of Gratuity due to Non-Vacation of Quarters", "Problem of Unauthorized Occupancy of the Government Accommodation", and "Legal Aspects of Promotion" — are examined with depth and clarity. Broader legal frameworks, which shape decision-making beyond the immediate industry, are thoughtfully addressed in articles such as "The Polluter Pay Principle and its Implementation in India", "Compulsory Licensing of Pharmaceutical Patents in India", and "The Hindu Succession (Amendment) Act, 2005: A Critical Analysis". Fundamental administrative and corporate law concepts, including "Wednesbury Principle of Unreasonableness", "Legitimate Expectation and Its Implications", "Concept of Royalty and Its Implications", "Seat and Venue in Indian Arbitration: A Crucial Distinction", and "Section 12 of the Arbitration & Conciliation Act", add further richness to this year's edition.

Vidhikiran is more than an academic contribution as it is a meaningful step towards enhancing legal awareness and promoting a culture of reflective practice within our organization. Through these efforts, we reaffirm our commitment to building an institution that not only meets regulatory standards but also strives to uphold the highest principles of justice, equity, and operational integrity.

I congratulate all the contributors whose research and insights have enriched this volume, and express sincere appreciation to the entire team behind this edition for their dedication and hard work in bringing this edition to life. May *Vidhikiran* serve as a catalyst for further learning, informed action, and continuous improvement in the years ahead.


Director (HR)

Western Coalfields Limited

अजय मधुकर म्हेत्रे (भा.दु.से.)
मुख्य सतर्कता अधिकारी

AJAY MADHUKAR MHETRE, ITS
Chief Vigilance Officer



मुख्य सतर्कता अधिकारी कार्यालय
वेस्टर्न कोलफील्ड्स लिमिटेड
कोल एस्टेट सिविल लाईन्स, नागपुर - ४४०००१

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MESSAGE

It is a matter of immense pride and satisfaction to witness the release of this Legal Journal, a compilation of thoughtful, analytical, and research-oriented articles authored by dedicated executives working across the Legal, Environment, and allied departments. This initiative reflects not only the intellectual strength within our organization but also a deep commitment to fostering a culture of continuous learning, legal awareness, and ethical governance.

The diversity and depth of topics covered—ranging from foundational legal doctrines like the *Wednesbury Principle of Unreasonableness* to sector-specific analyses such as *Environmental Clearance of Coal Mines and Legal Aspects of Promotions* showcase the interdisciplinary expertise of our officers. *Articles such as Disciplinary Proceedings, Legal Perspective On Forfeiture Of Gratuity Due to Non Vacation of Quarters*, are particularly relevant to the Vigilance Department, as they deal with issues commonly encountered in vigilance oversight. These topics highlight the importance of procedural integrity and legal clarity in handling service-related matters.

A sound understanding of evolving legal trends and jurisprudence strengthens our institutional integrity. This journal serves as a platform for knowledge-sharing and encourages introspection and discourse on key statutory and constitutional matters, including arbitration, succession laws, and public expectations from governance.

I congratulate all the contributors and the editorial team for their diligent efforts in bringing out this scholarly volume. This second edition further strengthens our commitment to fostering a sustained culture of legal scholarship within our organization. I am confident that this journal will inspire professionals across departments to further explore and document complex legal and environmental challenges with academic rigour and practical insight.

कार्यालय : मुख्य सतर्कता अधिकारी कार्यालय, वेस्टर्न कोलफील्ड्स लिमिटेड, कोल एस्टेट सिविल लाईन्स, नागपुर - ४४० ००१
Office of CVO Western Coalfields Limited, Coal Estate, Civil Lines, Nagpur - 440 001



PREFACE

It is with great pride and a deep sense of responsibility that I present the 2025 edition of Western Coalfields Limited's Research Journal. Now in its second consecutive year, this publication stands as a reflection of our organization's sustained commitment to fostering research, critical thinking, and a deeper engagement with the legal and regulatory frameworks that govern our operations.

The articles featured in this volume are a rich testament to the intellectual rigor and diversity of thought within our organization. They address a wide array of crucial topics that go to the very root of understanding key legal concepts and operational challenges faced by public sector enterprises like ours.

This edition features insightful studies such as "Interpretations of Section 26 of the CBA Act, 1957" and "Environmental Clearance of Coal Mines: A Brief Study of Applicability of EIA Notification 1994", both of which are highly relevant to the core of our industry. Papers such as "Implementation of Disability Laws in India: A Legal Perspective" and "Legal Perspective on Forfeiture of Gratuity due to Non-Vacation of Quarters" delve into critical aspects of employee rights and employer obligations, reflecting the growing importance of social and labor laws in organizational governance.

Operational and administrative challenges are thoughtfully analyzed through topics like "Problem of Unauthorized Occupancy of the Government Accommodation" and "Legal Aspects of Promotion", while disciplinary mechanisms are revisited through the paper on "Disciplinary Proceedings". The journal also includes discussions on broader legal doctrines, such as "Wednesbury Principle of Unreasonableness", "Legitimate Expectation and Its Implications", and the "Polluter Pay Principle and its Implementation in India", offering valuable insights into principles that increasingly influence policy and judicial decisions.

In addition, contemporary issues are explored in papers like "Compulsory Licensing of Pharmaceutical Patents in India" and "Concept of Royalty and Its Implications", further expanding the scope of this volume. Matters of corporate and commercial law are well represented with thoughtful analyses on "Seat and Venue in Indian Arbitration: A Crucial Distinction" and "Section 12 of the Arbitration & Conciliation Act", reaffirming the importance of precise legal understanding in dispute resolution. Furthermore, the "Hindu Succession (Amendment) Act, 2005: A Critical Analysis" provides a timely reflection on

evolving inheritance rights in Indian law.

The contributions made in Vidhikiran are result of focused research aiding in capacity building in the form of legal awareness among our employees. More importantly, this collection reflects a spirit of inquiry — a willingness to explore beyond immediate operational needs and engage with the evolving legal environment around us.

I extend my heartfelt gratitude to all contributors and the entire team who have passionately carried this initiative forward. I am confident that Vidhikiran will continue to serve as an important platform for intellectual growth and professional excellence within Western Coalfields Limited.

As we move forward, let us reaffirm our belief that robust research and a deep understanding of the legal landscape are not just academic exercises, but the foundation of responsible governance, ethical operations, and sustainable success.

HOD (Legal)
Western Coalfields Limited, Nagpur



The Hindu Succession (Amendment) Act, 2005: A critical analysis



Deepak Agarwal,
B.B.A., LLB (Hons.), NLUO, Cuttack
Assistant Manager (Legal), WCL HQ



INTRODUCTION

“The law must be stable and yet it cannot stand still. Hence all thinking about law has struggled to reconcile the conflicting demands of the need of stability and the need of change.”

- Roscoe Pound

The founding fathers of the Indian Constitution referred it as ‘organic living document’ by which they intended to throw a light on its dynamic nature.¹ The Constitution is considered as the grund norm of all the statutes as legislature draw its power of legislation from it. The parliament had many times made changes in the constitution to serve the interest of the society and to keep its spirit alive.

In India apart from secular statutes there are many personal laws of different religions. The State, by preserving personal laws of different religions, has been trying to uphold the heterogeneity of the nation however in a path to establish a heterogeneous society it has neglected the rights of citizens and specifically the women who for an eternity have been sidelined in nearly every culture.

¹Justice HR Khanna, *Making of Indian Constitution*, (Eastern Book Company 2008).

As far as Hindu personal laws are concerned there are several statutes related to marriage, divorce, adoption, succession and guardianship. Joint family system is pivotal mechanism which governs the Hindu matters of inheritance and these matters were governed by customary laws which varied from region to region. In order to bring a uniform codified law for governing the matters of Hindu succession, the parliament enacted the Hindu Succession Act, 1956. The said act was able to serve the interest of the people to some extent but it contained certain provisions which were gender bias in nature and causing undue hardship to the people of particular section of the society. Precisely these provisions were related to the concept of coparcenary, survivorship, pious obligations etc.

To cope up with the mischief of the said act the parliament had enacted the Hindu Succession (Amendment) Act, 2005. Though the act of 2005 eliminated some of the mischief present in the original act but it is not free from certain fallacies. Thus, the authors take this opportunity to give a critical analysis to the changes brought up by the amendment act in the principal act.

MISCHIEFS IN THE PRINCIPAL ACT

The Hindu Succession Act, 1956 was welcomed by the people with huge applause and higher hopes as it settled down the hustle and bustle created by the customary practices which vary from region to region. However, after sometime it was felt that this legislation contained various provisions which are gender bias in nature and causing undue hardship to the people of a particular section of the society. The provisions which were replete with deficiency can be described in the following manner:-

(a) Section 4(2) provided that “nothing contained in this Act shall be deemed to affect the provisions of any law for the time being in force providing for the prevention of fragmentation of agricultural holdings or for the fixation of ceilings or for the devolution of tenancy rights in respect of such holdings.”² After the enforcement of the Constitution, the debate about agrarian reforms was triggered which leads to enactment of many central and state legislations regarding the land holdings, fixation of ceilings etc. The laws which were made thereof were not free from customary

²Hindu Succession Act 1956, §4(2).

influence and were gender discriminatory³ and non-applicability of this act on those legislations clearly defeating the objectives of its enactment.

(b) Section 6 provided for an unreasonable and arbitrary doctrine of survivorship which means that male Hindu dies then his interest in the property shall devolve upon his surviving members i.e. his brothers and not on his wife or children. The inheritance rights were denied to the daughters, they were not considered as coparcenary in the Joint Hindu Family Property.

(c) Sections 8 & 15⁴ which provide for devolving of male Hindu dying intestate and female Hindu dying intestate respectively are gender bias in nature as they give preference to the agnates over the cognates. These sections are indicative of gender discriminatory practices prevalent in the Indian legal system.

(d) Section 23⁵ was gender bias in nature as it deprives the female heir to claim partition of the dwelling-house of a Hindu intestate.

(e) Section 24 of the Hindu Succession Act provides that “the three classes' widows specified in the section shall not be entitled to succession if they have remarried”, which is unjust and discriminatory in its very nature as it is based on unreasonable classification.

HINDU SUCCESSION AMENDMENT ACT, 2005: PROGRESSIVE REFORMS AND EXISTING AMBIGUITIES

To cope up with the mischief of the principal act, the parliament had enacted the Hindu Succession (Amendment) Act, 2005. The said act set up a platform for dealing with the inheritance matters in a more gender neutral manner and it also averted the undue hardships created by the principal act.

A. PROGRESSIVE REFORMS

³Paroma Sen, 'Customary Laws over land & land rights of women in Haryana' Science' [2015]20 IOSR-JHSS 10.

⁴Hindu Succession Act 1956, §§ 8 & 15.

⁵Hindu Succession Act 1956, § 23.

This Amendment has been undertaken almost five decades since the Hindu Succession Act of 1956 was passed and the government's move was considered a "milestone" by many feminists and legal thinkers. There are following remarkable changes brought up by this act:-

(a) The daughters are made coparcenary along with sons which means they will enjoy all the rights and subject to all liabilities as that of son with respect to coparcenary property.⁶

(b) The doctrine of survivorship has been eliminated.⁷

(c) The principle of pious obligation has been omitted which made it mandatory for the son to pay all the debts contracted by his father before his death on the premise that he will not attain salvation if son fails to fulfill this obligation.⁸

(d) Sec. 4 (2) of the principal act has been omitted which brings agricultural land at par with all other forms of property.⁹This reform has overridden inconsistent state laws and customary practices which have governed inheritance of agricultural land.

(e) Female heirs have been conferred a right to claim partition of the dwelling-house of a Hindu intestate.¹⁰

(f) It has deleted section 24 of the Hindu Succession Act which barred certain widows from inheriting the Hindu intestate's property if they remarried.¹¹

(g)It has introduced four new heirs in Class I category with respect to male intestate. This leads to addition of followings four heirs; son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased son.¹²

B. EXISTING AMBIGUITIES

⁶Hindu Succession (Amendment) Act 2005, § 6 (1).

⁷Hindu Succession (Amendment) Act 2005, § 6 (3).

⁸Hindu Succession (Amendment) Act 2005, § 6 (4).

⁹Hindu Succession (Amendment) Act 2005, § 2.

¹⁰Hindu Succession (Amendment) Act 2005, § 4.

¹¹Hindu Succession (Amendment) Act 2005, § 5.

¹²Hindu Succession (Amendment) Act 2005, § 7.

Though the act of 2005 eliminated some of the mischiefs present in the original act but it is not free from certain fallacies. The ambiguities or fallacies present in the amendment act rests on several counts:-

(a) Though the daughters have been made coparcenary along with son but the act is silent on the point that whether women can act as karta of the Joint Hindu Family? because as per customary practices only eldest male member can become a karta. In *CIT v. Seth Govindram Sugar Mills*¹³, the Supreme Court held that only coparcenary can act as a karta of Joint Hindu Family and the Delhi High Court in *Sujata Sharma v. Manu Gupta*¹⁴ held that "the eldest woman member of a Mitakshara Hindu Undivided Family (HUF) can be its Karta." Though this judgment is a progressive piece of legislation but it fails to remove the dust stick on women's position as a karta completely for two reasons; *firstly*, it is only applicable to the territory of Delhi; *secondly*, it is only related to daughter's eligibility to act as a karta and not to women in general.

(b) It can be stated undoubtedly that by giving daughters a status of coparcenary, the act of 2005 brought watershed changes in the sphere of Hindu personal laws but at the same time the other perplexities and injustice created thereof cannot be brush aside. After the amendment act, the daughter will become a coparcenary in her father's family and even after her marriage she will retain that status which allows her to enjoy membership of two Joint Hindu Families simultaneously i.e. one of her father and other of her husband. This leads to dilution of shares of Class 1 female heirs such as the deceased's widow and mother.

(c) The reading of Sec. 6 (5) along with its proviso can be explained in the following words that, "this act has no application on partitions which has been effected either by registered deed of partition or decree of court before the 20th day of December, 2004." This provision leaves untouched a situation where the father passed away prior to 9-09-2005 (the date of application of the amendment act) which takes a shape of ground wire with the passage of time as Supreme Court has taken two different view on this point, in the case of *Prakash v. Phulavati*¹⁵, it held that, "if the coparcener (father) had passed away prior to 09.09.2005, the living daughter of the coparcener

¹³1965 SCR (3) 488.

¹⁴CS (OS) No. 2011/2006.

¹⁵(2016) 2 SCC 36.

would have no right to coparcenary property.” And in *Danamma v Amar*¹⁶ it was held that, “if the father had passed away prior to 09.09.2005 and a prior suit is pending by a male coparcener for partition, the female will be entitled to a share in the partition.”

(d) Sec. 7 of Amendment Act, 2005 introduced four new heirs in Class I category; son of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased daughter of a pre-deceased daughter, daughter of a pre-deceased son of a pre-deceased daughter and daughter of a pre-deceased daughter of a pre-deceased son but it excludes two analogous heirs without any justification. Two of the male descendants in the daughter’s line are not listed as Class I heirs while their female counterparts are so listed. Thus “son of predeceased son of a predeceased daughter” as well as “son of a predeceased daughter of a predeceased son” of the intestate are not added under Class-I.¹⁷

CONCLUSIONS AND SUGGESTIONS

The laws are made to regulate the various spheres of the society, they cannot remain stagnant for a longer period otherwise the interest of the people will be compromised. The amendment is a tool by which principal laws are brought in consonance with the needs of the people in the society. The Hindu Succession (Amendment), 2005 is considered as the progressive piece of legislation as it did away with several mischiefs associated with the principal act and for the same reason it had been welcomed by the people with huge applause. But after critical analysis of this amendment act we found that there are some ambiguities associated with this act.

It is opined that enjoyment of membership in two Joint Hindu Families by the daughter simultaneously i.e. one of her father and other of her husband could be resulted in indirect dowry because pragmatically in Indian society when the daughter left her maternal house and shifted to the house of her husband then she left all the responsibilities associated with her by virtue of being daughter and completely become the part of the family of her husband. Moreover, if the girl takes away her share, brother-sister bond will be shattered, and in times of difficulty or trouble created by the in-laws, her family may not come to rescue her. Apart from this some perplexities are also

¹⁶AIR 2018 SC 721.

¹⁷The Law Commission of India, (Report no. 204).

revolving around the questions that (a) whether women can act as a karta of the Joint Hindu Family?, (b) whether the daughter would have any right in the coparcenary property if the coparcener (father) had passed away prior to 09.09.2005?.

After analyzing the progressive reforms brought by the Amendment Act of 2005 and ambiguities associated therewith, it can be observed that apart from rectifying technical glitches and elucidating upon nebulous areas of the Act, there is a need to interpret the law more benignly, to realize the prime objective behind the Amendment. The onus of give effective interpretation to the act and clear the ambiguities associated therewith lays on the judiciary and for its effective implementation the society also has to contribute in ways like spreading awareness, legal education, setting up legal forums for discussion of the problems encountered in the application of the new laws, etc.

It can always be hoped that Hindu Succession Amendment Act brings to fruition what was aspired by it at the time of its inception, reinforcing women rights and reinstating their long lost esteemed stature and eliminate the mischiefs associated with the principal act. According to authors there are following changes which should be incorporated in the Hindu Succession Act, 1956 to make it more pragmatic and gender neutral:-

- (1) The only unmarried daughters should be given status of coparcenary in the Joint Hindu Family so as to avert injustice done to Class 1 female heirs such as the deceased's widow and mother.
- (2) A specific provision has to be inserted by which a woman should be conferred a right to become a karta of the Joint Hindu Family.
- (3) The position regarding daughter's right in the coparcenary property if the coparcener (father) had passed away prior to 09.09.2005 has to be make clear.
- (4) Sections 8 & 15¹⁸ which provide for devolving of male Hindu dying intestate and female Hindu dying intestate respectively should be made more gender neutral by placing both agnates and cognates on equal footing.

¹⁸Hindu Succession Act 1956, §§ 8 & 15.

(5) Two analogous heirs “son of predeceased son of a predeceased daughter” as well as “son of a predeceased daughter of a predeceased son” of the intestate should be added under Class-I heirs.



Problem of Unauthorized Occupancy of the Government Accommodation



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India, being one of the most populous countries in the world, has faced resource constraints since independence. One such area of scarcity is the accommodation provided by the government to its employees. According to a report by Parliament's standing committee on urban development 2017-18, there existed a huge demand of 1.36 lakh accommodations for government officials in the general pool, while the actual availability was only 97,000. Lack of actual availability of government accommodation against such huge demand is aggravated by the unauthorized occupancy of government accommodation beyond the period of allotment. The unauthorized occupancy in government accommodation primarily occurs due to failure on the part of employees who have either been transferred to new places or retired from the employment, to vacate the accommodation provided by the government. The occupation of government houses/quarters allotted to employees beyond the period prescribed poses two challenges before the government. The first being inability to accommodate those persons who are in need of accommodation and waiting for allotment and the other being inability to effectively deal with the persons who continue to occupy the accommodation beyond the period prescribed.

One of the ways to deal with unauthorised occupancy is the charging of penal rent. However, over a period of time it has been observed that the charging of penal rent/market rent is not a sufficient alternative and the menace of unauthorized occupation is required to be dealt with firmly.

State legislatures have brought suitable amendments in the earlier Indian Penal Code, 1860 (in short 'the IPC') to tackle this menace. It is pertinent to mention here that States of Orissa and Uttar Pradesh had amended Section 441 of the IPC in its application to their States.

State of Orissa vide Section 2 of Orissa Act 22 of 1986, amended the section 441 of IPC as follows:-

"441. Criminal trespass.-Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

Or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person or with intent to commit an offence.

Or having lawfully entered into or upon such property, remains there with the intention of taking unauthorized possession or making unauthorized use of such property and fails to withdraw from such property or its possession or use, when called upon to do so by that another person by notice in writing, duly served on him,

is said to commit criminal trespass.”

Whereas State of Uttar Pradesh vide Section 2 of The Criminal Laws (U.P. Amendment) Act, 1961 amended the section 441 of IPC as follows:-

“441. Criminal trespass. - Whoever enters into or upon property in possession of another with intent to commit an offence or to intimidate, insult or annoy any person in possession of such property,

or having lawfully entered into or upon such property, unlawfully remains there with intent thereby to intimidate, insult or annoy any such person, or with intent to commit an offence,

or, having entered into or upon such property, whether before or after the coming into force of the Criminal Law (U.P. Amendment) Act, 1961, with the intention of taking unauthorized possession or making unauthorised use of such property fails to withdraw from such property, or its possession or use when called upon to do so by that another person by notice in writing, duly served upon him, by the date specified in the notice,

is said to commit 'criminal trespass.”

Thus, in these two States, the Governments could file criminal proceedings against the employees for the offence of criminal trespass in the case of unauthorized occupation of Government accommodation. This acted as a deterrent for any officer to live beyond the period prescribed.

Indian parliament, being aware of this situation, passed “**The Public Premises (Eviction of Unauthorised Occupants) Act, 1971**”. It is an important legislation to tackle the problem of unauthorized occupation. It governs the eviction of unauthorized occupants from public premises. The primary object of this Act is to provide a swift and efficient legal mechanism to evict individuals who are occupying government property without authorization, ensuring that public premises are used for their intended purpose and preventing misuse of government assets by unauthorized occupants; essentially safeguarding public interest by facilitating the quick removal of unauthorized occupants from public premises like government buildings and corporation properties.

What are Public Premises ?

Section 2(e) of the Act defines public premises in very wide terms and includes a wide range of properties. Any premises belonging to, or taken on lease or requisitioned by, or on behalf of the Central Government and includes any such premises which have been placed by that Government, under the control of the Secretariat of either House of Parliament for providing residential accommodation to any member of the staff of that Secretariat. Further, the definition extends to properties owned or controlled by companies where the Central Government holds a significant shareholding, corporations established by or under a Central Act, and other specified entities such as universities and institutes of technology etc. It is evident from the above that by defining the public premises in such wide terms parliament has tried to provide a legal framework for managing unauthorized occupations.

Eviction Process under the Act

The Act delineates a detailed procedure for the removal of unauthorized occupants. According to Section 4, If the estate officer has information that any person is in unauthorised occupation of any public premises and that he should be evicted, the estate officer shall issue a notice in writing within seven working days from the date of receipt of the information regarding the unauthorised occupation calling upon the person concerned to show cause why an order of eviction should not be made. Further, If the estate officer knows or has reasons to believe that any person is in unauthorised occupation of the public premises, he shall forthwith issue a notice in writing calling upon the person concerned to show cause why an order of eviction should not be made.

According to Section 5, after considering the cause, if any, shown by any person in pursuance of a notice under section 4 and any evidence produced by him in support of the same and after personal hearing, if any, the estate officer is satisfied that the public premises are in unauthorised occupation, he shall make an order of eviction, for reasons to be recorded therein, directing that the public premises shall be vacated, on such date as may be specified in the order but not later than fifteen days from the date of the order. The estate officer has the authority to use necessary force to evict the occupant if they fail to comply with the order.

Judicial pronouncement

The Act has been subject to various interpretations by the Courts. In the landmark case of, **Ashoka Marketing Ltd. v. Punjab National Bank, 1990 (4) SCC 406**, the Supreme Court examined the conflict between the Public Premises Act and the Delhi Rent Control Act, both of which are special enactments. The court has held that the Public Premises Act and the State Rent Control Acts were both referable to the concurrent list, and would be valid in their spheres, but Public Premises Act will prevail to the extent of any repugnancy. The Court has observed that:

“We are unable to accept the contention of the learned counsel for the petitioners that the provisions contained in the Public Premises Act cannot be applied to premises which fall within the ambit of the Rent Control Act. In our opinion, the provisions of the Public Premises Act, to the extent they cover premises falling within the ambit of the Rent Control Act, override the provisions of the Rent Control Act and a person in unauthorised occupation of public premises under Section 2(e) of the Act cannot invoke the protection of the Rent Control Act.”

The Supreme Court further explored this area of law in the case of **Express Newspapers Pvt. Ltd. v. Union of India, 1986 (1) SCC 133**, examining the actions of public authorities under the Public Premises Act. This case centered on the eviction of Express Newspapers from a government-owned property. The Court highlighted that while public authorities possess the authority to evict unauthorized occupants, such power must be exercised fairly, reasonably, and in alignment with the principles of natural justice. The ruling reinforced the notion that public premises should serve the public interest, but not at the expense of infringing upon the rights of individuals or entities without adequate justification. The court observed that:

“One should remember that the property belongs to the Union of India and the rights in it cannot be bartered away in accordance with the sweet will of an Officer or a Minister or a Lt. Governor but they should be dealt with in accordance with law. At the same time a person who has acquired rights in such property cannot also be deprived of them except in accordance with law. The stakes in this case are very high for both the parties and neither of them can take law into his own hands.”

Additionally, in the significant case of **Suhas H Pophale vs Oriental Ins. Co. Ltd. & Anr, AIR 2014 SC 1509**, the Supreme Court examined the question as to whether the rights of an occupant/licensee/ tenant protected under a State Rent Control Act, could be adversely affected by Public Premises Act? The court held that:

“As far as the eviction of unauthorised occupants from public premises is concerned, undoubtedly it is covered under the Public Premises Act, but it is so covered from 16.9.1958, or from the later date when the concerned premises become public premises by virtue of the concerned premises vesting into a Government company or a corporation like LIC or the Nationalised Banks or the General Insurance Companies like the respondent no.1. Thus there are two categories of occupants of these public corporations who get excluded from the coverage of the Act itself. Firstly, those who are in occupation since prior to 16.9.1958, i.e. prior to the Act becoming applicable, are clearly outside the coverage of the Act. Secondly, those who come in occupation, thereafter, but prior to the date of the concerned premises belonging to a Government Corporation or a Company, and are covered under a protective provision of the State Rent Act, like the appellant herein, also get excluded. Until such date, the Bombay Rent Act and its successor Maharashtra Rent Control Act will continue to govern the relationship between the occupants of such premises on the one hand, and such government companies and corporations on the other. Hence, with respect to such occupants it will not be open to such companies or corporations to issue notices, and to proceed against such occupants under the Public Premises Act, and such proceedings will be void and illegal. Similarly, it will be open for such occupants of these premises to seek declaration of their status, and other rights such as transmission of the tenancy to the legal heirs etc. under the Bombay Rent Act or its successor Maharashtra Rent Control Act, and also to seek protective reliefs in the nature of injunctions against unjustified actions or orders of eviction if so passed, by approaching the forum provided under the State Act which alone will have the jurisdiction to entertain such proceedings.”

Another important legislation to tackle the problem of unauthorized occupation is Companies Act, 2013. Section 452 of the companies Companies Act deals with the Punishment for wrongful withholding of property. It states that If any officer or employee of a company—

- a. wrongfully obtains possession of any property, including cash of the company; or
- b. having any such property including cash in his possession, wrongfully withholds it or knowingly applies it for the purposes other than those expressed or directed in the articles and authorised by this Act,

he shall, on the complaint of the company or of any member or creditor or contributory thereof, be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

(2) The Court trying an offence under sub-section (1) may also order such officer or employee to deliver up or refund, within a time to be fixed by it, any such property or cash wrongfully obtained or wrongfully withheld or knowingly misapplied, the benefits that have been derived from such property or cash or in default, to undergo imprisonment for a term which may extend to two years.

This petition u/s 452 of the Companies Act, 2013 lies before the Judicial Magistrate, exercising power to try offences under Companies Act. Apex Court in the case of **Gopika Chandrabhushan Saran and Another vs. M/s. XLO India Ltd. and Another reported in (2009) 3 SCC 342**, held as under:-

“The capacity, right to possession and the duration of occupation are all features which are integrally blended with the employment. Once the right of the employee or the officer to retain the possession of the property, either on account of termination of services, retirement, resignation or death, gets extinguished, they (persons in occupation) are under an obligation to return the property back to the company and on their failure to do so, they render themselves liable to be dealt with under Section 630 of the Act for retrieval of the possession of the property.”

Conclusion:- It is unfortunate that many employees, officers, public representatives, and other dignitaries continue to live in government-provided housing even after they are no longer eligible. Some occupy residences meant for their previous positions, which are beyond their current entitlement. Unauthorized occupants must understand that rights and responsibilities go hand in hand—one person's right comes with a duty towards others. By staying in these houses unlawfully, they are denying others their rightful accommodation. No law or rule can fully prevent this misuse; only a sense of responsibility and self-awareness among the occupants can bring real change.



Legitimate Expectation and Its Implications



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Introduction

Legitimate expectation is not defined by any law, however, this doctrine is used by the court for judicial review of administrative actions. The idea of legitimate expectation is fundamental to administrative law because it guarantees justice, fairness, and transparency in decisions made by the government that impact people and organizations. When someone has reasonable expectation about a particular treatment, or result based on a public authority's past actions, or representations, those expectations are known as legitimate expectation. The importance of legitimate expectation, their development in legal jurisprudence, and their consequences for administrative law and governance are all examined in this paper.

Halsbury's Laws of England defines legitimate expectation in the following words: *A person may have a legitimate expectation of being treated in a certain way by an administrative authority even though he has no legal right in private law to receive such treatment. The expectation may arise from a representation or promise made by the authority including an Implied representation or from consistent past practice.*"

The reasonable expectations that people or organizations form while interacting with public authority are known as legitimate expectations. These expectations can originate from a number of things, including clear commitments, customs, or the authority's prior consistent rulings.

For example, those asking for comparable licenses may rightfully anticipate being treated similarly if a government body has routinely issued licenses under particular criteria. The goal of the legitimate expectations theory is to prevent public authorities from arbitrarily undermining these expectations. By guaranteeing that people and organizations can trust the statements or actions of public entities, it fosters consistency, predictability, and equity in administrative decision-making.

It may be noted that the legitimate expectation does not mean mere anticipation or hope. In ***Jitendra Kumar & Ors. v. State of Haryana & Anr Appeal (civil) 5803 of 2007***, it was observed that “ a legitimate expectation is not the same thing as an anticipation. It is distinct and different from a desire and hope. It is based on a right. It is grounded in the rule of law as requiring regularity, predictability and certainty in the Government's dealings with the public and the doctrine of legitimate expectation operates both in procedural and substantive matters.”

A public body or administrative authority will be under an obligation by reason of

- a) representation,
- b) past practice, or
- c) conduct giving rise to an expectation which would be within its powers to fulfill.

If any person wants to make a claim by resorting to this doctrine, then the following points have to be satisfied namely:

- (1) The person relied on the said representation, and
- (2) The denial of that expectation has worked to his detriment.

It is necessary to highlight here that the aggrieved person can seek intervention of the court only if the decision taken by the authority was found to be arbitrary, or unreasonable, or in gross abuse of power, or in violation of principles of natural justice and if the decision is not taken in public interest.

Evolution in Legal Jurisprudence and Implications for Administrative Law

Over time, the idea of reasonable expectations has changed as a result of court rulings and legal research. Originally acknowledged by English administrative law, it has now been embraced and modified by several jurisdictions across the globe. In response to shifting governmental and administrative dynamics, courts have honed and broadened the definition of reasonable expectations to include a variety of circumstances and settings.

According to the case of ***Madras City Wine Merchants Association v. State of Tamil Nadu, (1994) 5 SCC 509*** Legitimate expectation may arise-

- “1. if there is an express promise given by a public authority; or
2. because of the existence of a regular practice which the claimant can reasonably expect to continue,
3. Such an expectation must be reasonable.”

As per the judgment in ***CCSD vs. Minister for the Civil Service, (1984) 3 AILER 935***, administrative action is subject to control by judicial review under three heads:-

“(i) illegality, where the decision making authority has been guilty of an error of law e.g. by purporting to exercise a power which it does not possess.

(ii) irrationality, where the decision making authority has acted so unreasonably that no reasonable authority would have made the decision;

(iii) procedural impropriety, where the decision making authority has failed in its duty to act fairly.”

The House of Lords, UK in ***Council of Civil Service Unions v. Minister for the Civil Service (1984)*** observed that reasonable expectations are upheld until they are superseded by competing public interests. This seminal decision established that unless there is a good basis to do otherwise, public authorities must keep their word or follow established procedures.

State of Karnataka v. Scheduled Caste and Weaker Section Welfare Assn. [(1991) 2 SCC 604] was the first Indian case to employ this doctrine. In this instance, the government published a notice detailing the regions where slum clearance programs will be implemented. However, the notification was later changed, omitting several previously informed places. The court determined that earlier notification had established reasonable expectations among the local population. Therefore, this legitimate expectation cannot be disregarded in the absence of a fair hearing. As a result, the Hon’ble Supreme Court acknowledged the procedural component of the theory and clarified that reasonable expectations cannot be rejected without providing a fair hearing to those who may be impacted.

The notion of procedural fairness was applied in ***Navjyoti Co-op. Group Housing Society v. Union of India [(1992) 4 SCC 477]***. In this instance, the seniority for land allocation based on the current list of cooperative housing societies was changed by a later decision. According to earlier regulations, the date of the company's registration with the Registrar determined the seniority of land allotment. On January 20, 1990, the policy was modified to base seniority on the day the final list was approved by the Registrar. The seniority of cooperative housing societies was changed as a result. The Hon’ble Supreme Court ruled that societies had a "legitimate expectation" that, even in the absence of a private right, past consistent allocation practices would be followed. It was decided that the doctrine imposed on public authorities effectively requires them to act properly by considering all pertinent aspects of that reasonable expectation. The fair dealing framework included the reasonable chance to provide representation in opposition to the policy change.

Legitimate expectations have significant effects on administrative law. It requires public officials to interact with people and organizations in a consistent, open, and equitable manner. By guaranteeing that administrative decisions are founded on reasonable and justifiable grounds rather than being arbitrary or capricious, this obligation strengthens the rule of law.

Furthermore, reasonable expectations act as a restraint on the authority of the executive. They

stop public officials from unjustly breaking their word or altering long-standing procedures without good cause. A functioning democratic society depends on responsibility and trust in governmental institutions, both of which are fostered by this.

Case Studies and Practical Applications

Several case studies illustrate the practical applications of legitimate expectations in administrative law. In *Ridge v. Baldwin* [1964] AC 40, the House of Lords held that a police officer had a legitimate expectation to be heard before being dismissed, despite no statutory requirement. This decision underscored the principle that procedural fairness is essential when administrative decisions affect individual rights or interests.

Similarly, in *R v. North and East Devon Health Authority, ex parte Coughlan* [2000] 2 LGLR 1, the Court of Appeal emphasized that where a public authority has made a clear promise to an individual that they will receive certain benefits or treatment, the authority is bound by that promise unless there is an overriding reason to depart from it. This case reaffirmed the enforceability of legitimate expectations in protecting individual rights against arbitrary administrative actions.

The administration of the Chandigarh Union Territory awarded plots under a development project and obtained full and partial payment in the case of *Hira Tikkoo v. Union Territory Chandigarh* [(2004) 6 SCC 765]. Later on, it was discovered that the Forest Act had already designated a portion of the land in question as reserved. Additionally, it violated the Aircraft Act because it was inside 900 meters of the air force's perimeter. As a result, the administration was unable to provide the allocated individuals with the land. The Supreme Court observed that *The administration would not be liable when there is mistaken advice or when representation is found to be infringing the statute.* "A man is not required by law to do anything that he is incapable of doing.

English courts have recently adopted a stance that strikes a balance between the public interest and ultra vires representation, or providing recompense to those who have been wronged by such counsel. The applicant in *Stretch v. U. K.*, (2004) 38 EHRR 12, was given a 22-year lease by an authority that was unable to award it. At the advanced stage of discussions, the applicant was acknowledged. The Court of Appeal acknowledged that the lease shouldn't have been renewed, but it also said that those authorities shouldn't have been allowed to profit from their error. However, the European Court of Human Rights rejected this argument and declined to award damages. It ruled that this action was not in the public interest, nor did it affect the constitutional duties of the authority concerned.

The 'Hedsor Water' portion of the Thames River was in issue in the *Rowland v. Environmental Agency* [(2003) EWCA Civ. 1885] case. The authorities deemed it open for the exercise of the right to public navigation. However, the authorities first agreed that there were no such privileges. Despite the validity of the standards, the Court of Appeal decided that the suit would fail. Peter Gibson L.J. observed in this case that *The action failed because legitimate expectations could only be granted against lawful claims.*"

They attempted a solution in which the authority would not aggressively encourage the use of the Hedsor water, but allowed navigation rights to exist. It was decided, therefore, that such "balance" need not be limited to situations in which the right had been acquired in accordance with the Convention. It ought to be used in every situation in which the public interest was not negatively impacted by the unconstitutional act.

Criticisms and Limitations

Despite its advantages, the doctrine of legitimate expectations is not without criticisms and limitations. Critics argue that it may unduly restrict the flexibility of public authorities to adapt to changing circumstances or correct past errors. There are concerns that an overly broad application of legitimate expectations could lead to administrative rigidity or hinder effective governance.

Moreover, determining the existence and scope of legitimate expectations can be complex and subjective, requiring courts to balance individual rights against public interests. This judicial discretion may result in inconsistent outcomes and uncertainty in the law, particularly in cases involving competing policy considerations or public welfare issues.

Conclusion

To sum up, reasonable expectations are a cornerstone of administrative law that protects accountability, consistency, and equity in governmental decision-making. It promotes trust and confidence in the administration by guaranteeing that people and organizations may rely on the promises and actions of public officials. Even if the concept has changed a lot as a result of court rulings and legal advancements, it is still essential for striking a balance between the public interest and individual rights. To maintain a fair and efficient administrative system, its implementation necessitates giving serious thought to the relevant circumstances and interests.

It is evident that the legitimate expectation hypothesis is based on the requirement for equity in administrative decision-making. The foundation of doctrine is fairness, which calls for the public entity to conduct itself fairly. Without a doubt, the concept of a genuine expectation has grown into an essential paradigm for assessing the decisions made by public bodies. Without a doubt, courts have developed this novel theory to evaluate administrative activity and uphold the need for fairness in administrative action. From being only a procedural doctrine, the theory of valid anticipation has gradually evolved into a substantive doctrine.



Concept of Royalty and its Legal Implications



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Meaning of royalty

The word royalty is derived from the notion that minerals were a property of the Crown. Therefore, anyone who wished to remove such minerals from the earth and use them for profit had to pay sum to the Crown. With respect to the present coal mining industry, this sum- royalty “...means the share of the profit reserved by the owner for permitting the removal of the coal and in the nature of rent”. (Kissick v. Bolton, 12 N.W. 95, 96).

The main legislation governing royalty in coal mining leases is the Mines and Minerals (Development and Regulation) Act, 1957 (hereinafter the MMDR Act). According to Section 9 of the MMDR Act, the holder of a mining lease shall “pay royalty in respect of mineral removed or consumed by him or by his agent, manager, employee, contractor or sub-lessee from the leased area” as the specified in the Second Schedule.

The Mineral Concession Rules, 1960 (hereinafter the Rules) supplement this Act and provide for the manner and method of calculation of royalty. Apart from that, the Rules also stipulate for essential clauses of a mining lease in Form K. Part V of Form K deals with rents and royalties reserved by the lease and specifies the rate and mode of payment of dead rent, royalty, surface rent, and the water rate. Part VII and VIII contain covenants to a mining lease such as undertaking to pay additional rents and taxes.

Nature of Royalty

With the statutory nature of royalty and its overlapping with levy of many taxes, there is a lot of comparison drawn between the two. This was the main subject of the Supreme Court judgment in *Mineral Area Development Authority & Anr. v. M/S Steel Authority of India & Anr. Etc. (Civil Appeal No. 4056-4064 of 1999)*. The case was referred to the Constitution Bench in the first place due to many conflicting decisions of the Supreme Court.

Prior to this judgment, in *Laddu Mal v. State of Bihar*, (AIR 1963 Pat. 491), the Court had held that “royalty on mines and minerals cannot be a fee but a levy of the nature of a tax. Royalty on minerals should be taken as an imposition of a tax or impost and would come under the definition given in Art. 366, C1.(28) of the Constitution. “

The Supreme Court in *India Cement Ltd v State of Tamil Nadu* (1990 AIR 85) held that "... royalty is a tax, and as such a cess on royalty being a tax on royalty, is beyond the competence of the State legislature because Section 9 of the Central Act covers the field and the State legislature is denuded of its competence under Entry 23 of List II. In any event, we are of the opinion that cess on royalty cannot be sustained under Entry 49 of List II as being a tax on land. Royalty on mineral rights is not a tax on land but a payment for the user of land."

Later, the Supreme Court sought to change this position in their decision in *State of West Bengal v Kesoram Industries Ltd* (2005 AIR 1646) by stating that, “In the first sentence the word 'royalty' occurring in the expression - 'royalty is a tax', is clearly an error. What the majority wished to say, and has in fact said, is - 'cess on royalty is a tax'. The correct words to be printed in the judgment should have been 'cess on royalty' in place of 'royalty' only. The words 'cess on' appear to have been inadvertently or erroneously omitted while typing the text of judgment.”

Finally, the issue was resolved in the final Supreme Court judgment, which also differentiated between royalty and tax by pointing out at differences in their nature.

Difference between Royalty and Tax

The judgment comprehensively covered characteristics of royalty to include:

- i. “it is a consideration or payment made to the proprietor of minerals, either the government or a private person;
- ii.it flows from a statutory agreement (a mining lease) between the lessor and the lessee;
- iii.it represents a return for the grant of a privilege (to the lessee) of removing or consuming the minerals; and
- iv.it is generally determined on the basis of the quantity of the minerals removed.”

These were then compared with essential characteristics of tax which include:

- i.“it is a compulsory exaction of money by a public authority;
- ii.it is imposed under statutory power without the consent of the tax payer;
- iii.the demand is enforceable by law;
- iv.it is an imposition made for public purposes to meet the general expenses of the state without reference to any special benefit to be conferred on the payer of the tax;
- v.it is part of the common burden”

Therefore, the two are different in terms of nature of payment, source of levy, authority levying the tax or royalty, return on payment, and measure of the payment. The Supreme Court concluded that “both royalty and dead rent do not fulfill the characteristics of tax or impost”.

Implications of the Judgment on Coal Mining Leases

The judgment provided a clear position on whether taxes levied by State and local governments shall be paid by government companies if they are already paying royalty by virtue of leases with the State Governments. However, the impact of the judgment is not clear if the wording of a statute is vague and if there are no leases but mineral bearing land is acquired. This special situation is created by the Coal Bearing Area (Acquisition and Development) Act, 1957.

According to sub-section (b) of Section 5 of the Act, once preliminary notification under Section 4 is promulgated, any existing mining lease on the land shall cease to have effect for so long as the notification is in operation. However, there are two ways in which the Act provides new leases can be executed on land which is to be acquired:

- a. where the rights under the mining lease are also acquired by the Central Government
- b. where the rights under the mining lease are not acquired

In the former case, the Central Government will become the deemed lessee of the State Government as if a mining lease under the Mineral Concession Rules. But in the second case, the implication of the Supreme Court judgment is not so clear-cut.

There is a special provision for a “sum in lieu of royalty” under the Act. This is because in the CBA Act, rights in or over such land are acquired free from all encumbrances. So, if there are no existing mining leases, the rights to work the mine also vest in the Central Government and subsequently to the government company.

In absence of Section 18A, there would be a huge loss of revenue to the State Government. But instead of directly applying provisions of the MMDR Act and the Rules, the provision states that where any land or any rights in or over land belonging to a State Government, other than the rights under a mining lease, vest in the Central Government or in a Government Company, the Central Government or the Company “may pay to the State Government such sum of money as would have been payable as royalty by a lessee had such land or rights been under a mining lease granted by the State Government.” Therefore, there is only an allusion to a sum akin to royalty but not to royalty under the MMDR Act or rules as in the case of acquiring rights under the mining lease.

Moreover, there are also High Court decisions differentiating “sum in lieu of royalty” from “royalty”. One such decision is that in *Managing Director, National Coal Development Corporation Ltd. and Ors. Vs. State of Bihar and Ors. (MANU/BH/0084/1984)*. The Patna High Court held that Dead Rent is not payable by reason of Section 18A. This is in itself a reason for peculiarity of Section 18A as the Supreme Court judgment clearly states that “where the holder of the mining lease also becomes liable to pay royalty under Section 9, such person shall be liable to pay either royalty or dead rent, whichever is higher.” As there is no dead rent payable, no royalty is payable. Therefore, the sum in lieu of royalty payable on land acquired CBA Act will be inferred to not be royalty.

The nature of sum under Section 18A is also deliberated in *Mahanadi Coalfields Ltd. v. Deputy Director of Mines, Talcher and Ors.* (MANU/OR/0668/2017). The Orissa High Court held that: “The C.B.A. Act being a self-contained Act involving coal mines, the M.M.(D.R.) Act for its independent nature has nothing to do with the transactions under the C.B.A.(A & D) Act, 1957.” The Court concluded that the State Authorities do not have the jurisdiction as there is “no prescription for application of the provision of either M.M.D.R Act or the M.C. Rules” and no provision for “for collection of interest on the amount involving transaction” under the CBA Act.

From these two rulings, the nature of what this sum is *not* is clear. However, what this sum *is* can be ascertained from examining its nature closely. This sum is compulsory exaction by a public authority- the State Government, and it is for a public purpose- coal mining. It is enforceable by law- the CBA Act and without the consent of or any special benefit to the acquiring body. It is also part of the common burden. This shows that the sum in lieu of royalty has all trappings of a tax. Therefore, if any state authority levies any tax on land acquired under the CBA Act, it may attract the principle of double taxation and any challenge to such a levy will not contravene the Supreme Court judgment.



Seat and Venue in Indian Arbitration: A Crucial Distinction



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The concepts of "seat" and "venue" are fundamental to understanding the jurisdiction and procedural aspects of arbitration under the Indian Arbitration and Conciliation Act, 1996. Section 20 of the Arbitration and Conciliation Act, 1996 states that:

- “(1) The parties are free to agree on the place of arbitration.
- (2) Failing any agreement referred to in sub-section (1), the place of arbitration shall be determined by the arbitral tribunal having regard to the circumstances of the case, including the convenience of the parties.
- (3) Notwithstanding sub-section (1) or sub-section (2), the arbitral tribunal may, unless otherwise agreed by the parties, meet at any place it considers appropriate for consultation among its members, for hearing witnesses, experts or the parties, or for inspection of documents, goods or other property.”

It is evident from the perusal of section 20 that the Act merely mentions the “place of arbitration” which is being used interchangeably with the terms “seat” and “venue”. While often used interchangeably in common parlance, they carry distinct legal implications that significantly impact the conduct and enforcement of arbitral awards.

1. Seat of Arbitration:

- **Definition:** The "seat" of arbitration, also referred to as the "juridical seat," is the legal home of the arbitration. It determines the curial law, which governs the procedural aspects of the arbitration.
- **Significance:**
 - It confers supervisory jurisdiction on the courts of that location. This means that the courts of the seat have the power to oversee the arbitral proceedings, including challenges to the arbitrator's jurisdiction and applications for interim measures.

- It dictates the procedural law applicable to the arbitration. For example, if the seat is in Mumbai, the procedural aspects will be governed by Indian arbitration law, regardless of where the hearings take place.
- It is crucial for determining the enforceability of the arbitral award. An award is considered a domestic award if the seat is in India, and a foreign award if the seat is outside India.

2. Venue of Arbitration:

- **Definition:** The "venue" of arbitration refers to the physical location where the arbitral hearings or meetings take place.
- **Significance:**
 - It is primarily a matter of convenience for the parties and the arbitrators.
 - It does not, by itself, confer jurisdiction on the courts of that location.
 - Hearings can be held in multiple venues, even if the seat is fixed in one location.

3. Determination of seat: The venue can be different from the seat. For instance, the seat may be London, but the hearings may be held in Delhi for the convenience of the parties. However, merely holding hearings in a particular location does not automatically make it the seat. It is vital that arbitration agreements clearly distinguish between the seat and the venue. If the agreement only mentions a "place" of arbitration, it is crucial to determine whether that place was intended to be the seat or merely the venue. The seat is typically determined by the parties' agreement in the arbitration clause. If the parties fail to agree, the arbitral tribunal may determine the seat, considering all relevant factors. Following are some landmark cases wherein the court highlighted some important factors which may be used as an aid to determine the seat of arbitration.

- **Landmark Cases:**
 - **Bharat Aluminium Co. v. Kaiser Aluminium Technical Services Inc. (BALCO) (2012) 9 SCC 552:** This case established the principle that the seat determines the curial law. The judgement followed the "Shashoua Principle," derived from the English case *Roger Shashoua v. Mukesh Sharma*, which suggests that in the absence of a designated seat, the venue can be considered the seat under certain conditions. This case significantly impacted the interpretation and application of the Indian Arbitration and Conciliation Act, 1996, in cases involving foreign awards.

Key takeaways from this judgement:

1. **Applicability of Indian Law:** The Supreme Court held that Part I of the Indian Arbitration Act applies only to arbitrations taking place in India. This ruling overturned the previous understanding that Part I could also apply to international commercial arbitrations held outside India.

2. **Party Autonomy and Choice of Law:** The judgment emphasised party autonomy, allowing parties to choose different laws to govern different aspects of their contract, including the arbitration agreement and the conduct of the arbitration.
3. **Determining Applicable Law:** The court provided a detailed analysis of how to determine the applicable law in cases with potentially conflicting clauses. It highlighted the importance of considering the parties' intentions and the overall context of the agreement.
4. **Exclusion of Indian Act:** In this specific case, the court found that the parties had chosen English law to govern the arbitration agreement. As a result, Part I of the Indian Arbitration Act was deemed to be excluded by implication.
5. **Impact on Foreign Awards:** This decision clarified that Indian courts do not have jurisdiction to set aside foreign awards if the parties have chosen a foreign law to govern their arbitration agreement.

Overall, the Bharat Aluminium case is a landmark judgment that provides crucial guidance on the interpretation of arbitration agreements and the applicability of Indian law to foreign awards. It emphasises party autonomy, clarifies the scope of the Indian Arbitration Act, and underscores the importance of clear drafting in arbitration agreements.

However, in 2018, uncertainty emerged as it was noticed that the Supreme Court had deviated from the Shashoua Principle. In **Union of India v. Hardy Exploration and Production (India) Inc. (Hardy Exploration) (2019) 13 SCC 472** the parties had selected that Kuala Lumpur was the venue of arbitration but were silent on the seat. After disputes arose between the parties, the arbitration proceedings commenced and the award was signed at Kuala Lumpur. Thereafter the appellant decided to challenge the award under the Arbitration and Conciliation Act, 1996 before the Delhi High Court contending that Delhi was the seat of arbitration. On appeal the Supreme Court delivered a judgment deviating from the Shashoua Principle and held that the parties had not chosen the seat of arbitration and noted that the Tribunal also had not made any findings with respect to the same. It was observed by the Hon'ble Court that the parties designated Kuala Lumpur as the venue of arbitration and thus it did not mean that Kuala Lumpur had become the seat of arbitration. The Court finally held that a venue could become a seat of arbitration only if something else is added to it as a concomitant.

However, the law was finally settled by the Hon'ble Supreme Court in case of **BGS SGS Soma JV v. NHPC Ltd. (2020) 4 SCC 234**, wherein the court held that the judgment in Hardy Exploration, being contrary to the Five Judge Bench in BALCO, cannot be considered to be good law. The court further held that:

“It may be concluded that whenever there is the designation of a place of arbitration in an arbitration clause as being the “venue” of the arbitration proceedings, the expression “arbitration proceedings” would make it clear that the “venue” is really the “seat” of the arbitral proceedings, as the aforesaid expression does not include just one or more individual or particular hearing, but the arbitration proceedings as a whole, including the making of an award at that place. This language has to be contrasted with language such as “tribunals are to meet or have witnesses, ex- perts or the parties” where only hearings are to take place in the “venue”, which may lead to the conclusion, other things being equal, that the venue so stated is not the “seat” of arbitral proceedings, but only a convenient place of meeting. Further, the fact that the

arbitral proceedings “shall be held” at a particular venue would also indicate that the parties intended to anchor arbitral proceedings to a particular place, signifying thereby, that that place is the seat of the arbitral proceedings. This, coupled with there being no other **significant contrary indicia** that the stated venue is merely a “venue” and not the “seat” of the arbitral proceedings, would then conclusively show that such a clause designates a “seat” of the arbitral proceedings.”

The Hon’ble Apex Court in **M/S Arif Azim Co. Ltd vs M/S Micromax Informatics FZE 2024 INSC 850** case once again clarified the distinction between the 'seat' and 'venue' in arbitration. In the present case, a dispute arose between an Afghan company and a UAE-based company with an Indian subsidiary. The distributorship agreement, executed in Kabul, designated Dubai as the venue and UAE law as the governing law. The petitioner sought arbitration under Indian law, while the respondent argued for Dubai as the seat. It was held by the Hon’ble Court that:

“In the present case as discussed in the foregoing paragraphs, the Distributorship Agreement, more particularly Clauses 26 & 27 respectively makes it abundantly clear that the seat of arbitration is in fact Dubai, UAE, furthermore both the law governing the contract and the curial law are not Indian laws. In such scenario, even if the argument of the petitioner that the non-exclusive jurisdiction clause had been incorporated to confer jurisdiction on other courts too is accepted in toto, even then this Court will not have any jurisdiction to exercise its powers under Section 11 of the Act, 1996 as neither the seat is India nor is the arbitration agreement governed by Indian laws. Since Part I of the Act, 1996 is inapplicable, the parties cannot confer any jurisdiction to a court which otherwise has no jurisdiction even if such conferment is permissible as per the Distributorship Agreement.”

Further it was held that, “The more appropriate criterion for determining the seat of arbitration in view of the subsequent decisions of this Court is that where in an arbitration agreement there is an express designation of a place of arbitration anchoring the arbitral proceedings to such place, and there being no other significant contrary indicia to show otherwise, such place would be the ‘seat’ of arbitration even if it is designated in the nomenclature of ‘venue’ in the arbitration agreement.”

The Supreme Court's decision in this case significantly impacts arbitration jurisprudence in India, providing much-needed clarity on the distinction between seat and venue. By prioritising party autonomy and emphasising clear drafting, the ruling promotes efficiency and predictability in arbitration proceedings.

Key Takeaways from this judgement:

1. **Seat as Exclusive Jurisdiction:** The judgment firmly establishes that determining the "seat" equates to an exclusive jurisdiction clause, granting sole jurisdiction to courts at the chosen seat. This overturns the previous notion of concurrent jurisdiction, where Indian courts could have limited oversight even with a foreign seat.
2. **Determining the Seat:** While the "closest connection test" previously played a role, the "Shashoua principle" now takes precedence. This principle presumes the designated venue as the seat unless the agreement explicitly states otherwise. However, the closest connection test remains relevant when the agreement lacks a clear seat designation.

3. **Forum Non Conveniens:** In cases with multiple potential seats, the doctrine of *Forum Non Conveniens* applies, allowing courts to decline jurisdiction in favour of a more appropriate forum.
4. **Party Autonomy:** The ruling underscores party autonomy in arbitration, with courts acting as facilitators rather than decision-makers. The parties' intentions and choices within the arbitration agreement hold paramount importance.

Conclusion:

In view of the above, it is crucial for the parties to carefully draft their arbitration clauses, clearly specifying the seat of arbitration. If the parties intend a particular location to be the seat, they should explicitly state so. The venue should be chosen based on practical considerations, such as the availability of facilities and the convenience of the parties and arbitrators. It is always best to have the seat clearly defined, rather than leaving it open to interpretation, to avoid costly and time-consuming legal battles. By understanding the distinction between seat and venue, parties can ensure that their arbitration proceedings are conducted smoothly and efficiently, and that the arbitral awards, once passed, remain enforceable without being subject to the further litigation over the issue of “seat” and “venue” .



LEGAL PERSPECTIVE ON FORFEITURE OF GRATUITY DUE TO NON-VACATION OF QUARTERS



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INTRODUCTION

Gratuity is a statutory benefit granted to employees as a token of appreciation for their long-term service. It ensures financial security to employees upon retirement, resignation, or in the event of death or disability. The payment of gratuity and its forfeiture is governed by **The Payment of Gratuity Act, 1972**. However, under specific conditions, gratuity of an employee may be forfeited by the employer upon retirement or termination. One such condition includes failure of employee to vacate the residential accommodation provided by employer. This article examines the legal framework governing gratuity forfeiture in India, particularly in cases of non-vacation of quarters through judgments of courts.

What is Gratuity?

Gratuity is a lump sum payment made by an employer to an employee in recognition of continuous service for a certain period. It is a statutory right and not a voluntary contribution from the employer.

Eligibility for Gratuity

Under **Section 4(1) of the Payment of Gratuity Act, 1972**, an employee is entitled to receive gratuity if:

- He/She has completed five years of continuous service with an employer.
- The payment is made on retirement, resignation, superannuation, death, or disablement due to accident or illness.
- In case of death or disablement, the five-year service condition is waived.

LEGAL FRAMEWORK

The Payment of Gratuity Act, 1972

The Payment of Gratuity Act, 1972, specifies conditions under which gratuity can be forfeited:

- **Section 4(6)(a):** Gratuity may be forfeited to the extent of damage or loss caused to the employer due to the employee's willful omission or negligence.
- **Section 4(6)(b):** Gratuity may be wholly or partially forfeited if the employee's services are terminated for:
 - (i) Riotous or disorderly conduct or any other act of violence on the part of the employee.
 - (ii) An offense involving moral turpitude committed during the course of employment.

The Act nowhere state non-vacation of residential accommodation provided by employer as a ground for forfeiture of gratuity.

Judicial Interpretation

Various courts of India have addressed the issue of gratuity forfeiture in cases of non-vacation of the residential accommodation provided by employer in several landmark judgments:

1. **Steel Authority of India Ltd. & Anr. v. Taraknath Sengupta & Ors.**¹

- **Background:** The employee retired but did not vacate the residential accommodation provided by employer. The employer withheld a portion of the gratuity, citing unauthorized occupation.
- **Court's Observations:** The Calcutta High Court held that the right to gratuity is statutory and cannot be curtailed by rules of the employer which do not have force of statute. The court emphasized that withholding gratuity for non-vacation of quarters is not permissible under the Payment of Gratuity Act, 1972.
- **Conclusion:** The employer was directed to release the withheld gratuity to the employee.

2. **Govind Soni v. The General Manager, Bishrampur Area of SECL & Ors.**²

- **Background:** The petitioner was denied gratuity due to alleged unauthorized occupation of company quarters post-retirement.
- **Court's Observations:** The Chhattisgarh High Court held that gratuity cannot be withheld for overstaying in government accommodation. The court emphasized that such withholding is not permissible under the Payment of Gratuity Act.
- **Conclusion:** The employer was directed to release the gratuity along with applicable interest.

3. **Sri Tapan Chandra v. Union of India & Ors.**³

- **Background:** The petitioner, after superannuation, continued to occupy the staff quarters and was denied gratuity on this ground.
- **Court's Observations:** The Calcutta High Court reiterated that the statutory right to gratuity cannot be curtailed except in line with the provisions of the Payment of

¹ WP No. 22336 of 2008

² Writ Appeal No. 61 of 2017

³ WP No. 22312 of 2018

Gratuity Act. The court noted that none of the conditions under Section 4(6) were met in this case.

- **Conclusion:** The court directed the employer to release the gratuity to the petitioner.

4. Steel Authority of India Limited vs. Raghendra Singh & Ors⁴

- **Background:** The respondent was allotted a residential accommodation as per the SAIL Scheme for allotment of leasing houses. The respondent neither deposited the balance amount in respect of quarter nor could the due amount be adjusted from his retiral dues.
- **Court's Observations:** The Supreme Court placed reliance on its decision in the case of *Secretary, ONGC Ltd. v. V.U. Warriar*⁵, wherein it was held that the commission could effect the recovery of dues payable by any officer from his gratuity amount, without obtaining his consent. The court emphasized that if an employee occupies a quarter beyond the specified period, the penal rent can be adjusted against the dues payable, including gratuity.
- **Conclusion:** The ruling allowed employers to adjust dues such as penal rent from the gratuity payable to the employee.

RECENT OBSERVATION

Recently, the **Regional Labour Commissioner, Bhopal** in its order dated 28/11/2024 had dealt similar issue and had observed through Section 4(1), 13 and 14 of Payment of Gratuity Act, 1972 and Article 300A of Constitution of India that gratuity amount is property of employee which cannot be forfeited or withheld without prescribed law. However, at the same time, company's quarter is also property of company and occupying the same without sanction of company is depriving company to use its property as management pleases. Emphasizing the principle of **one who seeks equity must do equity** which means both the parties must complete their legal obligation towards each other first before seeking justice. In present case employee has occupied

⁴ Special Leave to Appeal No. 11025/2020

⁵ (2005) 5 SCC 245

quarter and management withheld gratuity which can only be settled when both parties returns their legitimate properties of each other. Thus, the Commissioner concluded that employee is entitled to amount of gratuity when he will vacate quarter and hand it over to the company. Further, the Commissioner advised the management not to deduct penal rent and the employee will forgo his right of interest on amount of gratuity.

ANALYSIS

The perspective of judiciary on forfeiture or withholding of gratuity due to non-vacation of the residential accommodation provided by employer has evolved over time:

- **Statutory Provisions:** The Payment of Gratuity Act, 1972, does not explicitly list non-vacation of quarters as a ground for forfeiture. The specified grounds mainly relates to misconduct during employment that causes damage to the employer or involves moral turpitude.
- **Judicial Interpretations:** Earlier judgments, such as those by the Calcutta High Court, emphasized that gratuity is a statutory right and cannot be withheld for reasons not specified in the Act, including non-vacation of the residential accommodation provided by employer. However, subsequent rulings, including that by the Supreme Court, have recognized the employer's right to adjust dues like penal rent from the gratuity payable, especially in cases of unauthorized occupation post-retirement.

CONCLUSION

The forfeiture or withholding of gratuity due to non-vacation of the residential accommodation provided by employer to its employee is an important issue in India. While the Payment of Gratuity Act, 1972, does not explicitly provide for such forfeiture, judicial pronouncements have allowed employers to adjust dues like penal rent against the gratuity payable.



Implementation of Disability Laws in India: A Legal Perspective



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Implementation of Disability Laws in India: A Legal Perspective

Introduction

Persons with Disabilities (PwDs) constitute a significant portion of the global population, yet they continue to face substantial barriers in various aspects of life, including employment. In India, the 2011 Census recorded over 26.8 million individuals with disabilities, accounting for 2.21% of the total population. While legal frameworks such as the Rights of Persons with Disabilities (RPwD) Act, 2016, aim to ensure equal opportunities, the implementation of these laws often falls short, particularly in government employment.

Despite constitutional guarantees and affirmative action policies, PwDs encounter multiple challenges when seeking government jobs. These include barriers to entry, inaccessible workplaces, and limited career advancement opportunities. Issues such as non-inclusive recruitment processes, lack of assistive technology, and workplace stigma further hinder their professional growth. Even when PwDs secure government positions, they may struggle due to inadequate accommodations and biased performance evaluations.

Challenges in Implementing the RPwD Act, 2016

Despite the enactment of the Rights of Persons with Disabilities Act, 2016 (RPwD Act), several challenges hinder its implementation across states:

Barriers to Employment

Persons with Disabilities (PwDs) encounter significant challenges when seeking government jobs. Limited job opportunities mean that only a few positions are reserved for PwDs, and these often do not align with their skills and abilities. Additionally, both online and physical application processes are frequently inaccessible, making it difficult for PwDs to apply. A report by the Centre for Internet and Society revealed that a majority of Indian government websites remain inaccessible, preventing PwDs from completing essential tasks effectively.

Furthermore, the lack of disability-specific training programs limits their ability to compete with non-disabled candidates, further diminishing their chances of securing government employment. A study published in the *Journal of Disability Policy Studies* identified workplace

accessibility issues, harassment, and discrimination as key barriers preventing PWDs from obtaining government jobs.

Workplace Challenges

Even after securing employment, PWDs face numerous obstacles in the workplace. Many government offices and buildings lack proper accessibility, making navigation difficult. The absence of assistive technologies, such as screen readers and braille displays, further restricts their productivity. Additionally, stigma and bias from colleagues and supervisors create a hostile work environment, affecting their confidence and professional growth.

Career Advancement Barriers

PWDs also struggle with career progression due to systemic biases and insufficient support. Employers often hesitate to offer leadership roles to PWDs due to misconceptions about their abilities. The lack of workplace accommodations further prevents them from excelling in their roles. Additionally, biased performance evaluations may unfairly assess their capabilities, limiting their career advancement and overall job satisfaction.

Examples of Accessibility Failures

Several real-world cases highlight the persistent accessibility challenges PWDs face in government employment:

- In 2019, the Rajasthan government's website was found to be inaccessible to visually impaired users, violating disability rights laws.
- In 2020, a deaf government employee in Maharashtra struggled to communicate with colleagues due to the absence of sign language interpreters.
- In 2018, a wheelchair user in Delhi was unable to access a government building due to the lack of ramps and elevators, underscoring the infrastructural deficiencies.

A report by the Centre for Internet and Society further revealed that out of 7,800 government websites, 5,815 had accessibility barriers, and 1,985 failed to open, emphasizing the lack of an inclusive digital infrastructure. Similarly, a study published in *BMC Public Health* found that negative employer attitudes and limited social support significantly hinder employment opportunities for PWDs.

Systemic Challenges

Beyond employment and workplace difficulties, broader systemic issues continue to impede the empowerment of PWDs. The absence of designated authorities for limited guardianship affects decision-making structures meant to support them. In rural areas, many PWDs remain unaware of their rights, while public infrastructure remains largely inaccessible.

Non-appointment of State Commissioners for PwDs (Section 79)

The absence of these regulatory bodies impedes monitoring, fund disbursement, and enforcement. Due to non-appointment, the grievances of PwDs are not addressed in a timely manner, causing hardship in their daily lives. Most cases or applications filed before commissioners come from persons with disabilities who are engaged in some form of service, whether private or government. The lack of grievance redressal results in hurdles to their normal living. A critical barrier is the absence of an effective oversight and enforcement mechanism due to the insufficient number of State Commissioners for PwDs. These officials, mandated under

Section 79 of the RPwD Act, are responsible for monitoring implementation, reviewing safeguards, addressing complaints, and liaising with authorities to ensure corrective action. The failure of numerous state governments to appoint State Commissioners has severely compromised monitoring and accountability at the state level, leaving a vacuum in the Act's envisioned rights protection framework.

Non-creation of State Funds for PwDs (Section 88)

Financial support for PwDs remains inadequate due to the non-establishment of dedicated state funds.

Failure to Constitute Special Courts and Appoint Special Public Prosecutors (Sections 84 and 85)

The lack of judicial mechanisms results in delayed justice. This leads to a scarcity of lawyers well-versed in disability laws, causing PwDs to lose cases and have their rights inadequately protected. Additionally, there are very few judges specializing in disability laws, reducing the number of professionals capable of effectively defending the interests of PwDs. The lack of knowledge and resources creates significant hardship in litigation, often leading to unfavorable outcomes.

Deficiencies in Disability Certification and High-Support Needs

The absence of assessment boards affects the issuance of disability certificates and the provision of required assistance.

- India has demonstrated its commitment to disability rights through multiple legal and policy initiatives:
- Constitutional Provisions: Articles 14, 15, 19, and 21 ensure equality, non-discrimination, and dignity. Article 41 directs the state to secure employment and educational opportunities for PwDs.
- Rights of Persons with Disabilities Act, 2016: Expanded the definition of disability, increased job and education reservations, and imposed penalties for discrimination.
- Mental Healthcare Act, 2017: Recognized mental health as an integral part of disability rights.
- Rehabilitation Council of India Act, 1992 & National Trust Act, 1999: Focused on rehabilitation and empowerment.
- International Commitments: As a signatory to the UN Convention on the Rights of Persons with Disabilities (UNCRPD), India is obligated to uphold disability rights globally.

Barriers to Implementation

Several structural and operational barriers hinder the effective implementation of disability laws:

- **Judicial Delays:** Legal procedures remain complex and inaccessible to many PwDs.

- **Social Stigma:** Discriminatory attitudes persist, hindering employment, education, and social inclusion.

Judicial Interventions

The judiciary has played a crucial role in advancing disability rights, as underscored by the Supreme Court's series of orders in *Seema Girija Lal v. Union of India*. The initial court order in January 2023 exposed glaring gaps in compliance by various states, prompting the Supreme Court to issue successive orders urging the Department of Disabilities, under the Ministry of Social Justice and Empowerment, to coordinate with state governments.

Despite the Court's orders, which included deadlines for collaboration, many provisions of the Act remain largely unimplemented. The Court called for the appointment of State Commissioners (Section 79), the establishment of Special Courts, the designation of Public Prosecutors (Sections 84 and 85), and the formulation of rules (Section 101). However, as evidenced by the April 2024 order, non-compliance persists.

Some landmark judgments include:

- *Jeeja Ghosh v. Union of India (2016)*: The Supreme Court awarded compensation to a disability rights activist who was deboarded from a flight due to her disability, emphasizing the need for sensitivity and non-discrimination.
- *Deaf Employees Welfare Association v. Union of India (2014)*: The Delhi High Court directed the government to fill vacancies reserved for PwDs in a time-bound manner.
- *Vikas Kumar v. UPSC (2021)*: The Delhi High Court upheld the rights of candidates with disabilities, mandating fair evaluation and equal opportunities in competitive examinations.
- *Rajive Raturi v. Union of India (2017)*: The Supreme Court directed all states and union territories to make public infrastructure accessible in line with the RPwD Act.
- *Bhavya Nain v. High Court of Delhi (2024)*: The judgment held that a disabled person may hold the office of a judge in a lower court, directing courts to review policies and make accommodations to include PwDs in judicial roles.

Policy Recommendations

To bridge the implementation gap, the following measures are necessary:

- **Strengthening Monitoring Mechanisms:** Establishing state-level oversight bodies.
- **Capacity Building:** Training officials, educators, and employers on disability rights.
- **Incentivizing Private Sector Participation:** Offering tax benefits for hiring PwDs.
- **Improving Accessibility:** Conducting regular audits to ensure compliance with accessibility norms.
- **Community Engagement:** Conducting awareness campaigns to combat stigma and promote inclusivity.

Conclusion

India's legal framework for disability rights is robust, yet its inconsistent implementation continues to create barriers for Persons with Disabilities (PwDs), particularly in government employment. While the Rights of Persons with Disabilities (RPwD) Act, 2016, aims to ensure equal opportunities, challenges such as inaccessible recruitment processes, workplace barriers, and social stigma persist.

To bridge the gap between policy and practice, several key measures must be adopted. First, government agencies must ensure accessible application processes and workplaces by improving digital platforms and physical infrastructure. Second, disability-specific training programs and assistive technologies should be integrated into workplaces to enhance productivity and career growth. Third, fostering awareness and sensitivity among colleagues and supervisors is crucial in eliminating biases and creating an inclusive work environment. Fourth, transparent and fair performance evaluations must be implemented to ensure PwDs receive equal career advancement opportunities.

Ultimately, disability inclusion is not just a legal requirement but a societal obligation. Strengthening monitoring mechanisms, enforcing accountability, and fostering collaborative efforts across sectors will pave the way for a more inclusive India, where PwDs can participate fully and contribute meaningfully to the nation's progress.



Compulsory Licensing Of Pharmaceutical Patents In India



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INTRODUCTION

Basically, patents are the absolute privileges given to an individual that creates a novel and valuable process or product. Further, a patent grants an exclusive privilege for a period of 20 years to the owner of patent so as to restrict remaining peoples from misusing the creation¹. Moreover, the patents are particularly granted to the creators for their ability, exertion as well as assets to stimulate the novelty². The Government provides the patent provided that the creator has fully revealed the creation³. Unless there is existence of scheme⁴ of patent the creator will not be in a position to be cheered to reveal his creation and he may opt to maintain his creation as trade secret, which may result in apathy to the progress of fresh machinery⁵.

The study in the area of pharmaceuticals and medicines is costly, time absorbing and particularly unforeseeable in essence. Creator's pharmaceuticals associations hence make efforts to achieve their study patented so as to restrict market access of their opponent's narcotic drug associations. Further, there may be situations when the patent privileges are misused by the creators of patent⁶. The pharmaceuticals associations that are in possession of patent privileges may not cheapen the patented medicines in their own nation or may also not grant the medicines in requisite amount to accommodate the needs of the community and they may also raise the value of the medicine very huge. Medicines being the most important product, the misuse activities by the associations can greatly provoke the agony of the inmate, particularly the indigent peoples.

¹ Compulsory license under agreement on TRIPS, Gupta R.

² See Journal of Intellectual Property Rights. Compulsory Licensing under the TRIPs.

³ See Intellectual Property Rights in India: Significance of Patents.

⁴ See Journal of Intellectual Property Right, Volume 16.

⁵ See the case of Natco Pharma Ltd. v/s Bayer Corporation, 2012.

⁶ See Compulsory Licensing of Medicines and Pharmaceuticals by Chaturvedi.

In an effort to restrain the misuse of patent privileges⁷, provisions of the concept of compulsory license are introduced in the laws of patent. The WTO i.e. World Trade Organization⁸ has explained the meaning of the concept of Compulsory Licensing as a process where the government grants other person to develop the patented commodity or to the patented method beyond the assent of the holder of the patent. So, the Compulsory Licensing⁹ is the main part on preservation of patent incorporated under the agreement of TRIPS¹⁰.

The Compulsory Licensing is basically an unintentional agreement betwixt an active purchaser and reluctant vendor levied or sanctioned by the legislation¹¹. It enables a third body to prepare, benefit or advertise a patented creation beyond the assent of the owner of patent. Basically, in India the concept of Compulsory Licensing and the authorization of patent privilege are guided by the Indian Patent Act, 1970.

INTERNATIONAL ORGANIZATION GUIDING COMPULSORY LICENSING¹²

A) PARIS CONVENTION

The Paris Convention on Protection of Industrial Property properly considers representative's privilege to provide compulsory license. The number of members of are 176 including India¹³. As per its Article 5A, representatives can provide licenses to restrain misuse of privileges of patent. Provided that:

- 1) One cannot administer for the compulsory license if there is deficiency to perform or inadequate working prior to termination of term of 4year from the date of registering of

⁷ See the effects of compulsory license on innovation and access to health care.

⁸ WTO is a global institution that deals with norms of trade among nations.

⁹ This concept was brought by U.K. in 1623 by its Statutes of Monopolies.

¹⁰ See Compulsory Licensing of TRIPS and Pharmaceuticals.

¹¹ See the Journal of Technology and Law, 1993.

¹² See compulsory licensing: An emerging trend towards Indian-patent regime.

¹³ See Compulsory licensing- need or not?

application for patent or 3 years from the date on which the patent was permitted have transpired¹⁴.

- 2) In case patentee shows his inability by valid logics, his license may be declined.
- 3) The license must be non-absolute and non-assignable.

B) TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS¹⁵

ARTICLE 30: Representatives may give definite exclusions to absolute privilege granted by the patent but the condition is that such patent should not irrationally compete with profiteering of patent and should not irrationally affect valid interest of patent holder.

ARTICLE 31: The Trade Related Aspects of Intellectual Property Rights governed by the WTO comes into force on January, 1995. The agreement on TRIPS has established the rules of IP for the manufacturing schemes throughout the nation. Moreover, it has set up lowest guidelines/necessity for the safeguard of Intellectual Property which is to be accepted by all its representative nations. Further, agreement of TRIPS provides some adaptability which allows developed and minimum-developing nations to adopt the standards of TRIPS in such a way that allows them to seek their individual procedure like safeguard of public well-being and advancement of connection to drugs¹⁶.

There is no explicit mention of the concept “Compulsory Licensing” in the agreement of TRIPS but it is recognized in Article 31 of TRIPS. This concept is an element of TRIPS adaptability which desires to maintain a harmony betwixt popularizing approach to existent medicines and popularizing study and progress in fresh medicines¹⁷.

¹⁴ See WIPO: Paris Convention for Protection of Industrial Property, 1883.

¹⁵ See WTO legal texts- summary of Uruguay Round.

¹⁶ See WIPO. TRIPS Agreement.

¹⁷ See TRIPS and Pharma patents.

The essential necessity under Article 31 of TRIPS agreement for the compulsory licensing¹⁸ is as follows:

- 1) Authorizing on personal virtues: Every application for the authorization of compulsory license to be recognized on personal virtues. This is provided under Article 31(a).
- 2) Earlier attempts is essential for acquiring compulsory license: The only requirement through which compulsory license might be granted is if the aspirant has formed earlier attempts to acquire willing license from the person granting patent on justified agreement. This provided under Article 31(b).
- 3) License in matter of semi-conductor machinery: Here, the license will be granted exclusively for non-profitable usage or to cure aggressive business activities. This is given under Article 31(c).
- 4) Non-absolute ground: The license will be provided only upon non-absolute grounds which are given under Article 31(d).
- 5) Non-transferrable: The license granted cannot be transferred further. This is provided in Article 31(e).
- 6) Potent usage for the domiciliary business: The license will be given exclusively for the purpose of potent usage in the domiciliary business¹⁹ of that nation which is providing the license. This is in Article 31(f).
- 7) Expiration of Compulsory License: If the demand has been made by the patentee to the efficient administrator for the expiration of license then he can expire his license as per Article 31(g).
- 8) Sufficient compensation to the patentee: After taking into consideration the financial worth of license given there shall be provides a sufficient compensation to the patentee. This is laid down under Article 31(h).
- 9) Judgment on the basis of legal analysis: The constitutional legitimacy of all the judgments is based on legal analysis in the nation that provides the license as given in Article 31(i) and Article 31(j).

¹⁸ See Instances of health-related compulsory licenses.

¹⁹ See World Trade Organization.

10) Appropriate scrutiny in matters of contradictory activities: If it is seen that the patentee is involved into contradictory activities then the representative nations is not bound to administer the situations of “previous attempts of the claimant essential to achieve a willing license”. This is given under Article 31 (k).

11) Licensing of connected patent: Partner of a patent can administer for the permit of license in regard to other patent. This is provided under Article 31 (l).

C) DOHA DECLARATION OF PUBLIC HEALTH AND TRIPS²⁰

The fourth clerical seminar²¹ of WTO took place in Doha, on 14th of November, 2001. In this seminar “Declaration on Public Health and Agreement on TRIPS”²² was accepted by the representatives of WTO²³. The following things were considered and guaranteed by representatives of WTO, as per the Doha Declaration:

- a) The agreement on TRIPS must not restrain representatives from adopting means to safeguard well-being of community.
- b) Every representative has privilege to decide what comprises interstate necessity²⁴ or other situations of intense necessity²⁵.
- c) Every representative has privilege to provide licenses.

The main point to be noted is that the 6thPara of the Doha Declaration considered that the agreement of TRIPS narrowed the competent usage of licensing in those nations that does not possess requisite production ability in the field of pharmaceuticals. It was also given in Article 31(f) that the license will be given exclusively for the purpose of potent usage in the domiciliary business of that nation which is providing the license²⁶.

²⁰ This concept was adopted in Doha on 14th November, 2001.

²¹ See The Doha Round’s Public Health Legacy.

²² See Doha Declaration on Public health and TRIPS.

²³ See Canada’s Access to Medicines Regime,” American Journal of Law & Medicine”.

²⁴ See Population of India, Google.

²⁵ See India’s Population, Google.

²⁶ See the Limitations of Compulsory Licensing. The Health Law Journal.

The WTO's General Council in 2003, accepted the judgment on fulfillment of 6thPara²⁷ of the Doha Declaration on Public Health and TRIPS, and this lastly concluded in the shape of Protocol to rectify the agreement of TRIPS in the year 2005²⁸. Finally, the 6thPara rectified Article 31(f) and permitted representative nations to grant licenses for transport of patented pharmaceuticals commodities to the nations with inadequate production abilities in this field.

PROVISIONS OF COMPULSORY LICENSE IN INDIA

Sections 80 to 92 given in Chapter XVI of Indian Patent Act, 1970 provides for the permit of license. Further there are also some rules contained under Rules 96-102 provided under Chapter XIII of Patent Rules, 2003²⁹ that talks about compulsory license³⁰.

i) Compulsory License under section-84

A license may be permitted to willing individual only after termination of period of 3years from the date of permit of patent on any one the below given criteria which are as follows:

- a) Creation that has obtained patent is not accessible to the community at a justified low-cost amount.
- b) Creation that has obtained patent is not processed in the Indian domain.
- c) A justified criterion of community with regard to the creation that has obtained patent has not contended.

ii) Compulsory license for trading of pharmaceuticals commodities as per section 92A³¹

²⁷ See doi:http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm.

²⁸ See World Trade Organization. The Amendment of TRIPS Agreement.

²⁹ See Indian Patent Act, 1970 as amended in 2002 by Patents (Amendment) Act.

³⁰ See Manual of Patent Practice and Procedure.

³¹ See Natco Pharma Ltd. v/s Bayer Corporation.

This section permits production and trading of pharmaceuticals commodities³² to nations with deficient or no productions abilities for the said pharmaceuticals commodities to address the well-being issues of community³³. They will be given license on a condition that they permit a license to the aspirant (if commodity gets a patent in that nation) or if they permit admittance of those pharmaceuticals commodities that got patent from India (if the commodity does not get a patent in that nation).

Case: Natco v/s Bayer Case³⁴

On 9th of March,2012 the very first compulsory license of India was given by office of patent to the Natco Pharma limited, for the purpose of manufacturing generic form of Nexavar that was a patented commodity of the Bayer’s Corporation and which is helpful in the cure of cancer of kidney and liver.

The matter was decided by the Controller wherein he was against the Bayer³⁵ on all the three parameters that were provided under section-84³⁶ of Indian Patent Act, 1970.

COMPULSORY LICENSE IN COMPLIANCE WITH TRIPS OR NOT?

To identify if India has abide by the TRIPS necessity for the compulsory license, we have made contrast between the provisions of compulsory license as per the agreement on TRIPS and the Patent Act, 1970.

Comparison

S.NO.	TRIPS necessity for compulsory licensing	Appropriate section in Patent Act,1970	India abide by TRIPS (Yes or No)

³² See Indian Pharmaceutical Industry Report.

³³ See Gene Patents and Public Health.

³⁴ See Intellectual Property Appellate Board, Order No. 45/2013.

³⁵ See Economic Times, 4th March 2013.

³⁶ See Vishwanthan M. The government refused to revoke Novartis patent.

1	Authorizing on personal virtues. Under Article 31(a).	Section 84(6) (i), (ii) and (iii)	Yes
2	Earlier attempts are essential for acquiring compulsory license. Under Article 31(b).	Section 84 (6) (iv)	Yes
3	License in matter of semi-conductor machinery. Under Article 31(c).	Section 90 (1) (viii)	Yes
4	Non-absolute ground. Under Article 31(d).	Section 90 (1) (iv)	Yes
5	Non-transferrable. Under Article 31(e).	Section 90 (1) (v)	Yes
6	Potent usage for the domiciliary business. Under Article 31(f).	Section 90 (1) (vii)	Yes
7	Expiration of Compulsory License. Under Article 31(g).	Section 94	Yes
8	Sufficient compensation to the patentee. Under Article 31(h).	Section 90 (1) (i)	Yes
9	Judgment on the basis of legal analysis. Under Article 31(i) and (j).	Section 117A	Yes
10	Appropriate scrutiny in matters of contradictory activities. Under Article 31(k).	Section 84 (6) (iv) and Section 90 (1) (ix)	Yes
11	Licensing of connected patent. Under Article 31(l).	Section 91	Yes
12	Trading of patented pharmaceutical commodities.	Section 92A	Yes

From the above analogy it is clear that all the necessities for licensing as given in agreement on TRIPS in in consonance with the Patent Act, 1970. So, it can be wound up by saying that all the provisions of licensing under Patents Act, 1970 are completely in compliance with TRIPS.

CONCLUSION

So, the compulsory licensing is an efficient instrument to safeguard the misuse of privilege of patents. Representative nations are allowed to permit license as per agreement on TRIPS. From the above analysis it is clear that all the parts of compulsory license are in consonance of agreement on TRIPS. Till now, there is a single license which is given to India and that is also in consonance with already existent international trade norms. The important goal of compulsory license is to reform approach to patented drugs. Due to this there is a rise of clash in the domestic market which further results in lowering of value of medicines.

Further, Agreement on TRIPS as well as Doha Declaration regarded compulsory licenses as an essential ingredient to grant advantage of well-being to the community without doing any kind of prejudice in respect of complexion, race, religion or nation. So, basically it grants adaptability as the necessity of each nation and each ailment varies.



Environmental Clearance of Coal Mines

A brief study of applicability of EIA notification 1994



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Introduction

Protection of Environment is of utmost importance for a nation while achieving its development goals. As such, an "Environmental Clearance" (EC) is a mandatory government approval required for certain development projects, ensuring that the proposed Industrial / development activity minimizes environmental damage by assessing its potential impacts and imposing conditions to mitigate them.

In the context of Coal India Limited (CIL), securing Environmental Clearance is a mandatory pre-requisite for the Coal Mining Operations. For the purpose, Coal is considered as a Major Mineral i.e. mentioned as Specified Mineral Part-A in the First Schedule of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act). Further, as the categorization provided by CPCB (Latest issue January, 2025), "Opencast & Underground Coal Mining" is considered as a RED category industry.

Environmental Laws in India

The concept of preserving and maintaining Environmental Quality is embedded itself in the Constitution of India. Right to live is a fundamental right under Article 21 of the Constitution and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life.

The Constitution provides, Duties of the state Article 48A : The state is required to protect and improve the environment, including forests and wildlife, Article 47 : The state is required to improve public health, which includes protecting and improving the environment. Further, the Fundamental duties of citizens Article 51A(g) provides : Citizens are required to protect and improve the environment, including forests, lakes, rivers, and wildlife.

For effective implementation of the framework of The Constitution, the set of statutory provisions / rules / Guidelines / instructions applicable to Coal Mining for compliance of local, national & international Environmental regulations are as follows:

- 1) Water (Prevention and Control of Pollution) Act – 1974
- 2) Air (Prevention and Control of Pollution) Act – 1981
- 3) Environment Protection Act – 1986
- 4) The Indian Forest Act – 1927
- 5) The Forest (Conservation) Act - 1980
- 6) Wildlife Protection Act – 1972
- 7) Coal Mine Standard GSR 742E
- 8) National Ambient Air Quality Standards (NAAQS) 2009
- 9) The Mines and Minerals (Regulation and Development) Act – 1957
- 10) Hazardous and Other Waste (M&TM) Rules – 2016
- 11) E-Waste Management Rules - 2016
- 12) The Noise Pollution (Regulation and Control) Rules 2000
- 13) The Batteries (Management and Handling) Rules, 2001
- 14) Environmental Impact Assessment (EIA) Notification 1994 and SO 1533(E) dated 14.09.2006 and subsequent amendments issued by MoEF & CC
- 15) Mine Plan and Mine Closure Plan Guidelines issued by MoC dated 29.05.2020
- 16) Gazette Notification dated 31.12.2021 issued by MoEF & CC on Fly Ash, SO 5481(E)
- 17) Gazette Notification dated 24.09.2020 issued by Ministry of Jal Shakti, Central Ground Water Authority, SO 3289(E)

Mines and Minerals (Regulation and Development) Act, 1957 (for short, 'the MMRD Act) Section 18, casts a duty upon the Central Government to take all such steps as may be necessary for the conservation and systematic development of minerals in India and for the protection of environment by preventing or controlling any pollution which may be caused by mining operations and for such purposes, the Central Government may, by notification in the official gazette, make such rules as it thinks fit.

Rules 31 to 41 contained in Chapter V of the Mineral Conservation and Development Rules, 1988 framed under Section 18 of the MMRD Act deal with the measures required to be taken by the lessee for the protection of environment from any adverse effect of mining or irreversible consequences thereof. These Rules, inter alia, provide that every holder of a mining lease shall take all possible precautions for the protection of environment and control of pollution while conducting mining operations in the area;

Among above, the detailed process of obtaining Environmental Clearance in Coal Mines is majorly governed by the Environmental Impact Assessment (EIA) Notification 1994 and EIA Notification 2006, SO 1533(E) dated 14.09.2006 and subsequent amendments through notifications & OM's issued by MoEF & CC. Additionally, the Environment Safeguard were

imposed by the state through issuing Consent to Operate (CTO) u/s 26 of Water Act and u/s 21 of Air Act. Moreover, The Environment (protection) Act 1986 is considered as an umbrella Act for the enforcement of the Environmental laws.

Advent of Concept of Environmental Clearance

The concept of mandatorily securing Environmental Clearance came with the advent of EIA notification 1994. Prior to that, the clearances were given under Air & Water Act as a part of requirement of Lease renewal in compliance of MMRD ACT 1957 & subsequent rules issued thereunder. Also, the government Hydro-power / Industrial / Mining projects having that has to be put before the government for approval were required to do the EIA and obtain Environmental Clearance. One of such oldest such EIA / EMP's prepared in WCL was of Tandsi UG with Capital investment of INR 51.58 Crores, the same was appraised in MoEF on 17.09.1985.

The notification titled “Environmental Impact Assessment (EIA) of Development projects” issued by MoEF & CC dated 27.01.1994 (As amended on 04.05.1994) stipulates for:

1(a) - *“Any person who desires to undertake any new project or the expansion or modernization of any existing industry or project listed in Schedule-I shall submit an application to the secretary, MoEF, New Delhi.”*

Further, the Explanatory note of EIA notification, 1994 quotes:

“1 Expansion and Modernization of existing projects: A project Proponent is required to seek Environmental Clearance for a proposed expansion / modernization activity if the resultant pollution load is to exceed the existing levels.”

The schedule-I mentions for “ mining Projects (Major Minerals) with lease more than 5 ha. The notification provided for securing EC for the proposed expansion or modernization of Industrial Activity only. However, the existing projects continued to operate without Environmental Clearance. As such, the preparation of Environmental Impact Assessment (EIA) & Environmental Management Plan (EMP) as per the guidelines issued by the Central Govt. was made mandatory.

Subsequently, as per the notification issued by MoEF & CC vide dated 27.01.1997, the concept of Public Hearing has been mandated as a part of EIA process. The Public Hearing was mandated for Mining projects of Major Minerals with lease area more than 25 Ha.

The validity of such accorded Environmental Clearances has been considered to be 05 years from year of start of construction or operation.

The Concept of Ex-post Facto Environmental Clearance

After the issuance of EIA notification 1994 many of the industries continued to produce quantities in excess to the 1993-94 levels, renewed leases without securing EC and even secured fresh approval of leases, thereby attracting non-conformity to EIA notification 1994. However, The MoEF & CC granted three extensions to non-conforming industrial units (In relation to mandate of securing EC as per EIA notification, 1994) for obtaining EC, vide Circulars issued in 1998, 2000 and 2002. MoEF & CC vide Circular dt. May 14, 2002, granted

the last and final extension for obtaining 'ex post facto environmental clearance' with a deadline till March 31, 2003.

The matter of ex-post facto Environmental Clearance had been a matter of debate since the issuance. Hon'ble Supreme Court of India while interpreting applicability of EIA notification 1994 in the case of M.C. Mehta vs. UoI & Ors., 4677 / 1985 WP(Civil), order dated 18.03.2004, held that the Environmental Clearance will be of prospective effect only. Thus, it was apprehended even earlier that the concept of ex-post-facto EC is incorrect.

This Circular dt. May 14, 2002, of the MoEF&CC was challenged before the Hon'ble Gujarat High Court under Article 226 of the Indian Constitution in the matter of Alembic Pharmaceuticals Limited & Ors. v. Union Of India & Ors. The said petition was transferred to the National Green Tribunal (NGT) for adjudication under the National Green Tribunal Act, 2010 (NGT Act). Hon'ble NGT Vide judgment dt. January 08, 2016 held that the concept of ex post facto EC was alien to the EIA Notification 1994 and hence grant of such ex post facto ECs was impermissible under law.

MoEF&CC and concerned industrial units challenged the NGT judgment dt. 08th January 2016 before the Hon'ble Supreme Court. Hon'ble Supreme Court in its order dated 01 April 2020 (Civil Appeal 1526/2016) observed that the impugned Circular has introduced the notion of an ex post facto EC, which is fundamentally at odds with the EIA Notification 1994 and is in derogation of fundamental principles of environmental jurisprudence, including the precautionary principle and sustainable development.

Circular issued by MoEF & CC dated 28.10.2004 on applicability of EIA Notification 1994

Subsequently MoEF & CC issued circular no J-20012/11/98-IA.II(M) dated 28.10.2004 which specified: *The EIA notification, 1994 as amended from time to time shall include*

(i) Mining projects of Major mineral with more than 5 Ha lease area, which have started production or increased their production and / or lease area on or after 27.01.1994.

(ii) In addition, all mining projects of major minerals of more than 5 Ha lease area which have so far not obtained an EC under EIA notification, 1994 shall do so at the time of renewal of their lease in the context of the SC Judgement dated 18.03.2004 in W.P. 4677/1985 - MC Mehta vs UoI & Ors.

Further it has been clarified that, for the applicability of EIA notification 1994, the term "Expansion" means "the annual production of any year from 1994-95 onwards exceeds the annual production of 1993-94 or its preceding years constitute to be expansion". Expansion in production beyond the approved capacity however small would constitute a violation and attract the penal provisions of the Environment (Protection) Act. As such, Minor Minerals and major minerals with area less than 5 Ha were kept out of the ambit of Environmental Clearance. As such, MoEF & CC has made the base year for assessment of "Expansion" as 1993-94 or preceding years, thereby keeping it open ended on one side.

The matter of determining the definition of "Expansion" and corresponding applicability of EIA notification 1994 has later been challenged before Hon'ble Supreme Court of India. In the landmark judgement of Hon'ble Supreme Court in W.P. No. 114/2014 with WP(Civil) No. 194/2014 dated 02.08.2017, the court observed that:

(1) *A mining project that has commenced prior to 27th January, 1994 and has obtained a No Objection Certificate from the SPCB prior to that date is permitted to continue its mining operations without obtaining an EC from the Impact Assessment Agency. However, this is subject to any expansion (including an increase in the lease area) or modernization activity after 27th January, 1994 which would result in an increase in the pollution load. In that event, a prior EC is required. However, if the pollution load is not expected to 17 (2011) 15 SCC 658 and (2011) 15 SCC 681 W.P. (C) Nos. 114/2014 etc. increase despite the proposed expansion (including an increase in the lease area) or modernization activity, a certificate to this effect is absolutely necessary from the SPCB, which would be reviewed by the Impact Assessment Agency.*

(2) *The renewal of a mining lease after 27th January, 1994 will require an EC even if there is no expansion or modernization activity or any increase in the pollution load.*

(3) *For considering the pollution load the base year would be 1993-94, which is to say that if the annual production after 27th January, 1994 exceeds the annual production of 1993-94, it would be treated as an expansion requiring an EC.*

(4) *There is no doubt that a new mining project after 27th January, 1994 would require a prior EC.*

This is also substantiated by the para 155 of the judgement quoting:

“A submission made by the mining lease holders was that the maximum production in any year up to 1993-94 should be considered as the base for making the calculations. Such a contention was also urged before the CEC and was rejected. We have examined this contention independently and are of the view that the base year of 1993-94 is most appropriate - we have already given our reasons for this. Some lessees might lose in the process while some of them might benefit but that cannot be avoided. In any event, each mining lease holder is being given the benefit of calculations only from 2000-01 and is not being ‘penalized’ for the period prior thereto. We think the mining lease holders should be grateful for this since it was submitted by learned counsel for the petitioners and the learned Amicus that the penalty should be levied from the date of EIA 1994. In our opinion, the cut-off from 2000-2001 (without interest) is undoubtedly reasonable and there can be hardly be any grievance in this regard. The mining lease holders cannot have their cake and eat it too, along with the icing on to.”

Thus, it is clear from the above that Hon’ble Supreme Court of India completely reinstated the provisions of the EIA notification 1994 and the applicability of securing Environmental Clearances under the notification. As such, the mines which were operating with valid Consent to Operate (CTO) from SPCB’s, shall continue to do so if it doesn’t fall under the ambit of “Expansion”. Also, the definition of Expansion considering the production of year 1993-94 as a base year was established thereby erasing the ambiguity of considering production levels of preceding years. The only exemption provided is, the preceding year has to be considered for the assessment only if there is no production during 1993-94. In that event, the immediately preceding year would be considered as a base year (*Para -93*).

Further, it was established by the Court that, the Environmental Clearance will have an prospective effect only i.e. valid from the date of issuance of EC (*para - 124*).

The Court recommended penalties for such violation as:

“...illegal or unlawful mining without an FC or without an EC or without both would attract only 100% compensation and not 200% compensation. In other words, only one set of compensation would be payable by the mining lease holder”.

During the appraisal of the Court for imposition of penalties for the violation the Union of India submitted that:

“...penalties would arise under section 21(5) of the MMDR Act, 1957, in respect of any form of mining activity without lawful authority. Mining outside lease area would on the face of it amount to mining without lawful authority and would attract the provisions of section 21(5); and, in addition, all forms of mining without lawful authority including that in breach of the limits imposed by the Environmental Clearance carried out within the lease area would also invite penalties under section 21 (5).”

Therefore, it is imperative here that violation of Environmental Clearance in any aspect will lead to imposition of penalty u/s 21(5) of MMDR Act for a value amounting to 100% of the Mineral value.

Re-Validation of Environmental Clearances obtained under EIA Notification 1994

MoEF & CC vide Gazette Notification dated 06.04.2018 S.O. 1530 (E) mandated for re-validation of Environmental Clearance obtained under EIA notification 1994. This re-validation is applicable to all projects which have not undergone expansion / modernization / amendment under EIA notification 2006. This notification has been issued in response to the aforementioned judgement of Hon'ble Supreme Court of India dated 02.08.2017 wherein the court re-iterated that the validity of Environmental Clearance obtained under EIA notification 1994 is 05 years. The same has been reiterated by the court in Judgement dated 07.02.2018 in the matter of Civil Appeal 32138/2015 Goa Foundation vs M/s Sesa Sterlite Ltd. & ors.

Conclusion

The EIA notification, 1994 was the major step towards streamlining the process of securing Environmental Clearance and preparation of EIA / EMP report for the Industries / Mining projects. The subsequent amendment of 1997 mandated for the inclusion of Public Hearing in the EIA process. The year 1993-94 is considered as a base year for determining the applicability of the notifications on the ground of “Expansion”. Any mine / industry undergoing such expansion of capacity, increase in lease area & modernization after 1994 is required to take Environmental Clearance under the notification. The projects which has not under gone any such expansion / modernization / amendment, are to be revalidated under EIA notification 2006. Also, the concept of ex-post facto Environmental Clearance for the non-confirming projects has been denied by Hon'ble Supreme Court in to-to, thus all such non-confirming projects are ought to be considered as a violation of the notification. As such, the existing mines which are not covered under the aforementioned criteria were required to obtain the EC at the time of renewal of lease.



The Polluter Pay Principle and its Implementation in India



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Introduction

Environment Law is swiftly evolving and expanding its ambit in the contemporary era due to human beings rising devastation of the environment, as well as a growing concern for environmental protection. Generally, it is an acceptable norm that one who inflicts injury or damage should be held accountable for such wrongdoing. When such harm is committed towards environment, it is exceedingly becoming toilsome to watch over harmful activities due to lack of repercussion under Environmental Law. As a consequence, various legislations have been enacted that are aimed to prohibit certain environmental sabotage practices and specific ways for administering activities that might potentially affect the environment on a personal basis.

This led to the introduction of the notion of Sustainable Development to strike a balance between environmental preservation and development. But, it became increasingly difficult to monitor potentially dangerous practices owing to lack of consequences under environmental legislation. In other words, the laws are well intentioned but they are toothless. This resulted in the 'Polluter Pays Principle'.

In this background, the paper aims to analyze the polluter pays principle with specific reference to India. The Article begins by discussing the concept of the polluter pays principle, its historical background and its evolution in India. During this process, the provisions in certain legislations and judicial pronouncements will be examined. Further, the significance of holding polluters accountable for damages to the environment will also be explored. After critically investigating the idea from a variety of legal and academic perspectives, the Article will be concluded by the concluding remarks on Polluter Pays Principle, a cornerstone of environmental law.

Concept of Pollution

Pollution is generally described as the unregulated performance of certain activities that disrupt the natural order. The Organization for Economic Cooperation and Development (OECD) defined Pollution as "the introduction of substances or energy into the environment by human

beings, directly or indirectly, resulting in deleterious effects of such a nature as to jeopardize human health, that harms living resources and ecosystems, and interfere or impair facilities and other legitimate environmental benefits”.

According to the domestic legislation, the Water (Prevention and Control) Act, 1974 defines pollution as "any contamination of water, or such alteration of the physical, chemical, or biological properties of water, or such discharge of any sewage or trade effluent, or of any other liquid, gaseous, or solid substance into water, directly or indirectly, as may, or is likely to cause a nuisance"

Similar such definitions could be found in other enactments including the Air (Prevention and Control of Pollution) Act, 1981 and The Environment (Protection) Act, 1986. In a nut shell, all these local and international definitions highlight that pollution must have the potential to cause harm or must actually do harm. Therefore, the invasion is allowed if the harm is too minor to cause the damage. Hence, the pollution can be comprehended to mean that there must be some resulting harm or danger of harm for the pollutant to lead to or create pollution.

The Polluter Pays Principle

It is an acceptable norm that as you sow, so shall you reap. In respect of the environment this idiom is aptly consolidated by the Polluter Pays Principle. Black's Law Dictionary defines Polluter-Pays Principle as "a principle that states that the costs incurred due to pollution control, prevention and treatment should be paid by the entity which is responsible for causing the pollution in the first place”. Precisely, Polluter Pays Principle requires the person who is liable for causing pollution should pay the cost of mitigating the damage. The responsibility of causing pollution and making right the wrong done to the environment lies on the polluter.

The polluter pay principle basically makes the polluter responsible for the pollution caused to the environment. He will be responsible for every damage caused to the environment. Under this polluter pay principle, the polluter has to compensate the victims of pollution as well as pay for the restoration of the environment. The public authorities will decide upon the necessary measures to be adopted by the polluter for controlling the pollution in order to bring back the environment to an acceptable state after the industrial operations. Hence, it is incumbent on the polluter to pay both the costs for the individual sufferers as well as the cost of reversing the damaged ecology. The cost of the measures imposed by the public authorities should reflect on the cost of the goods and services, the production and/or consumption of which led to pollution. The cost of the measures should not be compromised by offering subsidies as it would lead to distortion in international trade and investment.

Legal Provisions Regulating Polluter Pays Principle in India

The Polluter Pays Principle is not directly put into practice in India. However it has to be noted that there are certain provisions in various statutes that impose penalties for pollution caused by polluters. For an instance, the Penalty for contravention of the provisions of the Environment (protection) Act 1986 and the rules, orders and directions is mentioned under Section 15 of Environment (protection) Act, 1986. According to this provision, whoever contravenes or fails to comply with the provisions of EPA Act can be held liable to pay fine of

RS. 1,00,000/- or five years of imprisonment, or with both. Such an imprisonment can be extended to seven years in case offense continues beyond a period of one year after the date of conviction. Further, Section 16 of this Act makes the person in charge liable for punishment if the offense is committed by a Company. Similar provisions can be seen in other legislations such as the Air (Prevention and Control of pollution) Act, 1981 and the Water Prevention and control of pollution) Act, 1974.

Moreover, it has become Constitutional obligation to preserve and improve the Environment. Article 48A makes it mandatory for the state to improve and protect the environment and makes it compulsory for the state to preserve the forest and the country's wildlife. Article 51A deals with fundamental duties of the citizens. Article 51(A)(g) makes it a duty of the citizens to protect and improve the natural environment that includes lakes, rivers, forests, and wildlife. Therefore, there is an obligation enshrined in the Constitution not only to protect the environment from pollution but also improve its quality.

After construing the above mentioned Constitutional and legislative provisions, it can be stated that the polluter pays principle has become part of the country's environmental legislation, even though the term is not explicitly mentioned anywhere.

Historical Background of the Principle

The Polluter Pays Principle is an idea which falls under the aegis of absolute responsibility. The principle of absolute liability holds a person responsible irrespective of taking legitimate care and makes him compensate those who suffered due to his immanently perilous activity

The roots of polluter pays principle can be found in the early days of environmentalism. V. Kneese and J H Dales were considered to be the first to discuss this concept. In 1960s, they discussed about the measures, methods and economics to reduce the pollution.

The polluter pays principle as it is known today was first incorporated in Principles 21 and 22 of the Stockholm Declaration, 1972. On 26th May 1972, the OECD had officially recommended the polluter pays principle to be the 'Guiding Principle Concerning the International Economic Aspects of Environmental Policies'.

After OECD recommendation, the principle was formally recognized by United Nations in 1972. Likewise, this principle has been given place in several International agreements pertaining to Environment. For an instance, the United Nations Framework Convention on Climate Change as well as the Rio Declaration on Environment and Development incorporated PPP as a guiding principle.

Development of the Principle in India

After the Stockholm Declaration of 1972, India has introduced various legislations ranging from the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, and the Environment (Protection) Act, 1986 in order to protect the environment. This reflects that the people across the globe including India began expressing the concern for the environment and the need to protect it.

In India, the Polluter pays principle evolved from the rule of 'absolute liability'. It was laid down in the case of *M.C. Mehta v. Union of India (1986)*, which is also known as the Oleum Case because of the nature of the effluents released from the industry. In this case, a company called Shriram Food and Fertilizer- a subsidiary of Delhi Cloth Mill Limited was involved in the manufacturing of caustic chlorine and oleum in a plant surrounded by a large number of people. As a result, a case was filed to address the problem and control and regulate this impact.

The apex Court held that "an enterprise engaged in a hazardous or inherently dangerous industry, which could endanger the health and safety of those working in the factory and those residing in the surrounding areas, owes a duty to the community that is absolute and non-delegable to ensure that no one suffers harm as a result of the hazardous or inherently dangerous nature of the activity that it has undertaken.

Regardless of any reasonable care exercised on his behalf, the enterprise is unquestionably obligated to make up for this harm. The amount of compensation payable is for harm caused by an accident in the conduct of the hazardous or the environmentally dangerous activity that was formerly conducted by the industry".

The Court further observed that compensation "must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount payable by it..."

Therefore, as a condition precedent, the Court directed to either relocate or develop a green belt around the industry prior to the recommencement of the operations. Besides, the industry was ordered to deposit a sum of Rs. 3500000/- in a bank and a guarantee of Rs. 1500000/- with the court for compensation to be paid to the victims. The court further ruled, "We must develop new principles and establish new standards to appropriately cope with the new issues that occur in a highly industrialized economy."

Hence, it can be stated that the apex Court devised an innovative remedy in the form of indirect recognition and implementation of the 'polluter pays principle. This landmark ruling of the Supreme Court which came in the backdrop of India's gaping void in environmental justice and tort law, made apparent by the Bhopal gas tragedy induced the Legislature to pass the Public Liability Insurance Act, 1991 and the National Environment Tribunal Act, 1995 that are aimed at establishing this very standard.

Landmark Judgments

Indian Council for Enviro-Legal Action v. Union Of India & Ors (1996)

An environmentalist organization raised awareness about the plight of the people living in a village named Bichhri in Udaipur district in Rajasthan. Hindustan Agro Chemical Limited which manufactures the chemicals was located in the said village. The harmful emission of concentrated sulphuric acid and aluminium sulphate led to the sufferings and woes of the inhabitants of Bichhri. It was highly difficult to handle the factory effluents as they were possessing refractory character. Several chemicals got filtered into the soil, thereby resulted in the pollution of aquifers and groundwater underneath. The polluted water was not fit for

drinking, consumption or irrigation purposes. It even damaged the nearby available water and the existing crop. Consequently, the villagers were made to suffer the repercussions of barren agricultural lands.

The Supreme Court held that whoever is engaged in an activity which involves usage of inherently dangerous substance shall be responsible to pay the damages if any harm caused to humans or environment. The principle of polluters pay was applied in this case for the first time ever by the Court. It made the polluter liable and ordered to bear the costs to restore the environment.

Vellore Citizens Welfare Forum v. Union of India & Ors (1996)

The residents of Tamil Nadu raised a protest against the dumping of untreated effluents from tanneries and other industries into adjacent water bodies. Approximately, 200 tons of leather was produced in the tanneries every day. During the process, every one kilogram utilizes 40 litres of water and every litre of water contained 176 different forms of hazardous acids. Consequently, the portable water got contaminated due to the toxic nature of the effluents. The river water flowed into the adjoining agricultural lands due to rain and floods in the surrounding town. This resulted in the contamination of adjacent fields which were primarily used for agriculture and cultivation purposes. The water in the nearby water streams became poisonous and became unfit for drinking and other domestic uses. Therefore, the Court directed the industrialists to pay the damages and to take the necessary measures to restore the environment to its original condition.

The Taj Trapezium Case (1996)

In this landmark judgment *M.C. Mehta v. Union of India and Ors*, the Supreme Court reaffirmed the “polluter pays principle” and regarded the principle as an intrinsic part of the environmental laws in India. This Case primarily dealt with the fading and decaying of Taj Mahal. As it is a monument of significant national importance, the Court stressed on the need of applying the principle of Polluters pay to this Case. The National Environment Engineering Report Institute in 1990 as well as Varadarajan Committee’s report in 1995, submitted that the Taj Mahal was basically harmed by the chemical industry, foundries, and Mathura refineries that were situated in a particular location called as the Taj Trapezium Zone. The apex Court directed the industries to switch to petrol from gasoline or relocate from the monument to continue their operations. The industries that were not complying with the directives were ordered to be shut down by the Court. While emphasizing that the workers' rights would be adversely impacted in case of the closure of the industry, the principle of polluter pay was given a new meaning by Justice Kuldeep Singh in this landmark judgment. He opined that the workers of the Industry should suffer as a result of closure or relocation. Hence, they should have given compensation in the form of housing, continued employment until the industry was revived. Ever since the apex Court as well as various high courts time and again stressed upon the need to safeguard the rights and obligations of the workers and ensured that they are not violated. This event is considered as a milestone in the administration of environmental law.

Analysis of the Polluters Pay Principle in India

The Supreme Court as well as various high courts time and again applied the Polluter Pays Principle to hold the polluter liable to pay for the damage caused due to their emissions. What is more interesting is that the Courts directed the polluter to pay accordingly even when the pollution caused was in the permissible limits that was imposed on them. For an instance, the Supreme Court in the *Oleum Gas leak case* held Shriram Industries accountable for the leakage of oleum gas and the degradation to the environment, even though they were complied with the existing legislations like the Air Act, 1981. Hence, the focus of the Courts while dealing with the Environmental issues would be not only on punishing the polluter by making them legally liable but also to seek proper enforcement of these laws.

In Indian Council for *Environ Legal Action case*, the court stated that “Even though, it is not the function of the court to see the day-to-day enforcement of the laws, that being the function of the executive, but because of the non-functioning by the enforcement agency, the courts as of necessity have had to pass orders or direction to the enforcement agencies to implement the law for the protection of the fundamental rights of the people.”

This raises a question whether there is any need to make the polluter criminally liable or civil action against him would be sufficient. Prior to the ratification of the Stockholm Declaration of 1972, Section 268 and 290 of the Indian Penal Code, 1860 were the basis on which the accused used to be criminally liable for public nuisance relating to the environment. After the Stockholm Declaration, India enacted the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981 that have provisions through which criminal proceedings can be initiated against the polluters.

Some critics argue that there is minimal executive action in India due to which in essence, the “polluter pays” principle has degenerated into “pay and pollute”. Generally, when a case goes to the notice of the concerned authorities, they impose fine on the offenders rather than taking penal action against them. Mere imposition of fines on the polluters seems to have been not showing much impact on the offenders as a recurrence of the pollution can be seen in many instances. As a result, the Courts in various cases opined that initiating criminal prosecution in pollution cases ensure deterrence amongst them.

Conclusion

The polluter pays principle has progressively evolved since its inception. Article 21 of the Indian Constitution guarantees the fundamental right to protection of life and personal liberty. The right to life encompasses various aspects, including the right to live with dignity, the right to livelihood, and the right to a healthy environment. Causing pollution in any locality would infringe this basic right of the inhabitants. As pollution is an unavoidable element of industrialization, India has formulated specialized expert body called national Green tribunal to look after the environmental issues. Section 20 of National Green Tribunal Act,2010 enables the Tribunal to apply the principles of sustainable development, the polluter pays principles and precautionary principle while passing any order or decision or award.

The Supreme Court has been playing a crucial role in shaping and enforcing this principle in India. In *Benzo Chem Industrial Private Limited v. Arvind Manohar Mahajan & Ors (2024)*, the Supreme Court corrected the approach of NGT in ordering twenty five crores as penalty for environmental damages on a company based on its revenue. The Court categorically stated

that “there was no nexus between the revenue generation of the company and the ascertainment of penalty for violation of environmental laws”. The NGT passed this order on the reasoning that the revenue of the company ranged from 100 Crores to 500 Crores. The Court also pointed out that there were no violations on the part of the appellant. While setting aside the order of NGT, the Apex Court held that the principles of natural justice should have been followed before imposing such an exorbitant amount as penalty on the Company.

Despite the endeavors of Indian Judiciary in enforcing this concept, there are short comings when it comes to its implementation due to factors such as lack of an appropriate formula for calculating compensation, the sufficiency of fines imposed on polluters, and the difficulty of classifying a "polluter" in several instances. Hence, the Polluter Pays Principle is a dynamic concept in environmental law which moulds its evolution based on economic variables, judicial pronouncements and legislative framework. It is a mechanism through which compensation, restoration, deterrence and accountability can be fostered. There is a need to adopt situation based approach while implementing the principle where the complex environmental challenges and reality of the economy are to be balanced in this contemporary era. As development does the harm the environment beyond the necessary limit, execution of PPP in letter and spirit can help India achieve its sustainable development goals as well.



DISCIPLINARY PROCEEDINGS



Suweg Pawar
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यतः कर्मा ततः फलः

Introduction

This principle reflects the law of air, which is emphasized in Hindu philosophy and the Bhagavad Gita. It signifies that a person receives results according to their conduct — good conduct leads to good issues, while bad conduct has negative consequences.

Every person is governed under the Rule of Law irrespective of his status, rank and position in the society. Same holds good for the labor force in all the associations including Government Organisation (Union and State) and Semi Government Organization. If an employee in an organization acts against the rule of law, their behavior is considered misconduct. To understand this better, we need to look at the meanings of ‘conduct’ and ‘misconduct.’

‘Conduct’ refers to a person’s overall behavior including their discipline, integrity, effectiveness, decency, and moral morals, as well as how well they perform their duties in a professional manner.

On the other hand, ‘Misconduct’ is a broad term though not specifically defined in any law but generally refers to stern and deliberate defilements of rules or laws. It includes conduct that are fairly banned or goes against ethical and professional morals. Misconduct in office refers to any unlawful action or negligence by a public functionary that negatively impacts the rights of an individual or party.

Constitutional Backing for Disciplinary Proceedings

Backing for Disciplinary Proceedings is said to be governed under article 309, 310, and 311 of Part XIV of the Indian Constitution. curtly, the various statutory vittles which govern the conduct of different types of association are as under :

- (a) Government Organisations – are governed by the Central Civil Services(Bracket, Control, and Appeal) Rules, 1965.
- b) Semi Governmental Organisations - are governed by their own sets of rules for recovering the cases for conducting the corrective proceedings against their workers.
- c) Purely private organisations - are governed by the various artificial and labour laws of the country and the approved standing orders applicable for the establishment.

Governing Rules for employees of WCL :

We as Public Sector are State under Article 12 of the Constitution. We have two class of employees :

- a. Executives
- b. Non-executives

Executives are governed by Code of Conduct, Discipline and Appeal Rules, 1978 (amended upto 2021), is applicable to all employees holding posts in the Executive Cadre Scales of pay of Coal India Limited and its Subsidiary Companies and to such other employees as may be notified by the Company from time to time. It shall not apply to employees governed by the Standing Orders. Certified Standing Orders are applicable to the Non-Executive Cadre employees.

Principles Of Natural Justice : Disciplinary action for misconduct against any employee will be considered legally invalid if it does not adhere to the following two principles of Natural Justice. -

1. **Nemo debet esse judex in propria causa** i.e No man shall be a judge in his own cause, or a suitor or the deciding authority must be unbiased and without bias and
2. **Audi alteram Partem** i.e. hear the other side, or no bone can be condemned unheard.
3. Over a period of time, a third principle has also surfaced to the effect that Final orders must be speaking orders (Reasoned orders).

Model Time Limit for Departmental Inquiries as laid down in Circular No. 8(1)(g)99(3) dated 03.03.1999.

Stage of Departmental Inquiry	Time	Limit prescribed
Fixing date of Preliminary Hearing and inspection of listed documents, submission of Defence documents/witnesses and nomination of a Defence Assistant (DA) (if not already nominated)		Within four weeks
Inspection of relied upon documents/submission of list of DWs/Defence documents/Examination of relevancy of Defence documents/DWs, procuring of additional documents and submission of certificates confirming inspection of additional documents by CO/DA Issue of summons to the witnesses, fixing the date of Regular Hearing and arrangement for participation of witnesses in the Regular Hearing Regular Hearing on Day to Day basis		3 months
Submission of Written Brief by PO to CO/IO		15 days
Submission of Written Brief by CO to IO.		15 days
Submission of Inquiry Report from the date of receipt of written Brief by PO/CO		30 days

Certified Standing Orders :

In certified standing orders of our company, penalties are not categorized into Minor and Major penalties, thus have no different procedure for imposing major and minor penalty.

Important clauses for Procedure for Penalties under Certified Standing Orders

28.1 - Misconduct shall be informed in writing of the allegations against him.

A workman may be suspended during pending enquiry – Subsistence Allowance.

Opportunity to submit his explanation in writing within a period of not less than three days.

An enquiry shall be held, normally by an officer of the company appointed by the management.

The workmen concerned shall be entitled to be represented or assisted by a co-worker or office bearer of a trade union of which he is a member if so requested by him during the enquiry.

28.10 - The proceedings of departmental enquiry shall be in writing. Where after the enquiry it is proposed to impose any punishment against a workman, a copy of the enquiry report shall be given to him.

The workmen shall also be given an opportunity to inspect the day to day record of enquiry proceedings.

28.7 - A copy of the order passed by the disciplinary authority, shall be supplied to the workman concerned.

30. - **Appeal :**

The Appellate Authorities shall be notified by the management from time to time. A workman on whom any of the penalties is imposed shall have the right to appeal to the authorities notified in this behalf. The appeal shall be submitted within fortyfive days of receipt of the order of punishment. The appellate authority shall dispose of the appeal within forty five days of receipt of the same.

31. **Review of cases of punishment :**

An authority higher than the appellate authority may review the case after imposition of punishment at any time either on his own motion or on the application of the workman concerned.

Code of Conduct, Discipline and Appeals Rules

Major and Minor penalties are distinguished in CDA Rules. Hence two separate procedures i.e. for imposing major penalties and minor penalties have been mentioned in CDA Rules.

32.0 Procedure for imposing Minor Penalties

32.1. Where it is proposed to impose any of the minor penalties specified in clauses (a) to (e) of Rule 28, the employee concerned shall be informed in writing of the imputations of misconduct or misbehaviour against the employee and give an opportunity to submit his/ her written statement of defence within a specified period not exceeding 15 days.

The defence statement, if any, submitted by the employee shall be taken into consideration by the Disciplinary Authority before passing orders.

32.2. The record of the proceedings shall include :

(i) A copy of the statement of imputations of misconduct or misbehaviour delivered to the employee;

(ii) His/ her defence statement, if any; and (iii) The orders of the Disciplinary Authority together with the reason therefor.

Procedure for imposing Major Penalties

30.1. No order imposing any of the major penalties specified in Clauses (f) to (j) of Rule 28.1 shall be made except after an inquiry is held in accordance with this rule and in certain special cases as per Rule 36.

36.0 Special proceedings in certain cases

- 36.1. Notwithstanding anything contained in Rule 30 or 31 or 32. the Disciplinary Authority may impose any of the penalties specified in Rule 28 in any of the following circumstances:
- (i) the employee has been convicted on a criminal charge, or on the strength of facts or conclusions arrived at by a judicial trial ; or
 - (ii) where the disciplinary authority is satisfied for reasons to be recorded by it in writing that it is not reasonable/practicable to hold an enquiry in the manner provided in these Rules; or
 - (iii) where the Board is satisfied that in the interest of the security of the Company, it is not expedient to hold any inquiry in the manner provided in these rules.

Functions of the Disciplinary Authority

Disciplinary authority is required to discharge the following functions:

- a. Examination of the complaints received against the employees
- b. Deciding as to who is to be appointed as the investigating authority
- c. Taking a view as to whether there is any need to keep the delinquent employee under suspension
- d. Taking a view on the preliminary investigation report and deciding about the future course of action thereon, such as warning, training, counseling, initiation of major or minor penalty proceeding, prosecution, discharge simpliciter, etc.
- e. Consultation with the Central Vigilance Commission (CVC) where necessary.
- f. Deciding whether there is any need to issue of charge sheet or penalty may be imposed dispensing with inquiry under the appropriate provision.
- g. Issue of charge sheet where necessary
- h. In the case of minor penalty proceedings, deciding, either suo motu or based on the request of the delinquent employee, as to whether it is necessary to conduct a detailed oral hearing.
- i. In the case of minor penalty proceedings, forming a tentative opinion about the quantum of penalty based on the representation of the delinquent employee, if any, and ordering for a detailed oral hearing where necessary.
- j. After issue of charge sheet, deciding as to whether there is any need to conduct inquiry, or the matter may be closed, or the penalty can be imposed, based on the unambiguous, unconditional and unqualified admission by the delinquent employee.
- k. Passing final order imposing penalty or closing the case, based on the response of the delinquent employee
- l. Appointment of Inquiry Authority and Presenting Officer, where necessary
- m. Taking a view on the request, if any, of the delinquent employee for engagement of a Legal Practitioner as Defence Assistant
- n. Making originals of all the listed documents available to the Presenting Officer so that the same could be presented during the inspection of documents.
- o. Examination of the inquiry report to decide as to whether the same needs to be remitted back to the inquiry authority
- p. Deciding as to whether the conclusion arrived at by the Inquiring Authority is acceptable and to record reasons for disagreement if any.
- q. Consultation with CVC, if necessary
- r. Forward the inquiry report to the delinquent employee together with the reasons for disagreement, if any and the recommendations of the CVC where applicable
- s. Considering the response of the delinquent employee to the inquiry report and the reasons for disagreement and taking a view on the quantum of penalty or closure of the case.
- t. Pass final order in the matter.

u. On receipt of copy of the appeal from the penalized employee, prepare comments on the Appeal and forward the same to the Appellate Authority together with relevant records.

Functions of the Inquiry Authority during Preliminary Hearing

During Preliminary Hearing, IO is required to perform the following actions:

- a. Making arrangements for conducting the hearing
- b. Setting the stage for smooth conduct of hearing
- c. Asking the statutory questions
- d. Finalisation of the question of Defence Assistant
- e. Fixing dates for Inspection of the originals of the documents
- f. Fixing dates for the submission of the list of additional documents and witnesses required by the CO for the purpose of his defence
- g. Finalisation of the documents and witnesses admissible for defence
- h. Taking action for procuring the additional documents required for the defence.
- i. Settling the issue of disputed documents
- j. Taking the documents on record
- k. Issue of certificates of attendance to the parties. This will be done during regular hearing stage also.
- l. Deciding on the requests for adjournment
During regular hearing stage, IO will continue to prepare and issue Daily Order Sheets and certificate of attendance as was being done earlier. In addition, IO will be performing the following activities:
 - a. Summoning witnesses
 - b. Monitoring the conduct of the examination of witnesses
 - c. Recording the statements of the witnesses
 - d. Recording the demeanor of the witnesses
 - e. Deciding objections about the questions raised during examination of witnesses.
 - f. Deciding requests for introducing additional witnesses.
 - g. Deciding requests for recalling witnesses
 - h. Asking the CO to state his defence on conclusion of the case of the Disciplinary Authority.
 - i. Putting the mandatory questions on conclusion of the case of the defence
 - j. Checking up from the CO as to whether he got sufficient opportunity for his defence.
 - k. Giving directions for the submission of the written briefs by the Presenting Officer and the CO.

CASE LAWS :

1) Issue and Service of Charge-sheet:

Endorsements of Postal Authorities on letters “not found”, “not traceable”, “not known”, “left” do not amount to service, but an endorsement “refused” does. The Supreme Court has laid down, that charge sheet is issued when it is framed and despatched to the employee irrespective of its actual service on the employee.

[Delhi Development Authority vs. H.C. Khurana, 1993(2) SLR SC 509 and Union of India vs. Kewal Kumar, 1993(2) SLR SC 554]

2. Rules provides for continuation of DE after superannuation :

The Court held that Rule 34.2 of the CDA Rules allows disciplinary proceeding to be continued and concluded even after the employee has attained the age of superannuation, provided the proceedings were initiated while in service.

The Court held that Rule 34.3 of the CDA Rules is in consonance with the sub section 6 of section 4 of the PGA, and the appellant employer has the right to withhold gratuity during the pendency of departmental proceedings.

[Chairman cum Managing Director, Mahanadi Coalfields Limited Vs. Rabindranath Choubey CIVIL APPEAL NO. 9693 OF 2013]

3. Effect of documents filed by department as Exhibits:

Mere tendering of documents is not sufficient to prove the charges. The documents have to be proved by the prosecution witnesses who are liable to be subjected to be examined by the Presenting Officer and cross-examined by the delinquent official. The Apex Court has considered the question "whether in absence of any oral evidence having been tendered by the appellants, and especially in absence of putting their own defence to the respondent during his cross examination in the Court, what is the effect of documents filed by appellants and marked as Exhibits". The findings of the Apex Court was that mere admission of document in evidence does not amount to its proof. On the other hand, documentary evidence is required to be proved. Further, the witnesses who are examined in the departmental enquiry shall be made available for cross-examination. Even though the provisions of the Civil Procedure Code and the Evidence Act are not strictly applicable in disciplinary proceedings, the principles behind those provisions cannot be altogether ignored.

[L.I.C of India & Anr. vs. Ram Pal Singh Bisen 2011(1) SLJ 201]

4. Criminal Proceedings and Departmental Proceedings are entirely different.

The two proceedings criminal and departmental are entirely different. They operate in different fields and have different objectives. Whereas the object of criminal trial is to inflict appropriate punishment on an offender, the purpose of enquiry proceedings is to deal with the delinquent departmentally and to impose penalty in accordance with the service Rules. The degree of proof which is necessary to order a conviction is different from the degree of proof necessary to record the commission of delinquency. Even the rule relating to appreciation of evidence in the two proceedings is also not similar. In criminal law, burden of proof is on the prosecution and unless the prosecution is able to prove the guilt of the accused beyond reasonable doubt, he cannot be convicted by a Court of law whereas in the departmental enquiry, penalty can be imposed on the delinquent on a finding recorded on the basis of 'preponderance of probability'. Acquittal by the Court of competent jurisdiction in a judicial proceeding does not ipso facto absolve the delinquent from the liability under the disciplinary jurisdiction of the authority

[Shashi Bhushan Prasad Vs. IG-CISF & Ors. CIVIL APPEAL NO. 9693 OF 2013]

5. Departmental Inquiry during the Pendency of a Criminal Prosecution:

Holding of a departmental enquiry during pendency of a criminal prosecution in respect of the same subject-matter would not amount to a contempt of court. The departmental authorities are free to exercise such lawful powers as are conferred on them by the departmental rules and regulations and such exercise of powers bonafide will not come within the mischief of the law of contempt, especially when the departmental authorities did not publish their orders nor tried to influence the court in any manner.

[Mehra Singh vs. Supdt of Post offices, Jabalpur, AIR 1962 MP 72]

6. Speaking Orders in Appeal Cases:

The Supreme Court and the High Courts have emphasized that the appellate authorities must give reasons and there should be some discussion of the evidence on record. An appellate authority has a legal duty to deliberate about merit and adjudge it before confirming, enhancing, reducing or setting aside the penalty.

[Nathaniel Ghosh vs. Union Territory of Arunachal Pradesh, (1980) 2 SLR 733]

7. Sanction under the Prevention of Corruption Act, 1988 necessary for Prosecution:

The requirement of sanction (official approval) is very important to protect government employees who perform their duties honestly. Without this protection, anyone could file false complaints against them, leading to unnecessary harassment. To prevent this, the law ensures that before prosecuting a public servant, permission from the government or the concerned authority must be obtained. If a court starts legal proceedings against a public servant without this required sanction, the officer has the right to challenge it. In such a case, the entire legal action could be considered invalid from the beginning (void ab-initio) because the court does not have the authority to proceed without proper approval.

[ANIL KUMAR & ORS Vs. M.K. AIYAPPA & ANR, 2013-TIOL-50-SC-SERVICE]

Suggestions

1. The timeline for conducting departmental inquiries (DE) must be strictly followed to ensure timely resolution.
2. Authorities should provide clear and reasoned orders at every stage of the departmental inquiry to maintain transparency and fairness.
3. If the departmental inquiry arises from a criminal offense committed by the employee, the charge sheet in the DE should include the imputations mentioned in the criminal charge sheet. However, it should also incorporate additional elements that distinguish it from the criminal charge sheet.
4. Before issuing a charge sheet in a departmental inquiry, the disciplinary authority (DA) must ensure that the allegations against the employee fall within the scope of their job responsibilities and are aligned with the rules, orders, or circulars of the company.
5. The charged employee should receive all relevant documents and be given sufficient time to respond to allegations before any final decision is made.

Conclusion

Disciplinary proceedings play a vital role in maintaining organizational integrity, fairness, and accountability. Rooted in constitutional provisions and principles of natural justice, these proceedings ensure that misconduct is addressed systematically while upholding employees' rights.

The legal framework, including Article 309, 310, and 311 of the Indian Constitution, along with service rules and standing orders, provides a structured approach to disciplinary actions. The distinction between minor and major penalties, the necessity of unbiased inquiries, and adherence to procedural guidelines safeguard both the organization and the employee from arbitrary actions.

Various judicial pronouncements reaffirm the importance of procedural fairness, emphasizing that disciplinary actions must be based on proper evidence, reasonable timelines, and speaking

orders. While departmental and criminal proceedings operate independently, a well-conducted inquiry ensures transparency and justice.

In conclusion, a well-defined disciplinary mechanism not only enhances workplace discipline but also upholds the credibility of the organization by ensuring that every action taken is just, reasonable, and legally sound.



INTERPRETATIONS OF SECTION 26 OF THE CBA ACT, 1957



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Synopsis

The Article mentions key features of the Coal Bearing Areas (Acquisition and Development) Act or the CBA Act, 1957 and highlights the varying interpretations of the Section 26 of the CBA Act gathered from several judgements passed by the Hon'ble Court.

Introduction

The Coal Bearing Areas (Acquisition and Development) Act or the CBA Act, 1957 was enacted in India with the primary objective of establishing greater public control over the coal mining industry and its expansion. Section 26 of this Act explicitly restricts the jurisdiction of civil courts. It states that no civil court shall have authority over any matter that falls within the purview of the Act. Instead, the Act vests decision-making power in the hands of the specified authorities. Given the lack of specificity regarding jurisdictional restrictions, this section remains open to multiple interpretations, potentially varying across different legal forums.

Key features of the CBA Act include:

Sec. 4. Preliminary notification respecting intention to prospect for coal in any area.

“Whenever it appears to the Central Government that coal is likely to be obtained from land in any locality, it may, by notification in the Official Gazette, give notice of its intention to prospect for coal therein.”

Sec.7. Intention to acquire land or rights in or over land notified under section 4.

“If the Central Government is satisfied that coal is obtainable in the whole or any part of the land notified under sub- section (1) of Section 4, it may, give notice of its intention to acquire the whole or any part of the land or of any rights in or over such land.

If no notice to acquire the land or any rights in or over such land is given under sub- section (1) within the period allowed thereunder, the notification issued under sub- section (1) of section 4 shall cease to have effect on the expiration of three years from the date thereof.”

Sec.8. Objections to acquisitions.

“Any person interested in any land in respect of which a notification under section 7 has been issued may, within thirty days of the issue of the notification, object to the acquisition of the whole or any part of the land or of any rights in or over such land.”

Sec. 9. Declaration of acquisition.

“When the Central Government is satisfied, after considering the report, if any, made under section 8 that any land or any rights in or over such land should be acquired, a declaration shall be made by it to that effect.”

“Provided that no declaration in respect of any particular land, or rights in or over such land, covered by a notification under sub- section (1) of section 7, shall be made after the expiry of three years from the date of the said notification.”

Sec.10. Vesting of land or rights in Central Government.

“On the publication in the Official Gazette of the declaration under section 9, the land or the rights in or over the land, as the case may be, shall vest absolutely in the Central Government free from all encumbrances.”

Sec. 11. Power of Central Government to direct vesting of land or rights in a Government company.

“Notwithstanding anything contained in section 10, the Central Government may, by order in writing, that the land or the rights in or over the land, as the case may be, shall, instead of vesting in the Central Government under section 10, vest in the Government company either on the date of publication of the declaration or on such other date as may be specified in the direction.”

Sec. 12. Power to take possession of land acquired.

“The competent authority may, by notice in writing, require any person in possession of any land acquired under this Act to surrender or deliver possession of the land within such period as may be specified in the notice, and if a person refuses or fails to comply with any such notice, the competent authority may enter upon and take possession of the land, and for that purpose may use or cause to be used such force as may be necessary.”

Sec. 13 (5). Determination of Compensation

“Where any land is acquired under section 9, there shall be paid compensation to the person interested the amount of which shall be determined after taking into consideration-

- the market value of the land at the date of the publication of the notification under sub-section (1) of section 4.
- the damage sustained by the person interested:
 - by reason of the taking of any standing crops or trees which may be on the land at the time of the taking possession thereof;
 - at the time of taking possession of the land, by reason of severing such land from other land;
 - at the time of taking possession of the land, by reason of the acquisition.
- if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and
- the damage, if any, bona fide, resulting from diminution of the profits of the land between the time of the publication of the notification under sub-section (1) of section 4 and the time of the publication of the declaration under sub-section (2) of section 9.”

Sec. 14. Method of determining compensation.

“Where the amount of any compensation payable under this Act can be fixed by agreement, it shall be paid in accordance with such agreement.

Where no such agreement can be reached, the Central Government shall constitute a Tribunal consisting of a person who is or has been or is qualified to be a judge of a High Court for the purpose of determining the amount.

The Tribunal shall, after hearing the dispute, make an award determining the amount of compensation which appears to it to be just, and specify the person or persons to whom the compensation shall be paid; and in making the award the Tribunal shall have regard to the circumstances of each case and to the foregoing provisions of this Act with respect to the manner in which the amount of compensation shall be determined in so far as the said provisions or any of them may be applicable.

Where there is a dispute as to the person or persons entitled to compensation and the Tribunal finds that more persons than one is entitled to compensation, it shall apportion the amount thereof among such persons and in such manner as it thinks fit.

Nothing in the Arbitration Act, 1940, (10 of 1940) shall apply to any proceedings under this section.

The Tribunal, in the proceedings before it, shall have all the powers which a civil court has while trying a suit under the Code of Civil Procedure, 1908.”

Sec. 16. Interest on awards.

“If the sum which in the opinion of the Tribunal ought to have been awarded as compensation is in excess of the sum which the Central Government has stated to be a fair amount of compensation, the award of the Tribunal may direct that the Central Government shall pay interest on such excess at the rate of five per centum per annum from the date on which it became payable to the date of payment of such excess.”

Sec. 17. Payment of compensation.

“Any compensation payable under this Act may be tendered or paid to the persons interested entitled thereto.

If the persons interested entitled thereto shall not consent to receive it or if there be any dispute as to the sufficiency of the amount of compensation or the title to receive it or the apportionment thereof, the Central Government shall deposit the amount of compensation with the Tribunal:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided further that every person who claims to be an interested person (whether such person has been admitted to be interested or not) including the person referred to in the preceding proviso shall be entitled to prefer a claim for compensation before the Tribunal:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to prefer any such claim before the Tribunal.]

When the amount of compensation is not paid or deposited as required by this section, the Central Government shall be liable to pay interest thereon at the rate of five per centum per annum from the time the compensation became due until it shall have been so paid or deposited.”

Sec. 20. Appeals.

“Any person aggrieved by any award of the Tribunal under section 14 may, within thirty days from the date of such award, prefer an appeal to the High Court within whose jurisdiction the land or some portion of the land which has been acquired.”

Sec. 26. Jurisdiction of Civil Courts.

“Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Central Government or the competent authority or any other person is empowered by or under this Act to determine.”

Interpretations of Section 26 of CBA Act 1957:

A. It is observed that after publication of notification for acquisition of lands for a project under Section 9 of the CBA Act, suits are filed in the Civil Courts for seeking exclusive ownership right or a share in the ownership right of the land. The title of the land is disputed through filing of these suits.

Upon publication of Section 9 notification, the land or the rights in or over the land, as the case may be, vest absolutely in the Central Government free from all encumbrances. Section 14 of the CBA Act stipulates for the constitution of the Tribunal for the purpose of determining the amount of compensation and its apportionment. Section 17 of the CBA Act mentions that if there be any dispute as to the sufficiency of the amount of compensation or the title to receive it, the amount of compensation shall be deposited with the Tribunal.

The question of apportionment of compensation is required to be decided by the Tribunal under Section 14 of the Act which would essentially include the decision of Tribunal in relation to title to the land or any interest therein. Conjoint reading of sections 14 and 17 of the Act, manifests the legislative intent that the Tribunal is empowered to decide the title disputes. Section 26 is therefore, a provision ousting the jurisdiction of the Civil Court in relation to the matters which are required to be decided by the Tribunal under Section 14 which would include questions of title. Thus, in view of the Section 26 of the CBA Act, the jurisdiction of the Civil Court is ousted to decide the title of the land vested in the Central Government under Section 9 of the Act.

The aforesaid interpretation of Section 26 is supported by the following case laws:

1. The case of Somra Manjhl Alias Somaru Manjhl versus Central Coalfields Ltd., in which the Hon'ble High Court of Patna observes:

“.....The plaintiff filed suit against the defendants for the following reliefs: (A) That by adjudication the plaintiff's right, title, interest and possession over the suit lands be declared and confirmed or in the event of the dispossession a decree for khas possession be passed and suit lands be restored to the plaintiff. (B) That the plaintiff is entitled for getting compensation and job for the suit lands from the defendants No.1 to 5 and defendant No.6 is not entitled to

get compensation for the suit lands. (C) That by a permanent/temporary in-junction the defendants No.1 to 5 be restrained from making any payment of compensation with respect to suit lands to the defendant No.6.”

“.....Now the point in question is whether a person deprived of compensation for acquisition under the Act is entitled to come to a Civil Court or not. Definitely, the bar put under Sec.26 of the Act deprives the plaintiff from coming with such point. I have already mentioned that the main purport of the plaint was to get compensation and service of one of the dependants of the plaintiff in lieu of acquisition although the question of title was raised only to bring the suit within the fold of the Civil court. The trick of pleadings and the camouflage of the reliefs are not decisive in the matter but the space of the question or the effect of the reliefs are to be considered to decide the jurisdiction point. Reference in this connection may be made to the case of vatticherukuru Village Panchayat V/s. Nori madhusudan and others, 1991 Supp. (2)Supreme Court Cases 228. In the present case it appears that the reliefs claimed in the suit are nothing but **the question as to who is entitled to compensation either the plaintiff or defendant No.6 vis-a-vis as to whose title was there over the acquired land at the time of acquisition and this matter is exclusively within the SA No. 201 of 2005 jurisdiction of the particular tribunal to be set up for the purpose under Sec.17 of the Act. The civil Court can have no jurisdiction as per bar being created under Sec.26 of the Act.** The learned court below had rightly held that the Civil Court has got no jurisdiction to try the plaintiff's suit. It appears from the order of this Court in relation to the present dispute in C. W. J. C. No.1307 of 1990 (R) raised by defendant No.6 regarding payment of compensation that no tribunal was set up for the purpose of deciding compensation as there were no other claimants except defendant No.6. If the plaintiff feels that he has been deprived of getting legitimate right of compensation, then he is at liberty to move the appropriate authorities for setting up of a tribunal u/sec.17 of the Act and if the same is being denied, he can have the liberty to move before an appropriate forum for redressal of his grievance, but it is maintained that the Civil Court has got no jurisdiction for redressal of the grievance of the plaintiff.”

2. The case of Shanti Devi versus Central Coalfields Ltd., in which the Hon'ble High Court of Ranchi observes:

“.....This Second Appeal under Section 100 of the Code of Civil Procedure is preferred against the judgment and decree dated 05.05.2005 passed by the learned Additional District Judge, FTC-IV, Chatra in Title Appeal No. 19 of 2000 by which learned First Appellate Court dismissed the appeal and confirmed the judgment and decree in Title Suit No. 7 of 1996 passed by learned Subordinate Judge-I, Chatra whereby and where under the suit of the plaintiff filed with a prayer for declaration of right, title and interest of the plaintiff over the suit land with a right to receive the compensation and job from the defendant no. 3 was decreed by court on contest against the defendant no. 1 and 2 and ex parte against the defendant no. 3 and the title of the plaintiff no.2 was declared on the suit land of Khata no. 124 of village Bahera for the purpose of receiving the compensation and the job if any from the defendant no. 3 in respect of acquisition of the said land and the title of the original plaintiff no. 1 - Jahur Mian represented

through the legal heirs being the plaintiff no. 1 to 1/D was declared on the suit land of Khata no. 48 of village Bahera for the purpose of receiving compensation and job if any, from the defendant no. 3 in respect of the acquisition of the said land.”

“.....a plain reading of the Section 17(2) of the said Act, goes to show that inter alia, in case of dispute in title between the claimants for compensation, the Central Government shall deposit the amount of compensation with the tribunal and Section 14 (5) of the said Act envisages the procedure which is to be adopted by the tribunal and one should not lose sight of the fact about the stature of the person who constitute the tribunal, being a person who is or has been or qualified to be a judge of a High Court, which in other words means a person of experienced judicial mind having all the expertise and traits that is required to adjudicate every aspects of law involved in the matters before such tribunal. Unlike the revenue statutes or unlike the statutes of settlement operation, there is no provision in Coal Bearing SA No. 201 of 2005 Areas (Acquisition and Development) Act, 1957 that in case of dispute of title, the matter be referred to the civil court rather the power vested under Section 14(8) upon the tribunal, has empowered it to exercise the powers of a civil court while trying the suit under the Code of Civil Procedure, for the purpose of summoning, discovery and production of documents, reception of evidence on affidavits, requisitioning any public record and issuing commissions for examination of witnesses. The vesting of all such powers on the tribunal and under the circumstances discussed above, leads one to only corollary that learned tribunal under the Coal Bearing Areas (Acquisition and Development) Act, 1957 can adjudicate the disputed title of claimants in respect of acquired property before it at least to the limited extent of as to which of the disputing parties are entitled to the compensation amount deposited by the Central government with it. Hence, this court is not persuaded by the submissions made by the learned counsel for the respondents that learned tribunal constituted under Section 14 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 does not have the power to adjudicate the title of the claimants in respect of the acquired property.”

- B. Section 9 of the Code of Civil Procedure states that civil courts in India have jurisdiction to try all suits of a civil nature, except those for which their cognizance is either expressly or impliedly barred. In other words, the court's authority extends to all civil suits unless there is a specific legal provision preventing it. If a provision seeks to limit the court's jurisdiction, it must be strictly interpreted. Additionally, when it comes to matters related to compensation, the court's decision on title determines entitlement, and disputes over property title cannot be conclusively resolved by the Tribunal constituted under section 14 of the Act. The civil court retains its jurisdiction to decide issues related to property acquisition and title.

The aforesaid interpretation of Section 26 is supported by the following case laws:

1. The case of Nakula Sahoo & others vs Smt. Durpadi Singh & others, in which the Hon'ble High Court of Orissa observes:

“The seminal point that hinges for consideration of this Court is as to whether the Civil Court lacks jurisdiction to entertain the suit filed by the petitioners, herein or the subject matter of

suit lies within the exclusive jurisdiction of the Tribunal constituted under the Coal Bearing Areas (Acquisition and Development) Act, 1957 (hereinafter referred to as the Act)?”

“..... Even in cases where the statute accords finality to the orders passed by the Tribunals, the court will have to see whether the Tribunal has the power to grant the reliefs which the civil courts would normally grant in suits filed before them. If the answer is in the negative, exclusion of the civil court's jurisdiction would not be ordinarily inferred. In Rajasthan SRTC v. Bal Mukund Bairwa, a three- Judge Bench of this Court observed:- There is a presumption that a civil court has jurisdiction. Ouster of civil court's jurisdiction is not to be readily inferred. A person taking a plea contra must establish the same. Even in a case where the jurisdiction of a civil court is sought to be barred under a statute, the civil court can exercise its jurisdiction in respect of some matters particularly when the statutory authority or tribunal acts without jurisdiction.”

“..... It is trite that a decision is an authority for what it decides and not what can be logically deducted therefrom. In Padmasundara Rao (Dead) and others v. State of Tamil Nadu and others, AIR 2002 SC 1334, in paragraph-8 of the said report, the apex Court held that there is always peril in treating the words of a speech or judgment as though they are words in a legislative enactment, and it is to be remembered that judicial utterances are made in the setting of the facts of a particular case. Circumstantial flexibility, one additional or different fact may make a world of difference between conclusions in two cases. Thus, the aforesaid cases are distinguishable.”

“On a plain reading of Section 26 of the Act, it would show that the civil court's jurisdiction to entertain the suit or other proceedings stands specifically excluded in relation to any question referred to in Section 14 of the Act. It is evident from the language employed that the exclusion is not absolute or all pervasive. Prayer with regard to (i) to (iii) quoted in paragraph-2 (supra) made in the suit and the issues with regard to the right, title and interest of the plaintiffs over the suit land and declaration of the sale deed executed by defendant no.1 in favour of defendant nos. 2 and 4 as void, are to be tried by the civil court since the same are not covered under Section 14 of the Act. The Tribunal has not been conferred with any jurisdiction to decide the said issues. The issues of sale deed, possession and compensation are inextricably mixed up with each other. Thus, the learned Civil Judge (Sr.Division), Talcher is competent to decide the same issue.”

The case of Sandeep s/o Ramesh Dakhare vs WCL & others, in which the Hon'ble High Court of Nagpur observes:

“.....The statutory scheme would indicate that the ouster of the jurisdiction of the civil court is not absolute. The ouster is restricted to a matter which the Central Government or the competent authority or any other person is empowered by or under the Act to determine.”

“.....It is difficult to accept the submission that conjoint reading of sections 14 and 17 of the Act, manifests the legislative intent that the Tribunal is empowered to decide the title disputes. The competing claims to compensation or disputes touching the apportionment of the compensation may be prima facie considered by the Tribunal and the compensation may be apportioned between persons known or believed to be interested in the land. However, the final

determination of the rights of persons interested, where the rights are dependent on the validity or otherwise of the document of title or where the determination involves decision on important civil and property rights, must necessarily be that of the civil court.”

“..... It is well settled that a provision ousting the jurisdiction of a civil court must be strictly construed. The jurisdiction of the civil court under section 9 of the Code of Civil Procedure is expansive and takes within its sweep every suit of a civil nature except a suit of which cognizance is either expressly or impliedly barred. A provision which purports to bar the jurisdiction of the civil court must be strictly construed. Section 26 of the Act, construed thus, would bar the jurisdiction of the civil court to take cognizance only of those matters which are necessarily to be decided by the authorities or the Tribunal under the Act. In the case at hand, the civil suits seek to establish title. The civil suits do not question the acquisition nor do they question the quantum of compensation. The entitlement to the compensation would follow the decision on title. However, this Court has no hesitation in holding that dispute touching the title to the property acquired cannot be finally determined by the Tribunal constituted under section 14 of the Act. The jurisdiction of the civil court to decide the issues of title to the property acquired is not ousted.”

Conclusion

The divergence in the view of the Hon’ble Courts revolves around the interpretation of statutory provisions and the scope of the Tribunal’s authority versus that of the civil courts. To resolve disagreements in these opposing views, it may be concluded that the resolution of title disputes in the context of compensation under the CBA Act depends on the specific language of the statute and the legislative intent. While the Tribunal has a vital role in apportioning compensation and addressing ancillary issues, complex title disputes—especially those requiring detailed legal adjudication—may still require the involvement of civil courts. A balanced approach would recognize that the Tribunal has an important role, but regular courts can step in when the law is not clear or when the dispute over ownership is too complex for the Tribunal to handle. This way, both the Tribunal and the courts play their respective roles in safeguarding the rights of individuals in land acquisition cases.



Section 12- Arbitration & Conciliation Act



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INTRODUCTION

Freedom, impartiality and neutrality are the main characteristics of equal, fair and impartial arbitration. It is presumed that for successful adjudication of any proceeding, the adjudicator must be neutral and independent of either of the parties. Section 12 of the Act plays a crucial role in upholding these principles by establishing standards for the qualifications of arbitrators and safeguarding against potential conflicts of interest and provides for grounds of challenge to the appointment of arbitrator, which can be raised at any stage of the arbitration proceedings by either of the parties. However, prior to 2015 there was no specific provision in the Arbitration and Conciliation Act, 1996 concerning the arbitrator's impartiality and procedure for removing the arbitrator in such instances.

The Law Commission of India in its 246th Report had opined that party autonomy cannot be stretched to disregard the principles of impartiality and independence of the arbitral process, specifically at the stage of constituting of an arbitral tribunal. Hence, the Law Commission suggested automatic disqualification of persons whose relationship with the parties falls under any of the categories specified by law. Following upon the recommendations of the Law Commission, the Parliament enacted the Arbitration and Conciliation (Amendment) Act 2015 to incorporate Section 12(5) which renders a person whose relationship with the parties falls under any of the categories specified under the 7th (Seventh) Schedule ineligible for appointment. Given the 2015 amendment, parties filed applications under Section 11(6) urging the invalidation of appointment procedures which gave one party dominance in appointing arbitrators. The aim of the amendment was to enhance the quality of commercial arbitration in the country and to place a strong emphasis on freedom and impartiality of the arbitrators, which is the main essence of the arbitration proceedings.

This article delves into the significance of Section 12 of the Act, judicial view on the issues that arise in cases of unilateral appointment of arbitrators by Government bodies and PSUs and its practical implications for arbitration clause contained in manuals/commercial contracts of CIL. The article also tries to assess and analyse the way forward including possibility of suitable amendments, which may be made to the CIL Arbitration clause in order to harmonise it with the existing law and prevailing judicial view in this regard.

1. SECTION 12 OF ARBITRATION AND CONCILIATION ACT, 1996

(1) When a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances,—

(a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject-matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and

(b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

Explanation 1—The grounds stated in the Fifth Schedule shall guide in determining whether circumstances exist which give rise to justifiable doubts as to the independence or impartiality of an arbitrator.

Explanation 2—The disclosure shall be made by such person in the form specified in the Sixth Schedule.

(2) An arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub-section (1) unless they have already been informed of them by him.

(3) An arbitrator may be challenged only if—

(a) circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or

(b) he does not possess the qualifications agreed to by the parties.

(4) A party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reasons of which he becomes aware after the appointment has been made.

2(5) Notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator:

Provided that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

1.1. SECTION 12 OF THE ACT – BRIEF OVERVIEW

Following the recommendation of the 246th Law commission report, Section 12 of the Act was amended in 2015 and Fifth, Sixth and Seventh Schedules were inserted, with an aim to ensure independence and impartiality in the process of appointment of arbitrators.

Section 12 of the Arbitration and Conciliation Act, 1996, mandates that an individual approached to be an arbitrator must disclose any circumstances that may give rise to justifiable doubts regarding their impartiality or independence. This provision aims to ensure that arbitrators are free from any bias, conflict of interest, or external influence that could compromise their ability to render fair and unbiased decisions. The duty of disclosure imposed by the Act is continuous, extending from the initial acceptance of the appointment till the conclusion of the arbitration proceedings. Arbitrators are required to promptly disclose any new circumstances that may arise during the course of the arbitration, which could affect their impartiality or independence. This transparency is essential for maintaining the integrity and credibility of the arbitration process.

As per **Section 12 (4)**, the appointment of arbitrator may be challenged by either of the parties only if the circumstances exist that give rise to justifiable doubts as to his impartiality, or when he/she does not possess the qualifications agreed to by the parties in the agreement.

The **Section 12(5)** states that notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel or the subject-matter of the dispute, falls under any of the categories specified in the Seventh Schedule shall be ineligible to be appointed as an arbitrator. The **proviso to the Section 12(5)** states that parties may, subsequent to disputes having arisen between them, waive the applicability of this sub-section by an express agreement in writing.

The **Fifth Schedule** of the Act states the various grounds giving rise to justifiable doubts as to the independence or impartiality of arbitrators. The disclosure of such circumstances has to be made by the potential arbitrator in the forms contained in the **Sixth Schedule**. The **Seventh Schedule** of the Act states the various cases of the Arbitrator's relationship with the parties or counsel, which leads to disqualification of the arbitrator.

1.2 TWO CATEGORIES OF CHALLENGE UNDER SECTION 12

The effect of the 2015 Amendment is that there are now two separate categories for the parties to challenge the appointment of an arbitrator. First, a challenge under Section 12(3) to an appointed arbitrator based on justifiable doubts regarding his independence and impartiality, by using the procedure under Section 13. While Section 12(3) itself remains unamended, the insertion of Explanation 1 in Section 12(1), read with the Fifth Schedule, now enlists the circumstances that give rise to justifiable doubts as to an arbitrator's independence and impartiality.

The second category is under Section 12(5) which declares certain persons to be 'ineligible' to be appointed as arbitrators. These ineligibilities are enlisted in the Seventh Schedule. The provision itself stipulates that such ineligibility is notwithstanding any prior agreement to the contrary. In these situations, the ineligibility of the person to act as an arbitrator is a matter of law and goes to the root of their appointment. As they are de jure unable to perform their function, their mandate automatically terminates under Section 14(1)(a), and the appointment need not be challenged before the arbitral tribunal under Section 13. The parties can apply to the court under Section 14(2) for a decision on the termination of the arbitrator's mandate and appointment of a substituted arbitrator. The only way for parties to by-pass such ineligibility, as provided in the proviso, is to enter into an express agreement in writing, subsequent to the disputes having arisen, to waive the applicability of Section 12(5).

The difference between these categories is important to bear in mind. In the former situation, there is no bar to the appointment itself, but the appointment may later be challenged before the arbitral tribunal. On the other hand, in the latter situation, the Act places an express bar on the appointment of certain 'ineligible' persons as arbitrators, notwithstanding any prior agreement to the contrary. Their appointment is invalid from the very beginning, and in the application before the court under Section 14, the only question is whether the arbitrator falls under one of the categories of the Seventh Schedule and whether there is an agreement waiving the applicability of Section 12(5) in accordance with the proviso.

1.3 IMPLICATIONS OF SECTION 12 FOR ARBITRATION PROCEEDINGS

1. Safeguarding Impartiality and Independence: By requiring arbitrators to disclose potential conflicts of interest or circumstances that may affect their impartiality, Section 12 of the Act helps maintain the integrity of the arbitration process. Parties can assess the arbitrator's suitability and object to their appointment if justified doubts exist regarding their impartiality or independence.
2. Promoting Transparency and Accountability: The duty of disclosure enhances transparency and accountability in arbitration proceedings. Parties have a right to be informed about any factors that

could impact the arbitrator's decision-making process, thereby fostering trust in the fairness and integrity of the arbitration process.

3. **Mitigating Risks of Bias and Partiality:** By proactively disclosing potential conflicts of interest, arbitrators minimize the risks of bias or partiality in their decision-making. This proactive approach helps address concerns about arbitrators favoring one party over the other and ensures that arbitration awards are based on merit and legal principles rather than extraneous considerations.

2. JUDICIAL VIEW ON SECTION 12 OF THE ACT

2.1. Landmark judgments of Apex Court

While Section 12 is intended to strengthen the impartiality and independence of arbitrators, its effectiveness may be hindered by certain practical challenges and controversies. One common challenge is the interpretation of what constitutes circumstances giving rise to justifiable doubts regarding an arbitrator's impartiality or independence. This determination may be subjective and open to varying interpretations, leading to disputes and delays in the arbitration process. The judicial view on the appointment of sole arbitrator and also the effectiveness of panel of arbitrators and constitution of arbitral tribunal by government bodies and PSUs has so far been conflicted.

The Supreme Court of India has consistently emphasized the significance of Section 12 in upholding the fundamental principles of fairness, impartiality, and neutrality in arbitration. In its landmark judgment in the case of *TRF Limited v. Energo Engineering Projects Limited*¹, (hereinafter, "TRF"), the appellant contained an arbitration clause which stated that any dispute or difference between the parties in connection with the agreement shall be referred "to sole arbitration of the Managing Director of Buyer or his nominee." After a dispute arose between the parties about the encashment of the bank guarantee, the Managing Director of the respondent appointed a former judge as the sole arbitrator in terms of the arbitration clause. It was held that once the arbitrator has become ineligible by operation of law, he cannot nominate another as an arbitrator. The arbitrator becomes ineligible as per Section 12(5) of the Act and that it is inconceivable in law that person who is statutorily ineligible can nominate another person to act as an arbitrator.

¹ (2017) 8 SCC 377

In **Voestalpine Schienen GmbH vs DMRC**², (hereinafter, “Voestalpine”) the Supreme Court after examining the arbitration clause requiring the parties to nominate their arbitrators from a panel maintained by Delhi Metro Rail Corporation Ltd. (DMRC) held that the factum of retired employees and servicemen on panel of DMRC could not ipso facto attract the bar provided under the Seventh Schedule of the Act. It held that the very reason for empanelling these persons is to ensure that technical aspects of the dispute are suitably resolved by utilising their expertise when they act as arbitrators. The Court held that the arbitration clause had the following adverse consequences: (i) the choice given by DMRC to the other party was limited; and (ii) the discretion given to DMRC to curate a panel of five persons gave rise to the suspicion that it "may have picked up its own favourites." To remedy the situation, it was held that a choice must be given to both parties to nominate any person from the entire panel of arbitrators. Further, this Court observed that in case of a government contract where the authority to appoint an arbitrator rests with a government entity, there is an imperative to have a "broad based panel" to instil confidence in the mind of the other party and secure the principle of independence and impartiality at the stage of the constitution of the arbitral tribunal.

In **Bharat Broadband Network Ltd. vs United Telecoms Ltd.**³, (hereinafter, “BBNL”) the Supreme Court held that Section 12(5) read with the Seventh Schedule make it clear that if the arbitrator falls in any one of the categories specified in the Seventh Schedule, he becomes “ineligible” to act as arbitrator. Once he becomes ineligible, it is clear that, under Section 14(1)(a), he then becomes *de jure* unable to perform his functions inasmuch as, in law, he is regarded as “ineligible”.

Further, the Supreme Court in **Perkins Eastman Architects DPC vs HSSCC (India) Limited**⁴, (hereinafter, “Perkins Eastman”) held that any person who has an interest in the outcome of the dispute would be ineligible to be an arbitrator and further, a person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator. And, that has to be taken as the essence of the amendments brought in by the Arbitration and Conciliation (Amendment) Act, 2015 (3 of 2016) and recognised by the decision in TRF.

Subsequently, in **Central Organisation for Railway Electrification vs. ECI-SPIC-SMO-MCML (JV)**⁵, (hereinafter, ‘Core’) a three-Judge Bench of the Supreme Court observed that the controversy involved in the said matter was that as per the agreement procedure, the contractor was to

² (2017) 4 SCC 665

³ (2019) 5 SCC 755

⁴ (2020) 20 SCC 760

⁵ 2020 (14) SCC 712

suggest to General Manager at least two names out of panel sent by department to contractor, for appointment as contractor's nominee and General Manager had to appoint at least one out of them to three-member Arbitral Tribunal as contractor's nominee. The General Manager was to simultaneously appoint balance number of arbitrators from the panel or from outside the panel, duly indicating "Presiding Arbitrator" from amongst the three arbitrators so appointed.

After examining the said issue, the Supreme Court held that since the respondent contractor had been given the power to select two names out of panel of four retired railway officers, at least one of whom had to be appointed as one of the three arbitrators by the General Manager, as per the agreement procedure, the right of the General Manager (himself ineligible to act as arbitrator) in formation of the Arbitral Tribunal was counterbalanced by the respondent's above said power to choose any two from out of the four names. Hence, in the said case it was permissible for General Manager (though he was himself ineligible to act as arbitrator) to nominate arbitrators as per the agreement procedure.

As, it is evident from the conflicting views of the Supreme Court in the case of TRF followed in Perkins Eastman and in the case of 'Core' and other cases, in *Union of India vs. Tantia Constructions Ltd.*⁶, (hereinafter 'Tantia Constructions') a three-Judge Bench of the Supreme Court observed that it *prima facie* disagrees with the decision in Core for the basic reason that once the appointing authority itself is incapacitated from referring the matter to arbitration, it does not then follow that notwithstanding this, the appointments may be valid depending on the facts of the case. Therefore, the matter was referred to a larger bench to look into the correctness of the said decision. Subsequently, in *JSW Steel Limited vs South Western Railway and Another*⁷, (hereinafter 'JSW Steel Limited') another three-Judge Bench of the Supreme Court observed that correctness of the decision in 'Core' was doubted by a subsequent Bench of three Judges in 'Tantia Constructions', and the matter was directed to be placed before a larger Five (05) Judge Bench. Accordingly, the Supreme Court announced 5-Judge Constitution Bench led by Chief Justice D.Y. Chandrachud, and Justices Hrishikesh Roy, P.S. Narasimha, Pankaj Mithal and Manoj Misra which heard the matter.

When the reference came up on 12th July 2023, Mr. R. Venkataramani, the Attorney General for India, submitted that the Union Government had constituted an Expert Committee on Arbitration Law (chaired by Dr T.K. Viswanathan) to reconsider the provisions of the Arbitration Act. It was further submitted that the issues that have been raised in the present reference would fall within the broad

⁶ 2021 SCC Online 271

⁷ (2022 SCC Online 1973)

remit of the Expert Committee. On 17th January 2024, the Constitution Bench provided three months to the Union Government to evaluate the recommendations of the Expert Committee. The Court was informed on 16th April 2024 that the government had not taken any decision on the recommendations of the Expert Committee. The Constitution Bench decided to take up the reference for final hearing.

2.2 SUPREME COURT VERDICT - *Unilateral appointment clauses in public-private contracts are violative of Article 14*

In the reference to Hon'ble Supreme Court, the following issues fell for determination in this regard:

- a. Whether an appointment process which allows a party who has an interest in the dispute to unilaterally appoint a sole arbitrator, or curate a panel of arbitrators and mandate that the other party select their arbitrator from the panel is valid in law;
- b. Whether the principle of equal treatment of parties applies at the stage of the appointment of arbitrators; and
- c. Whether an appointment process in a public-private contract which allows a government entity to unilaterally appoint a sole arbitrator or majority of the arbitrators of the arbitral tribunal is violative of Article 14 of the Constitution.

The Hon'ble Supreme Court settled the above-mentioned issues in ***Central Organisation for Railway Electrification v/s M/s ECI SPIC SMO MCML (JV) A Joint Venture Company***⁸ vide their judgment dated 8th November 2024 wherein it has been held that unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution.

In view of the findings and deliberations as recorded in the judgment, the conclusion has been summarized by the Hon'ble Supreme Court as follows:

“a. The principle of equal treatment of parties applies at all stages of arbitration proceedings, including the stage of appointment of arbitrators;

b. The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs;

c. A clause that allows one party to unilaterally appoint a sole arbitrator gives rise to justifiable doubts as to the independence and impartiality of the arbitrator. Further, such

⁸ 2024 INSC 857

a unilateral clause is exclusive and hinders equal participation of the other party in the appointment process of arbitrators;

d. In the appointment of a three-member panel, mandating the other party to select its arbitrator from a curated panel of potential arbitrators is against the principle of equal treatment of parties. In this situation, there is no effective counterbalance because parties do not participate equally in the process of appointing arbitrators. The process of appointing arbitrators in CORE (supra) is unequal and prejudiced in favour of the Railways;

e. Unilateral appointment clauses in public-private contracts are violative of Article 14 of the Constitution;

f. The principle of express waiver contained under the proviso to Section 12(5) also applies to situations where the parties seek to waive the allegation of bias against an arbitrator appointed unilaterally by one of the parties. After the disputes have arisen, the parties can determine whether there is a necessity to waive the nemo judex rule; and

g. The law laid down in the present reference will apply prospectively to arbitrator appointments to be made after the date of this judgment. This direction applies to three-member tribunals.”

2.3 PROVISION OF WAIVER

A waiver is an intentional relinquishment of a right by a party or an agreement not to assert a right. The Arbitration Act allows parties to waive the application of Section 12(5) by an express agreement after the disputes have arisen. However, the waiver is subject to two factors. First, the parties can only waive the applicability of Section 12(5) (an objection to the bias of an adjudicator) after the dispute has arisen. This allows parties to determine whether they will be required or necessitated to draw upon the services of specific individuals/experts as arbitrators to decide upon specific issues.

The second requirement of the proviso to Section 12(5) is that parties must consciously abandon their existing legal right through an express agreement. Thus, the Arbitration Act reinforces the autonomy of parties by allowing them to override the limitations of independence and impartiality by an express agreement in that regard.

Justice Hrishikesh Roy in his judgment concurring with the opinion of the three judges of the constitutional bench observed as follows:

“41. In my view, all unilateral appointments must not be declared void by way of a declaration of this Court. The 2015 Amendment in Section 12(5) itself provides for a specific waiver i.e. (a) an express consent in writing and (b) the consent must be obtained after the dispute has arisen. Therefore, it is abundantly clear that an agreement between the parties provided it satisfies the specific waiver requirements under Section 12(5) can effectively cure any concerns about impartiality or independence in such cases.”

3. ROAD AHEAD FOR CIL

Coal India Limited (CIL) had issued guidelines vide its Circular dated 07.04.2017 that in the event of dispute arising out of the contract, the same shall be referred to an arbitrator for settlement thereof and accordingly, the relevant manuals have been amended. The relevant agreements of the CIL as per the said Manuals contain a sole Arbitration Clause which provides that any dispute arising out of the agreement shall be referred to the sole arbitration of a person, appointed to be the arbitrator by the Chairman, CIL/ CMD of Subsidiary Company (as the case may be). The award of the arbitrator shall be final and binding on the parties of this Contract. It is further a term of the contract that no person other than the person appointed by the Chairman, CIL / CMD of Subsidiary Company (as the case may be) as aforesaid should act as arbitrator and that, if for any reason that is not possible, the matter is not to be referred to Arbitration at all.

In the light of foregoing paragraphs and the statutory provisions as discussed above, the said Sole Arbitration Clause cannot be said to be in consonance with the provisions of the Arbitration and Conciliation Act, 1996. The conjoint reading of Section 12(5) and item 5 of the 7th Schedule renders CMD of any company ineligible to act as an arbitrator. After the Supreme Court judgment in TRF upheld by various subsequent judgments of Supreme Court, it is a settled law that once the arbitrator becomes ineligible as per Section 12(5) of the Act and that it is inconceivable in law that person who is statutorily ineligible can nominate another person to act as an arbitrator.

Further, the arbitration clause empowers CIL to unilaterally appoint a sole arbitrator and therefore, in terms of the verdict of Hon'ble Supreme Court in 'Core', such a provision is in violation of Article 14 of the Constitution as it gives rise to justifiable doubts to the other party as to the independence and impartiality of the arbitrator. The statutory provisions, the interpretation and the view endorsed by the Courts is contrary to the mandate of the Arbitration Clause contained in the CIL Manuals. Thus, the collective reading of all provisions, renders the existing Arbitration Clause in the manual to be unconstitutional and unenforceable.

In such a scenario, the parties, after serving a notice for referring the dispute for arbitration, approach Hon'ble High Court praying for appointment of an arbitrator. The Hon'ble Courts, thereafter, invariably appoint a retired High Court/District Court Judge to act as an independent arbitrator to adjudicate the dispute. In this way, we are losing on an important right provided to us by virtue of the Arbitration Act, 1996 – the autonomy to agree on procedure for appointment of an Arbitrator.

One legitimate solution to this issue is that the contractor/opposite party may be persuaded to waive their objection to the appointment of the sole arbitrator after the dispute has arisen by entering into an express agreement in writing to that effect. Amendments to the clause may be considered to put it in line with a statutory provisions and judicial view in this regard. Alternatively, CIL may explore the option of referring certain disputes of extreme importance or higher financial value to institutional arbitration with three-member arbitral tribunal.

It is understood that reference of disputes to a sole arbitrator has various advantages, including easy arrangements of meetings or hearings, reduced expenses since the parties will only have to bear the expense of one arbitrator, and speedy decision-making. However, in the case of the appointment of a sole arbitrator, the decision-making vests in the hands of one person and a clause that allows one party to unilaterally appoint a sole arbitrator is exclusive and hinders equal participation of the other party in the appointment process of arbitrators.

In comparison, a three-member arbitral tribunal usually allows each party to nominate one arbitrator of their choice, with the third arbitrator being appointed either by the two party-appointed arbitrators or by agreement of parties. This allows equal participation of both parties in the appointment process and enables the appointment of an independent and impartial third arbitrator. Hence, any perceived tilt of an arbitrator in favour of the party which nominated that arbitrator is offset by the appointment of the third arbitrator in the course of a deliberative process involving both the arbitrators or as envisaged in the agreement between parties. A three-member arbitral tribunal also enhances the quality of the adjudicative deliberations and ensures compliance with due process.

CONCLUSION

Section 12 of the Arbitration and Conciliation Act, 1996, serves as a cornerstone for maintaining the impartiality and independence of arbitrators in India by imposing a duty of disclosure on arbitrators and requiring them to promptly disclose any circumstances that may affect their impartiality or independence, the provision enhances transparency, accountability, and trust in the arbitration process. However, effective implementation of Section 12 requires proactive efforts from arbitrators, parties,

and arbitral institutions to uphold the highest standards of integrity and fairness in arbitration proceedings.

As regards PSUs and government bodies, every action of a public authority or a person acting in the public interest or any act that gives rise to a public element must be based on principles of fairness and non-arbitrariness. After Supreme Court verdict dated 8th November, 2024 in 'Core', it has become very clear that the government agencies have to consider the principles of equality and non-arbitrariness when crafting arbitration procedures, including the procedure for the appointment of arbitrators. The terms of the arbitration agreement must meet the minimum standards of equality and fairness.

It is noteworthy that where both the parties could nominate respective arbitrators of their choice is a completely a different situation. The reason is clear that whatever advantage a party may derive by nominating an arbitrator of its choice would get counter-balanced by equal power with the other party. But, in a case where only one party has a right to appoint a sole arbitrator, its choice will always have an element of exclusivity in determining or charting the course for dispute resolution. Naturally, the person who has an interest in the outcome or decision of the dispute must not have the power to appoint a sole arbitrator.

The Arbitration Act does not prohibit PSUs from empanelling potential arbitrators and has in fact acknowledged the importance and utility of maintaining a panel of arbitrators, especially by the PSUs. However, an arbitration clause cannot mandate the other party to select its arbitrator from the panel curated by PSUs and a choice may be given to the other party to select its arbitrators from the curated list, provided the other party expressly waives the applicability of the *nemo iudex* rule or it may select an arbitrator from beyond that list.

In view of the statutory requirements and interpretation of the Courts, it has become imperative for PSUs including Coal India Limited, to draft and incorporate arbitration clauses in a manner that does not indicate that one party has the power to unilaterally appoint the arbitrator(s). As a matter of best practice, equality of parties should be apparent from the wording of the arbitration clauses stipulating the appointment procedure. The authority of one party should not be exclusive and while there can possibly be a panel of arbitrators, it should be broad based, and the other party should not be mandated to choose from such panel.

Alternatively, CIL can opt for institutional arbitration mechanisms which can provide a convenient and cost-effective solution to the issue to appointment of arbitrators while preserving the

sanctity of party autonomy. Institutional arbitrations are conducted pursuant to institutional arbitration rules and overseen by an arbitral institution with responsibility for various aspects relating to constituting the arbitral tribunal from a panel maintained by them, administrative, financial and similar matters.



LEGAL ASPECTS OF PROMOTION



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Every management must provide realistic opportunities for promising employees to move upward. Supreme Court has on more than one occasion pointed out that provision for promotion increases efficiency of the public service while stagnation reduces efficiency and makes the service ineffective.

The gamut of service jurisprudence emanates from Articles 14 and 16 of the Constitution of India. Public Sector Undertakings are covered within the meaning of State defined under Article 12 of the Constitution of India. This being the position, it should be the endeavor of every such entity to carry out its affairs and attune its policies keeping in mind the provisions of the Constitution of India, primarily, Article 14, Article 15, and Article 16. In other words, policies should be so framed as to pass the test of Article 14 & Article 16.

“Promotion” in service jurisprudence means an upward movement on a higher post or a grade. The office or rank or post which the employee is promoted is referred to as the feeder post. It can be claimed either under Statute or a subordinate legislation or even by administrative instructions (Dinesh Bahadur Singh vs State Of U.P. And Ors. 2004 (4) AWC 2945). This meaning was again reiterated by the Apex Court in *Dr. (Mrs.) Meera Massey, Dr. Abha Malhotra and Dr. S.C. Bhadwal & Ors. V. Dr. S.R. Mehrotra & Ors* AIR1998SC1153 while referring to the following case-laws:-

State of Rajasthan v. Fateh Chand Soni (1996) 1 SCC 562 :-

"In the literal sense the word 'promote' means to advance to a higher position, grade, or honour. So also 'promotion' means advancement or preferment in honour, dignity, rank, or grade. 'Promotion' thus not only covers advancement to higher position or rank but also implies advancement to a higher grade. in service law also the expression 'promotion' has been understood in the wider sense and it has been held that 'promotion' can be either to a higher pay scale or to a higher post."

Tarsem Singh & Anr. v. State of Punjab & Ors., [1994] 5 SCC 392:-

***Promotion** as understood under the **service law jurisprudence** means advancement in rank, grade or both. **Promotion** is always a step towards advancement to a higher position, grade or honour."*

Director, Central Rice Research Institution Cuttack and Anr. v Khetra Mohan Das, [1994] Supp. 3 SCC 595:-

"Promotion as understood in ordinary parlance and also as a term frequently used in cases involving service laws means that a person already holding a position would have a promotion if he is appointed to another post which satisfies either of the two conditions namely that the new post is in a higher category of the same service or that the new post carries higher grade in the same service or class."

The principal object of a promotion system is to secure the best possible incumbents for higher positions while maintaining the morale of the whole organization (High Court of Calcutta v. Amal Kumar Roy, (1963) 1 SCR 437). The significance of promotion in organizations has well been appreciated by the Apex Court in a number of judicial decisions. In CSIR v K.G.S Bhatt & Another (AIR 1989 SC 1972) , the Apex Court observed in the same line as under :

"It is often said and indeed, adroitly, an organization public or private does not 'hire a hand' but engages or employees a whole man. The person is recruited by an organization not just for a job, but for a whole career. One must, therefore, be given an opportunity to advance. This is the oldest and most important feature of the free enterprise system. The opportunity for advancement is a requirement for progress of any organisation. It is an incentive for personnel development as well. (See : Principles of Personnel Management by Flipo Edwin B. 4th Ed. p. 246). Every management must provide realistic opportunities for promising employees to move upward. "The organisation that fails to develop a satisfactory procedure for promotion is bound to pay a severe penalty in terms of administrative costs, misallocation of personnel, low morale, and ineffectual performance, among both no managerial employees and their supervisors". (See : Personnel Management by Dr. Uday Pareek p. 277). There cannot be any modern management much less any career planning, man-power development, management development etc. which is not related to a system of promotions. (See : Management of Personnel in Indian Enterprises by Prof. N.N. Chatterjee, Chap. 12 p. 128). The appellant appears to have overlooked this basic requirement of management so far as respondent-1 was concerned till N.R. & A.S. was introduced".

We may next consider the concepts of '**promotion**' and '**upgradation**'. Often, the two terms Promotions and up gradation have been understood to be synonymous. Upgradation should not be confused with promotion; the line drawing distinction between the two would be the "process of selection". In *All India Employees Association (Railways) v. V.K. Agarwal* 2001 (10) SCC 165, *Union of India v. V.K. Sirothia* 2008 (9) SCC 283 , where the Apex court had to deal with the question of application of reservation provision to , observed that since upgradation involves neither appointment nor promotion, it will not attract reservation. Upgradation involves mere conferment of financial benefits by providing a higher scale of pay.

The principles relating to promotion and upgradation were summarized again in: *Bharat Sanchar Nigam Ltd. Vs. R. Santhakumari Velusamy and Ors* AIR 2011 SC3793, 2011(10)SCALE136:

- i. Promotion is an advancement in rank or grade or both and is a step towards advancement to higher position, grade or honour and dignity. Though in the traditional sense promotion refers to advancement to a higher post, in its wider sense, promotion may include advancement to a higher pay scale without moving to a different post. But the mere fact that

both that is advancement to a higher position and advancement to a higher pay scale – are described by the common term ‘promotion’, does not mean that they are the same. The two types of promotion are distinct and have different connotations and consequences.

(ii) Upgradation merely confers a financial benefit by raising the scale of pay of the post without there being movement from a lower position to a higher position. In an upgradation, the candidate continues to hold the same post without any change in the duties and responsibilities but merely gets a higher pay scale.

(iii) Therefore, when there is an advancement to a higher pay scale without change of post, it may be referred to as upgradation or promotion to a higher pay scale. But there is still difference between the two. Where the advancement to a higher pay-scale without change of post is available to everyone who satisfies the eligibility conditions, without undergoing any process of selection, it will be upgradation. But if the advancement to a higher pay-scale without change of post is as a result of some process which has elements of selection, then it will be a promotion to a higher pay scale. In other words, upgradation by application of a process of selection, as contrasted from an upgradation simplicitor can be said to be a promotion in its wider sense that is advancement to a higher pay scale.

(iv) Generally, upgradation relates to and applies to all positions in a category, who have completed a minimum period of service. Upgradation, can also be restricted to a percentage of posts in a cadre with reference to seniority (instead of being made available to all employees in the category) and it will still be an upgradation simplicitor. But if there is a process of selection or consideration of comparative merit or suitability for granting the upgradation or benefit of advancement to a higher pay scale, it will be a promotion. A mere screening to eliminate such employees whose service records may contain adverse entries or who might have suffered punishment, may not amount to a process of selection leading to promotion and the elimination may still be a part of the process of upgradation simplicitor. Where the upgradation involves a process of selection criteria similar to those applicable to promotion, then it will, in effect, be a promotion, though termed as upgradation.

(v) Where the process is an upgradation simplicitor, there is no need to apply rules of reservation. But where the upgradation involves selection process and is therefore a promotion, rules of reservation will apply.

(v) Where there is a restructuring of some cadres resulting in creation of additional posts and filling of those vacancies by those who satisfy the conditions of eligibility which includes a minimum period of service, will attract the rules of reservation. On the other hand, where the restructuring of posts does not involve creation of additional posts but merely results in some of the existing posts being placed in a higher grade to provide relief against stagnation, the said process does not invite reservation.

There is no fundamental right of promotion, but employees have a right to be considered for promotion if they meet the eligibility criteria (Hardev Singh v. Union of India & Anr [(2011) 10 SCC 121]. The Supreme Court has held that a right to be considered for promotion is a condition of service but mere chances of promotion are not. The rule which merely affects the chances of promotion cannot be regarded as varying a condition of service [State of Mysore & Anr. v. G.B. Purohit & Ors. (1967) SLR 753]. Further, there is no right

for an employee outside the rules governing the services. The right is to be considered for promotion in accordance with rules as they exist when the exercise is carried out for promotion [State of Himachal Pradesh & others V. Raj Kumar & others 2022 INSC 605].

The Apex Court in the case of Union of India v. K.K. Vadhera and Ors, 1989 Supp (2) SCC 625 has clearly laid down that the promotion to a post should only be granted from the date of promotion and not from the date on which vacancy has arisen.

CONCLUSION

It is settled law that promotion is an incidence of service law. However, mere chances of promotion are not conditions of service . It has to be amongst persons who are born on a regular cadre in service. An employee of a State although has no fundamental right of promotion, eligible candidates have a fundamental right to be considered for promotion against the vacancy and promoted if suitable ; what is necessary is to provide an opportunity for advancement, promotion being a normal incidence of service.



LEGAL ASPECTS OF PROMOTION



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Wednesbury Principle of Unreasonableness: Its Origin, Development, and Global Application

The Wednesbury principle of unreasonableness is a significant concept in administrative law that originates from a 1948 case before the United Kingdom's Court of Appeal. Over time, it has evolved, influencing judicial review in various jurisdictions, including India. This principle serves as a tool for courts to assess whether decisions made by public authorities are so unreasonable that no reasonable person could have made them. This essay explores the origins, history, development, and contemporary application of the Wednesbury principle, including its relationship with the doctrine of proportionality.

Origin and History of the Wednesbury Principle

The Wednesbury principle traces its origins to the landmark case of *Associated Provincial Picture Houses Ltd. v. Wednesbury Corporation* (1948), where the United Kingdom's Court of Appeal established the principle of unreasonableness as a ground for judicial review. In this case, the petitioner challenged the decision of a local authority that imposed a condition prohibiting children under 15 from attending films after 9 pm. The Court held that judicial review could not be used to overturn the decision solely because it was unreasonable in the eyes of the court. Instead, the Court established a high threshold for unreasonableness, asserting that a decision could only be overturned if it was "so unreasonable that no reasonable authority could ever have come to it."

This test, known as the "Wednesbury test," was designed to ensure that courts did not usurp the discretion of administrative authorities. The Court clarified that its role was not to substitute its own judgment for that of the decision-maker but rather to scrutinize whether the decision fell within a permissible range of reasonable outcomes. The Wednesbury principle thus set the standard for judicial review based on irrationality or unreasonableness.

Development and Evolution of the Wednesbury Principle

While the Wednesbury principle laid the foundation for judicial review, it was not without criticism. Many argued that the test's high threshold for unreasonableness prevented courts from intervening in decisions that were clearly arbitrary or unjust. This led to the development of more refined doctrines of judicial review, particularly the principle of proportionality, which emerged as a more robust framework for reviewing administrative actions.

The principle of proportionality is often seen as a natural progression from the Wednesbury test, incorporating a more detailed analysis of the relationship between the decision's objective

and the means used to achieve it. Proportionality involves a closer examination of whether the decision-maker's actions were appropriate and not excessively burdensome in relation to the goals sought. Thus, while the Wednesbury principle focuses on whether a decision is so unreasonable as to be beyond the pale of rationality, proportionality adds a layer of scrutiny concerning the balance between ends and means.

In the UK, while the Wednesbury test remains a staple of administrative law, proportionality has gained prominence in cases involving fundamental rights or international law obligations. The courts have increasingly moved towards a more context-specific approach, using proportionality to scrutinize the appropriateness of the means chosen to achieve legitimate aims.

Application of Wednesbury Unreasonableness in India

In India, the Wednesbury principle has played a crucial role in shaping judicial review. Indian courts, particularly the Supreme Court, have consistently applied the principle of unreasonableness to evaluate the legality of administrative decisions. Judicial review in India is grounded in the Constitution, and courts are empowered to examine whether actions of public authorities are arbitrary, unreasonable, or in violation of fundamental rights.

The Indian judiciary has embraced the Wednesbury test in cases involving administrative discretion. For instance, in *Om Kumar v. Union of India* (2001), the Supreme Court held that administrative actions that are arbitrary, capricious, or unreasonable can be struck down, applying the principles of unreasonableness. Similarly, in *Maneka Gandhi v. Union of India* (1978), the Court held that administrative actions infringing on fundamental rights, such as the right to freedom of movement, must not be disproportionate or unreasonable.

However, India's legal framework has also seen the growth of the proportionality test, particularly in cases where administrative decisions impinge upon fundamental rights. The doctrine of proportionality has been integrated into Indian jurisprudence to evaluate the balance between administrative actions and individual rights. This development marks a shift towards a more rigorous review of administrative decisions, moving beyond the basic test of unreasonableness to consider whether the measures taken by authorities are excessive in relation to their goals.

Wednesbury Principle and the Doctrine of Proportionality

While the Wednesbury principle focuses on unreasonableness, the doctrine of proportionality builds on this by evaluating whether an action is suitable, necessary, and balanced in relation to its objective. Proportionality requires courts to assess whether the action taken by a public authority is appropriate for achieving its stated aim, whether there are less restrictive means available, and whether the action is proportionate in its intensity.

The shift from Wednesbury unreasonableness to proportionality can be seen in the evolution of judicial review in the European Union, as well as in other common law jurisdictions. In the EU, proportionality has become a central tool for reviewing administrative decisions, particularly those involving fundamental freedoms and rights. In many jurisdictions, proportionality has supplanted the Wednesbury test, particularly where the subject matter involves core constitutional rights or international obligations.

Current Position of the Wednesbury Principle Globally

Globally, the Wednesbury principle remains a key concept in administrative law, particularly in jurisdictions with common law traditions. In the UK, it is still used as a measure of unreasonableness, although it has been supplemented by proportionality in cases involving human rights. The European Court of Justice has also applied proportionality as a more nuanced and flexible standard for reviewing the legitimacy of state actions.

In India, as mentioned earlier, the Wednesbury principle continues to be relevant, especially in cases of administrative discretion. However, as the country moves towards a more rights-oriented legal framework, proportionality has gained traction, particularly in cases involving public welfare and individual rights.

Therefore the Wednesbury principle of unreasonableness remains a foundational concept in administrative law, shaping the scope of judicial review. While it ensures that courts do not improperly interfere with the discretion of public authorities, it has been complemented and sometimes replaced by the doctrine of proportionality, which provides a more structured approach to balancing rights and state action. In India, both principles have been used to scrutinise administrative decisions, ensuring that they comply with constitutional principles of fairness and reasonableness. As legal systems evolve, the relationship between unreasonableness and proportionality will continue to influence judicial review, ensuring that state actions are both effective and just.





WESTERN COALFIELDS LIMITED

(A Subsidiary of Coal India Limited)

WORKSHOP ON ENVIRONMENTAL LAW

21st & 22nd March, 2025

HIGHLIGHTS

- **Opportunity to understand the principles and practical aspects of environmental laws.**
- **Opportunity to learn from eminent Subject experts and environmental law academicians.**
- **Opportunity to increase awareness about the regulatory framework.**

Environment Impact Assessment in India and reforms related to Environmental Laws



Sundar Ramanathan
Member EIA



A. Background

The concept of environmental protection and resource management has traditionally been given due emphasis and woven in all facets of life in India. These age-old practices teach people to live in perfect harmony with nature. Nevertheless, changing life styles, increasing pace of urbanization, industrialization and infrastructure development have caused environmental pollution and degradation. The losses manifest as pollution in air, water and land leading to biodiversity losses and potential health hazards.

2. Consequently, rules, laws and policies on environmental protection were introduced. Environmental Impact Assessment (EIA) is a tool to identify the environmental impacts associated with a developmental activity and to help provide the necessary mitigation measures. In India, EIA was formally introduced on 27/01/1994 and superseded on 14/09/2006.

B. EIA, 2006

3. As per the extant provisions of EIA notification, 2006, prior Environment Clearance (EC) is required for (i) all new projects or activities listed in the Schedule to this notification; (ii) expansion and modernization of existing projects or activities listed in the Schedule to this notification with addition of capacity beyond the limits specified for the concerned sector, that is, projects or activities which cross the threshold limits given in the Schedule, after expansion

or modernization; and (iii) any change in product-mix in an existing manufacturing unit included in Schedule beyond the specified range.

4. The EIA Notification, 2006 categorized all the projects into two categories namely; Category A and Category B [B1 and B2] based on the spatial extent of potential impacts on human health and natural and manmade resources. The Category A projects are appraised at the Central Level in the Ministry of Environment, Forest & Climate Change in consultation with the Expert Appraisal Committee (EAC), while the Category B projects are appraised at the State level i.e., State Level Environment Impact Assessment Authorities and Committees (SEIAAs and SEACs). The Category B projects are further categorized as category B1 and B2, wherein for category B1 projects preparation of EIA/EMP and Public Consultation is applicable and for category B2 projects neither EIA nor Public Consultation is required. The EC process for projects comprises of four stages namely screening, scoping, public consultation and appraisal.

4. The EIA/EMP report which is prepared on the basis of Terms of Reference (ToRs) under scoping stage evaluates the environmental and societal impacts of the project for which corresponding Environmental Management Plan (EMP) is prepared. The panel of experts evaluates the adequacy of EIA report including mitigation measures suggested under EMP during appraisal process. Thereafter, environmental safeguards in the form of specific and general conditions are stipulated in the Environment Clearance being accorded by MoEF&CC. The compliance to the prescribed environmental safeguards are being enforced and monitored through Eleven (11) Regional Offices and Nine (9) Sub Regional Offices of the Ministry.

5. PARIVESH 1.0 – stands for Pro Active and Responsive Facilitation by Interactive and Virtuous Environmental Single-window Hub. It is a web based, role-based workflow application which has been developed for online submission, processing and monitoring of proposals submitted by the proponents for seeking Environment, Forest, Wildlife and CRZ Clearances from Central and State authorities. It automates the entire tracking of proposals which includes online submission of a new proposal, editing/updating the details of proposals and displays status of the proposals at each stage of the workflow. The architecture and workflow are such that functionally distinguishable aspects (for example data input and output, data processing, and the user interface) are all interwoven, rather than containing

architecturally separate components. The current scope of the portal is limited to Clearance Processing, with very less or no provision for compliance reporting and monitoring.

Transition of PARIVESH 1.0 to 2.0

- **Before 2014:** Offline Process
- **June 2014 – 2018:** Online portal for receiving applications in silos for EC and FC clearances. Back-end processing in offline mode.
- **In 2018:** Single window portal, PARIVESH was launched to make end-to-end online processing of EC, FC, WL and CRZ.
- **2019 – 2020:**
 - o Further expansion of Services under PARIVESH
 - o For Environmental Clearances – end-to-end processing is carried out in PARIVESH
 - o Growth in Stakeholder Ecosystem: Form Earlier Ministry (MoEFCC) only to gradually rolled out to States (SEIAA/SEAC)
 - o WL and FC: Partial Process
 - o CRZ: Application and Approval

PARIVESH 1.0	PARIVESH 2.0
Web based, Role-based Workflow application - Only For EC, FC, WL & CRZ - From Central, State and district level authorities. End to End processing of proposals on PARIVESH	The improved and enhanced version with end-to-end automation of all Green Clearances and Post-Clearance Monitoring
Monolithic Workflow System	Micro-Service Architecture

Reforms through e-Governance in PARIVESH

- 1) **eKYC** using PAN, CIN & Aadhaar is done to ensure proper validated persons/entities are entering into the system.
- 2) Creating an integrated Ecosystem of Administration by onboarding Internal (State, IRO, SEIAA) as well as external (BharatMaps, PFMS, Aadhaar, QCI/NABET etc.) stakeholders

- 3) Better Process Synchronization through implementation of KYA, CAF, DSS, Bharat maps
- 4) Effective Compliance monitoring - Leveraging Emerging Technologies
- 5) Workflow Automation by implementation of business rules and system-generated Clearance Letter

Changes and Positive Impact

- 1) **Authentication and validation of users through Govt. database**

To check the authenticity of users entering PARIVESH through PAN, CIN or Aadhaar is done to ensure proper validated persons/entities are entering into the system.

- 2) **Efficient Pre-Planning of projects using Know Your Approval**

Project Proponent can better plan projects before applying in PARIVESH thereby avoiding the time for rework and making the process efficient.

- 3) **Rationalization Application & Submitting applications using Common Application Form (CAF)**

- 4) mapping of Common fields for EC, FC, WL, CRZ in an Application Form Management module minimized the repetitive efforts of the Users ensuring the single version of the truth across all applicable clearances

- 5) **Decision Support System (DSS):**

- 6) Development of Decision Support System (DSS) a spatial-based visualization and analytical platform that provides tools for exploration of the project proximity is helping the technical committee and regulatory authority in making the informed decision.

- 7) **Automation of different workflows, business rules in the single window system, and system-generated Clearance Letter.**

End to end process automation for various functionalities on the PARIVESH 2.0 portal, for State/Regional Office Level and MoEFCC level clearances

- 8) **Effective Post-clearance monitoring and tracking of non-compliances.**

Robust compliance monitoring by integration of module in PARIVESH for online submission of six-monthly compliance reports by the Project Proponents. End to end online examination and processing for action, if required, by the IROs and Ministry ensures the effective monitoring and timely action by the regulatory authority.

A copy of the EIA notification, 2006 and the reforms carried out by the Ministry can be accessed at <https://parivesh.nic.in/>

C. Violation under EIA, 2006

MoEF&CC enacted Environment Impact Assessment (EIA) Notification on 27/01/1994 and superseded the same on 14/09/2006. As per extant provisions of EIA, 2006, prior Environment Clearance is mandatory for projects listed in the schedule to the EIA, Notification 2006. Projects are brought for environmental clearance after starting the construction work, or have undertaken expansion, modernization, and change in product- mix. Such projects are treated as a Violation case.

Environmental Damage Compensation (EDC) is a tool guided by 'Polluter Pays' principle, wherein a cost is paid by the polluter responsible for polluting environment and causing damage to its components.

The notification for dealing with the violation cases was issued on 14/03/2017 by providing six months window period. Standard Operating Procedure (SoP) for dealing with the violation cases was issued on 7/07/2021 and the same is presently under sub-judice in the Hon'ble Supreme Court.

Salient features of Notification and SOP

- Protect and improve the quality of environment and abate environmental pollution and bring all such violation cases under compliance within the environmental laws
- Established a process for appraisal of such cases of violation for prescribing adequate environmental safeguards to all such entities and the process provides for a deterrent to all such violations and also the pecuniary benefit of violation and damage to environment.
- Expert Appraisal Committees (EACs/SEACs) constituted at the Central and the State level appraise all such violation projects for grant of EC. EAC/SEAC prescribe specific Terms of Reference for such projects on assessment of ecological damage, remediation plan and natural and community resource augmentation plan.
- EACs/SEACs on due diligence will recommend the quantum of damage assessment equivalent to the amount of remediation plan and Natural and Community Resource Augmentation Plan and the same has to be submitted as a bank guarantee with the SPCB prior to the grant of environmental clearance

and the same will be released after successful implementation of the RP&NCRAP.

CPCB developed a methodology for Environment damage compensation and the same is enclosed as **Annex A**. CPCB published a document on Environment Damage Assessment framework on December, 2022 and the same is enclosed as **Annex B**.

D. Important judgements related to EIA

1. TN Godavarman Thirumulpad vs UOI & Ors. (WP No. 202 of 1995) – Lafarge Umiam Mining Pvt. Ltd. Judgment (06.07.2011)

This landmark judgment addressed mining operations conducted on forest land without prior approval under the Forest (Conservation) Act, 1980. It reinforced stringent scrutiny of environmental and forest clearances in India, influencing compliance under the EIA Notification, 2006.

Key Takeaways:

- **Judicial Review Scope:** It clarified the extent of judicial intervention in cases where environmental clearances had been granted but later challenged.
- **Guidelines for Future Projects:** The Court mandated that forest clearance must precede environmental clearance in cases where both are required.

Significance:

- The judgment underscores the balance between economic development and environmental conservation within the Indian legal framework.
- It reinforces transparency, rigorous assessment, and public participation in environmental decision-making.
- Encourages corporate integrity, inter-agency collaboration, and community involvement in environmental governance, paving the way for sustainable development.
- This decision remains a cornerstone in India's environmental jurisprudence, ensuring greater accountability and adherence to conservation laws.

2. Supreme Court Ruling on Eco-Sensitive Zones: T.N. Godavarman Thirumulpad v. Union of India judgment dated 26.04.2023

The case of *T.N. Godavarman Thirumulpad v. Union of India & Ors.* addresses the regulation of Eco-Sensitive Zones (ESZs) around National Parks and Wildlife Sanctuaries in India. The Supreme Court clarified that mining activities are strictly prohibited within a one-kilometer radius of these protected areas. The Union of India filed an application challenging specific directions in the Court's earlier order dated June 3, 2022. The Union sought modifications to the order which had mandated a uniform ESZ of at least one kilometer around all protected forests and imposed restrictions on activities within these zones.

Court's Findings and Modifications

After reviewing arguments from the Additional Solicitor General, amicus curiae, and State Governments, the Supreme Court ruled that a uniform ESZ boundary was impractical due to India's diverse geographical and socio-economic conditions. Consequently, it modified its earlier order, allowing flexibility in ESZ delineation while ensuring adherence to the **Ministry of Environment, Forest & Climate Change (MoEF & CC) Guidelines dated 09.02.2011 and Office memorandum dated 17.05.2022.**

Key Legal Considerations

The Court's decision emphasized a balanced approach between environmental protection and socio-economic needs:

- **Flexibility in ESZ Boundaries:** Recognizing regional variations, the Court ruled that ESZs should be determined based on specific environmental and socio-economic factors rather than a fixed one-kilometer standard.
- **Guideline Compliance:** The Court reinforced the need to follow MoEF & CC's **February 9, 2011, Guidelines** and the **Environment (Protection) Rules, 1986**, particularly Rule 5, which governs restrictions on industrial and other activities in designated areas.
- **Stakeholder Consultation:** The ruling stressed the involvement of State Governments and expert committees in ESZ designation to ensure a well-informed and balanced approach.
- **Balancing Protection and Development:** While environmental protection remains paramount, the Court acknowledged concerns about local economic development, allowing regulated activities in ESZs to avoid undue hardship for residents.

Continued Mining Prohibition

Despite granting flexibility in ESZ delineation, the Court upheld its **absolute prohibition on mining within one kilometer** of National Parks and Wildlife Sanctuaries, even if the ESZ extends beyond this limit. This measure ensures the ecological integrity of protected areas, preventing mining-related threats to their flora and fauna.

This ruling strengthens the Ministry's commitment in **harmonizing conservation efforts with regional socio-economic realities**, ensuring that environmental safeguards remain both effective and context-sensitive.

3. M K Ranjit singh & Ors. Vs Union of India & Ors. Order dated 21.03.2024 on The Great Indian Bustard (GIB)

Introduction

This writ petition was filed before the Supreme Court of India, invoking its jurisdiction to issue necessary orders for the protection of two endangered bird species—the Great Indian Bustard (GIB) and the Lesser Florican. The petition referred to the Supreme Court's judgment dated April 19, 2021, which directed that a significant portion of the affected territory should not be used for overhead transmission lines. It also mandated the conversion of existing power lines to underground cables within a year and appointed a committee to assess the feasibility of laying high-voltage underground power lines. Subsequently, the Ministry of Environment, Forests, and Climate Change, the Ministry of Power, and the Ministry of New and Renewable Energy (MNRE) sought a modification of the April 19, 2021, judgment. They argued that implementing the order would severely impact the power sector and hinder India's international commitments, particularly its energy transition goals and obligations under the Paris Agreement of 2015, signed under the United Nations Framework Convention on Climate Change (UNFCCC).

Legal and Constitutional Framework

The judgment underscored the importance of promoting renewable energy to achieve social equity by ensuring access to clean and affordable energy, thereby fostering inclusive growth. The Court emphasized the constitutional obligations of the State under **Article 48A** and the fundamental duties of citizens under **Article 51A** to protect the environment and show compassion for living creatures. It further linked these duties to **Article 21** (right to life and personal liberty) and **Article 14** (equality before the law), affirming that the right to a clean environment and protection against climate change violations are fundamental rights.

The Supreme Court Order

Recognizing the need to harmonize biodiversity conservation with India's transition to renewable energy, the Supreme Court, through its order dated March 21, 2024, modified the 2021 ruling. The Court restricted the undergrounding requirement to only **priority GIB areas (approximately 13,163 square kilometers)**, subject to feasibility determined by an expanded seven-member expert committee.

Ministry though its affidavit filed in the present matter stated the detailed steps they have taken thus far and has also undertaken to implement a host of measures in the future, which are aimed at conserving the critically endangered GIB. Hon'ble Court directed the Ministry to implement said measures.

The case presented a complex legal challenge of balancing biodiversity conservation—particularly the protection of the Great Indian Bustard—against the need to mitigate climate change. The Court's decision reflects an effort to strike a balance between **environmental protection, energy security, and India's international climate commitments** under the Paris Agreement.

E. Reforms related to Air and Water Act

Exemption from Consent Mechanism:

Amendments were also made in Air and Water Acts to enable Central Government to exempt certain categories of industries from obtaining Consent **under** certain conditions, in sections 21 of Air act and 25 of Water Act. These amendments enable Central Government to notify how and which Industries will be exempted from Consent, the relevant notifications issued on 12.11.2024.

[Notification: G.S.R. 702 (E) dated 12-11- 2024:
Exemption under Air Act] [Notification: G.S.R. 703
(E) dated 12-11- 2024: Exemption under Water Act]

The Notification exempts non-polluting white category of Industries completely from obtaining Consent. Other Industries have been exempted from Consent to Establish (CTE) in case they have taken prior environmental clearance. Through this notification, consent conditions of CTE have been integrated with EC itself, a Standard Operating Procedure has been in this regard.

Standard Operating Procedure issued on **14.11.2024**
and 14.01.2025

Uniform Consent Guidelines:

Section 21 A in the Air Act and section 27A in Water Act have been inserted to enable Central Government to issue guidelines regarding Grant or refusal of consent to Industries which will be binding on State Boards. The consequent draft Notification to implement this amendment has been issued. This reform will ensure ease of doing business and prevent industries from hassle to follow different procedures in various states. This notification will uniformize the procedures across the various jurisdictions so that Industries will not have to follow a number of different compliances, documentations and timelines.

Notification Published on 29.1.2025

Categorizations of Industries:

Comprehensive revision of categorization of Industries in red, orange, blue and white categories have been made by the Central Pollution Control Board. The new policy encourages transition of Industries into higher categories with better compliance. A new category of 'Blue' for environment management industries has been created. Direction by CPCB has been issued to state Boards in this regard in January 2025 under section 18(1)(b) of Air/Water act.

Categorisation issued on 23.01.2025



Questions & answers:

S.No.	Question	Answer
1.	<p>As of the now the EC is granted for a peak capacity with a mention of total reserves to be excavated during the mining life. As such, during the formulation of Mining Plan, the reserves are estimated conservatively considering the economics and mining losses. As such till the end of mine life, the remaining extractable reserves always exceed to that mentioned in the approved Calendar Plan of Mining Plan. Thus, for extracting these additional reserves (Within Peak EC capacity and same land area) will amendment of EC be applicable for such cases? Also since the Environmental Protection measures as per the peak EC capacity are already in place, the relaxation for excavating (20%) more coal reserves under same ML area and within the peak capacity may be considered.</p>	<p>The EC for the coal mining projects are always linked with approved mining plan submitted at the time of grant of EC. In case of any increase in extractable reserves beyond the approved mining plan, proponent may obtain the revised mining plan and approach MoEF&CC for expansion EC under EIA, 2006.</p>
2.	<p>What is the EC validity period for the EC granted before EIA notification 1994? Also for such mines, if EC / Mining Plan mentions the Peak Capacity that is in excess of the 1993-94 production levels, will the ALLOWABLE PRODUCTION CAPACITY will be considered as production of year 1993-94 or the capacity that is mentioned in the EC / mining plan.</p>	<p>As per the prevailing, EC validity is not stipulated for mines which have been accorded prior to 27/01/1994. Clarification issued by the Ministry in this regard is enclosed as <u>Annex 1</u>.</p>

S.No.	Question	Answer
3.	<p>As MoEF & CC is looking forward to easing EIA norms for UG mines. Will the ministry is looking forward to ease out the FC process for UG mines? As of now, a large chunk of Coal reserves are blocked beneath the ESZ of protective areas or under forest land. Securing FC for such mines takes significantly large time. Thus, considering the aspect of Environmental Friendly nature of UG mining, tapping the blocked reserves beneath the forested areas and enhancing the national coal production, the aspect of easing out EC & FC for UG mine may be considered.</p>	<p>Matter pertains to Forest Clearance. May be referred to the FC division of the Ministry.</p>
4.	<p>In the present context, the MoC is putting great thrust on re-purposing of the mines through implementing different infrastructures in mine lease such as installing Solar plant, Pump Storage Plant, Gasification Plant, Community Agriculture etc, which leads to change in land use vis-à-vis the provision envisaged in the approved EMP / EC (which earlier envisages only plantation). So, will this change in land use attracts non-compliance of EC conditions? Also how to proceed further with respect of EC aspect in such cases ?</p>	<p>It may be noted that setting up of renewable energy sources such as solar power plant and wind energy mills within the ML area will not attract EC. However, setting up of coal gasification plant and pumped storage project are covered under the schedule of the EIA Notification and do require EC under EIA, 2006. In view of this, it is suggested that proponent may ascertain the applicability of EC and consent before setting up of any new infrastructure in the ML area and may proceed further accordingly depending upon the requirement.</p>
5.	<p>For EC revalidation projects the process is to be carried out as per as per SO 1530 (E) Dt.06.04.2018. As per OM Dt.</p>	<p>Matter may be referred to the member secretary of coal mining sector. Requisite clarification can be issued to</p>

S.No.	Question	Answer
	16.02.2021, MoEF&CC noted that public consultation is required for proceeding with revalidation projects. However, SPCB many a time insists to provide TOR of the projects to proceed with public consultation. How to proceed further in such cases?	the concerned SPCB for facilitating the public consultation as per OM dated 16/02/2021.
6.	The coal reserves been excavated within the life mentioned in EC. Additional reserves are identified which are beyond the reserves noted in EC but within the same mining lease area. The additional reserves are identified after the EC validity. If the mining plan has been revised after EC validity, how to proceed further in such cases? Will it be considered as fresh EC or amendment in existing EC.	Proponent update/revise the existing approved mining plan for the additional reserves and get it approved by the concerned competent authority. If such approval is done within the EC validity period, proponent may obtain the enhanced EC validity for the revised life of the mine. However, the maximum validity of such ECs will be governed as per EIA, 2006.
7.	In some ECs, it has not been specified that the current EC supersedes the previous one. As a result, while preparing the six-monthly compliance reports and issuing the CCR, the IRO has raised queries regarding the supersession of the previous EC. In this regard, Can we expect any OM clarification regarding this matter?	It is opined that whenever any expansion EC issued, proponent may request MoEF&CC/SEIAA to issue the superseded EC so as to avoid confusion in the ECs accorded.
8.	As per MoEF & CC OM Dtd.09.08.2018 for Standardization of Environment Clearance conditions for coal mines, it is quoted as below:	Installation of CAAQMS is governed by the meteorological condition of the mine lease area. Normally, proponent establishes three stations covering

S.No.	Question	Answer
	<p><i>“Continuous ambient air quality monitoring stations as prescribed in the statute be established in the core zone as well as in the buffer zone for monitoring of pollutants, namely PM₁₀, PM_{2.5}, SO₂ and NO_x. Location of the stations shall be decided based on the meteorological data, topographical features and environmentally and ecologically sensitive targets in consultation with the State Pollution Control Board. Online ambient air quality monitoring stations may also be installed in addition to the regular monitoring stations as per the requirement and/or in consultation with the SPCB. Monitoring of heavy metals such as Hg, As, Ni, Cd, Cr, etc to be carried out at least once in six months”</i></p> <p>In addition to that, the condition for the installation of CAAQMS (one or more) is being incorporated in the EC/CTO. In view of the above, please provide clarification on the minimum number of stations to be monitored for regular monitoring in totality for both the core and buffer zones, as well as the number of CAAQMS to be installed.</p>	<p>upwind, downwind and crosswind locations. Relevant extracts of CPCB guidelines is enclosed as Annex 2.</p>
9.	<p>Whether fresh Environmental Clearance required for setting up a new railway siding outside the mine lease area for coal dispatch?</p>	<p>Not required. However, the coal transportation by rail shall be informed to all the monitoring and enforcement authorities along with their compliance report.</p>

S.No.	Question	Answer
10.	Is an amendment in the EC is required for a change in mining technology, such as switching from bord and pillar to continuous miner?	The EC for the coal mining projects are always linked with approved mining plan submitted at the time of grant of EC. In case of any change in technology which is different approved mining plan, proponent may obtain the amendment in the EC.
11.	Will the revised EPA Act be applicable to old cases (i.e., those prior to the publication of the revised Act)?	Yes provided that adjudication process for such old cases are done post enactment of the notification. Notification will have prospective effect only.
12.	As per the OM dated 06.04.2018, EC revalidation is required for projects where EC was issued under the 1994 notification. These old revalidated cases may be considered on a lenient basis, as they are legacy cases, and it may kindly be considered that the details of these mines have not been properly maintained.	Proponent may first ascertain the details of available records for such mines and thereafter appropriate guidance can be provided specific to the proposal.
13.	An OM may be issued specifying the time-frame for the issuance of the Closure Report on CCR by the IRO.	Matter pertains to Compliance and Monitoring Division of MoEF&CC. May be referred to the C&MD of the Ministry.
14.	EPR for coal mines may be removed from the Fly Ash Notification. Additionally, operating mines may be exempted from the requirement of back-filling 25% of overburden (OB) with fly ash, as it could pose a danger to the safety of personnel and machinery involved in mining operations.	Ministry is already in receipt of this request from Ministry of Coal. Matter is under process in the Ministry.

S.No.	Question	Answer
15.	<p>In case of SECL Mines (This is the case for all)- As per Control of Air & Water Pollution (Grant, Refusal, or cancellation of consent) Guidelines 2025 Dt. 29.01.25 have been provisioned for fee calculation formula for mining Projects for CTO & CTE (max twice of CTO fee). If SPCBs are going to adopt the new consent fee in toto as per new formula as per the guideline, the CTO fee charged by SPCBs at present will increase by 30 to 100 times (approx.). Therefore, MoEF&CC, New Delhi is requested to revisit the formula mentioned for calculation of Consent Fee for Coal Mines.</p>	<p>Matter pertains to Control of Pollution Division of MoEF&CC. May be submit a representation to the Ministry in this regard.</p>
16.	<p>It has been informed by MS(EAC), Sir that in case of UG mines going for expansion for more than 50 % with the same EC boundary standard ToR will be issued in such cases within 7 days. Whether this will be applicable to Opencast Mines as well or not. Further, If Public Hearing has already been conducted for the same land, then such cases may be exempted from fresh Public Hearing, if required public consultation through paper publication may be imposed during issuance of ToR.</p>	<p>As per MoEF&CC OM dated 06/05/2022, all mining proposals involving increase in production with no increase in lease area is entitled for standard ToR. Copy enclosed as Annex 3.</p>
17.	<p>MoEF&CC has issued guidelines on 14.01.2025 & 14.11.2024 for Streamlining the implementation of</p>	<p>This point appears to be case specific. May be separate communication may</p>

S.No.	Question	Answer
	<p>Notifications G.S.R. 702 and G.S.R 703 dated 12th November 2024.</p> <p>In the above notification it has been mentioned that EC will be issued along with CTE by depositing requisite fee for new/expansion projects.</p> <p>However, in case of expansion projects, falling under jurisdiction of CECB, Raipur; CECB is issuing CTE-cum-CTO for expansion projects with validity of one year by paying of CTE fee as prescribed by CECB, Raipur.</p> <p>In view of above, MoEF&CC is requested to please explore the possibility of same in line with the present case of CECB, Raipur; if possible.</p>	<p>be sent for further examination and action.</p>
18.	<p>The proposals of revalidation of EC as per MoEF&CC SO dated 08.04.2018 which were earlier considered at central level and pending for submission of ADS reply at Project Proponents. Whether these proposal having area less than 500 ha can be considered at state in view of MoEF&CC OM dated 28.02.2025.</p>	<p>This is governed by para 8 of OM dated 27/09/2022. Copy of the same is enclosed as Annex 4.</p>
19.	<p>A Mining proposal requires Wildlife Clearance due to telemetry corridor but not involving any forest land. Whether application of EC after conducting Public Hearing along with Final EIA Report can be submitted to MoEF&CC during the period of pendency of wildlife clearance. In such proposals whether EAC can</p>	<p>This is governed by MoEF&CC OM dated 17/05/2022. Copy of the same is enclosed as Annex 5.</p>

S.No.	Question	Answer
	recommend proposal based on the merit and recommend Environment Clearance subject to wildlife clearance.	



ANNEXURE - I

Z-11013/53/2024-IA-II(M)
Government of India
Ministry of Environment, Forest and Climate Change
(IA Division)

Indira Paryavaran Bhawan
3rd Floor, Jal Wing,
Jor Bagh, Aliganj Road
New Delhi. 110003

Dated: 1st July, 2024

To,

1. **The Member Secretary,**
Madhya Pradesh Pollution Control Board, E-5, Area Colony, Paryavaran Parisar, Bhopal,
Madhya Pradesh- 462 016

2. **The Member Secretary,** CECB Chhattisgarh
Chhattisgarh Environment Conservation Board, Paryavash Bhavan, North Block Sector-19,
Naya Raipur, Chhattisgarh- 492002.

Subject: Requirement of EC for Mines already operative on CTO (1993-94 production level) under water & Air Act prior to EIA Notification 1994-regarding

Sir,

Ministry is in receipt of communication from the M/s SECL wherein it has been intimated that following seven mines are operating prior to EIA Notification 1994 and running on Consents obtained from CECB, Raipur and MPPCB, Bhopal and still working with the same production level of 1993-94:

Sl/ No.	Area	Project	Consent Capacity (In MTPA)	Consent Validity	State	Remarks
1	Korba	Surakachhar	0.45	31/07/23	CG (02 nos.)	Consent Expired.
2		Balgi UG	0.36	29/02/24		Consent Expired.
3	Johila	Pali UG	0.50	31/05/25	MP (05 nos.)	
4		Nowrozabad	0.45	31/07/24		
5		Piparia UG	0.24	31/03/25		
6	J&K	Govinda/Meera UG	0.51	31/07/24		
7		Bhadra UG	0.18	31/07/24		

2. Ministry, vide OM dated 20.09.2021 had issued directions under Section 5 of the Environment (Protection) Act, 1986 to all SPCBS not to grant or renew CTO unless Environment Clearance, as

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O/o Joint Secretary (SKB)
Dy. No. 1217883
Date: 13/07/24

applicable, has been obtained. SECL in their communication informed that recently CTO of two mines in Chhattisgarh got lapsed and during the renewal process, the SPCB of Chhattisgarh, in light of MoFF&CC order dated 20.09.2021 sought clarification regarding the applicability of obtaining EC prior to grant of CTO. M/s SECL therefore requested this Ministry to issue clarification to SPCB of CG & MP States regarding requirement of EC for Coal Mines already under operation on CTO under water & Air Act, prior to EIA Notification 1994.

3. Ministry examined the aforementioned request of SECL regarding the requirement of Environmental Clearance (EC) in respect of Mining projects operating prior to EIA Notification, 1994 on the basis of Consent to Operate(CTO) and continuing with the same production level of 1993-94. In this regard, as per the directions of Hon'ble Supreme Court (*WP C No. 114 of 2014 titled Common Cause v. Union of India*), undersign is directed to inform that EC is not applicable to the Mining projects running on the basis of CTO prior to the EIA Notification 1994 and maintaining the 1993-94 base level production capacity. However, the mines operating on the basis of CTO shall require Environmental Clearance as per EIA Notification, 2006, as amended under the following scenarios:

- (i) Mining projects running prior to January 27, 1994, without No Objection Certificate (NOC) from the State Pollution Control Boards (SPCB) shall require EC.
- (ii) Mining projects that started operations prior to January 27, 1994 and underwent expansion (including increase in lease area) or modernization leading to increase in the pollution load will require EC. The base year for assessing pollution load increase shall be 1993-94.
- (iii) Further, annual production exceeding that of 1993-94 will be considered as expansion and will require EC.
- (iv) Mining projects that started prior to January 27, 1994 and have renewed the mining lease irrespective of whether there is any expansion, modernization, or increase in pollution load will require EC.

4. SPCBs are therefore requested to accordingly examine the applicability of aforesaid scenarios in each case before renewal of the CTO of mining projects already under operation prior to EIA Notification 1994 and which have maintained the production level of 1993-94 and accordingly take necessary action.

5. This issues with approval of the Competent Authority

Your faithfully,


(Amit Vashishtha)

Scientist E/Member Secretary, IA Coal
Email Id: amit.vashishtha@nic.in
Phone number: 011-20819306

Copy to:

1. Sr. PPS to Secretary EFCC

4.0 GUIDELINES FOR MONITORING

For setting up of any ambient air quality monitoring station, the most important thing to be considered prior to commencement of actual monitoring is to collect its background information.

4.1 Background Information

The background information that needs to be collected includes details of sources and emissions, health status, demography, population growth, landuse pattern, epidemiological studies. Such prior information will provide immense help to identify the likely effects and in particular health impacts resulting from population exposure to air pollutants.

(i) Sources and Emissions

Sources in a city includes vehicles, industries, domestic etc. In an industrial area, information should be obtained on the type of industries including their number, fuel used, composition of fuel, pollutants emitted etc. Information on number and distribution of sources should be collected. This information will help in identifying which pollutants can be expected in an area and thus should be measured. In case of industrial stacks, locations of maximum ground level concentrations should be determined by modeling. The stations should be located at locations where maximum ground level concentrations are expected. Information on type and number of vehicles should be obtained. Information on domestic fuel that is used in household should be obtained. Pollution load emanating from these sources should be estimated so as to identify sources that are generating significant amount of pollution.

(ii) Health and Demographic Information

Investigations shall be carried out based on the public complaints received from an area related to air pollution. If the results of such investigations reveal that the level are high that area can be considered for ambient air quality monitoring.

Areas where population density is high (more than one million) can be considered for locating monitoring stations. Information on age and socio-economic status of population is also important for making a decision on initiation of ambient air quality monitoring. Location of monitoring station in such areas will help in finding exposure levels to population which can be used further in epidemiological studies to evaluate health effects of air pollutants.

(iii) Meteorological Information

Meteorological data with respect to temperature, relative humidity, wind speed and direction should be collected. Predominant wind direction plays an important role in

determining location of monitoring stations. Due to effects such as land and sea breezes, valley effects etc. it is important to collect local meteorological data specific to the site. The monitoring stations should be located in areas that are downwind from the sources. Mixing height data should also be collected. Mixing height data can be collected from Indian Meteorological Department. Information on duration of various seasons in a year is also important. Measurement frequency should be such that monitoring is done in all the seasons so that all seasonal variations are included in computing annual average.

(iv) Topographical Information

Local winds and stability conditions are affected by topography. In river valleys there is increased tendency of developing inversions. More number of monitoring stations should be located in areas where spatial variations in concentrations is large. Mountains, hills, water bodies also affect dispersion of pollutants.

(v) Previous Air Quality Information

Any previous information collected on ambient air quality can serve as a basis for selecting areas where monitoring should be conducted and previous studies may include data collected for any health studies etc. Previous studies can be used to estimate the magnitude of the problem.

Once the background information is collected, the ambient air quality monitoring is to be initiated and selection of type of pollutant to be measured, number and distribution of monitoring stations etc. should be made.

4.2 Components of Monitoring

The following parameters needs to be decided for carrying out ambient air quality monitoring.

4.2.1 Number and Distribution of Monitoring Locations

Knowledge of existing air pollutants levels and pattern within the area are essential for deciding number and distribution of stations. Isoleths distribution of an ambient concentrations determined from modeling or previous air quality information can be used to determine number and distribution of stations. When isopleths maps are not available information of emission densities and land use pattern may be used with windrose data to determine areas of expected higher concentrations. The number of monitoring stations in a city can be selected based on background information collected on sources and emissions, Population figures which can be used as indicators of region variability of the pollutants concentration

The no. of sampling sites depends on

- ◆ Size of the area to be covered

- ♦ The variability of pollutant concentration over the area to be covered
- ♦ The data requirements, which are related to the monitoring
- ♦ Pollutant to be monitored and
- ♦ Population figures which can be used as indicators of criticality both from view of likely air quality deterioration as also health implications.

A general guide to the no. of minimum stations and its distribution needed for monitoring trends of the common pollutants in urban areas based on population consideration is recommended in the Table. 4.2 as per IS 5182 Part 14; 2000. These criteria is for reference only, actual criteria followed at site must be based on compromise between available resources and site specific parameters such as size of the area to be covered, variability in pollutants concentration etc.

**Table 4.1 : Recommended Minimum Number of Stations, Population-wise
(Source: IS : 5182 (Part 14), 2000).**

Pollutant	Population of Evaluation Area	Minimum No. of AAQ Monitoring Station
SPM (Hi-Vol.)	<100 000	4
	100 000- 1000 000	4+0.6 per 100 000 population
	1000 000 – 5000 000	7.5 + 0.25 per 100 000 population
	>5000 000	12 + 0.16 per 100 000 population
SO₂ (Bubbler)	<100 000	3
	100 000- 1 000 000	2.5+0.5 per 100 000 population
	1000 000 - 10 000 000	6+0.15 per 100 000 population
	>10 000 000	20
NO₂ (Bubbler)	<100 000	4
	100 000- 1000 000	4+0.6 per 100 000 population
	>1000 000	10
CO	<100 000	1
	100 000- 5 000 000	1+0.15 per 100 000 population
	>5 000 000	6+0.05 per 100 000 population
Oxidants	-do-	-do-

For other monitoring objectives, particularly in relation to epidemiological studies, the nos. will have to be increased. There are several other modifying factors as follows :

- ♦ In highly industrialized cities the no. of stations for SPM and SO₂ must be increased.

determining location of monitoring stations. Due to effects such as land and sea breezes, valley effects etc. it is important to collect local meteorological data specific to the site. The monitoring stations should be located in areas that are downwind from the sources. Mixing height data should also be collected. Mixing height data can be collected from Indian Meteorological Department. Information on duration of various seasons in a year is also important. Measurement frequency should be such that monitoring is done in all the seasons so that all seasonal variations are included in computing annual average.

(iv) Topographical Information

Local winds and stability conditions are affected by topography. In river valleys there is increased tendency of developing inversions. More number of monitoring stations should be located in areas where spatial variations in concentrations is large. Mountains, hills, water bodies also affect dispersion of pollutants.

(v) Previous Air Quality Information

Any previous information collected on ambient air quality can serve as a basis for selecting areas where monitoring should be conducted and previous studies may include data collected for any health studies etc. Previous studies can be used to estimate the magnitude of the problem.

Once the background information is collected, the ambient air quality monitoring is to be initiated and selection of type of pollutant to be measured, number and distribution of monitoring stations etc. should be made.

4.2 Components of Monitoring

The following parameters needs to be decided for carrying out ambient air quality monitoring.

4.2.1 Number and Distribution of Monitoring Locations

Knowledge of existing air pollutants levels and pattern within the area are essential for deciding number and distribution of stations. Isopleths distribution of an ambient concentrations determined from modeling or previous air quality information can be used to determine number and distribution of stations. When isopleths maps are not available information of emission densities and land use pattern may be used with windrose data to determine areas of expected higher concentrations. The number of monitoring stations in a city can be selected based on background information collected on sources and emissions, Population figures which can be used as indicators of region variability of the pollutants concentration

The no. of sampling sites depends on

- ◆ Size of the area to be covered

- ♦ The variability of pollutant concentration over the area to be covered
- ♦ The data requirements, which are related to the monitoring
- ♦ Pollutant to be monitored and
- ♦ Population figures which can be used as indicators of criticality both from view of likely air quality deterioration as also health implications.

A general guide to the no. of minimum stations and its distribution needed for monitoring trends of the common pollutants in urban areas based on population consideration is recommended in the Table. 4.2 as per IS 5182 Part 14; 2000. These criteria is for reference only, actual criteria followed at site must be based on compromise between available resources and site specific parameters such as size of the area to be covered, variability in pollutants concentration etc.

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NO₂ (Bubbler)	<100 000	4
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	>1000 000	10
CO	<100 000	1
	100 000- 5 000 000	1+0.15 per 100 000 population
	>5 000 000	6+0.05 per 100 000 population
Oxidants	-do-	-do-

For other monitoring objectives, particularly in relation to epidemiological studies, the nos. will have to be increased. There are several other modifying factors as follows :

- ♦ In highly industrialized cities the no. of stations for SPM and SO₂ must be increased.

- ♦ In areas, where large amounts of heavy fuels are used the no. of stations for SO₂ should be more or vice-versa.
- ♦ In regions with irregular terrain, increase the no. of stations.
- ♦ In cities with extremely heavy traffic the no. of stations for NO_x, Oxidants and CO may need to be doubled.
- ♦ In cities with low traffic and a population of > 4 million, the no. of station for SO₂, NO_x and CO can be reduced.

Table 4.1 (Source: WHO 1977) gives guide to the distribution of stations. These criteria is for reference only, actual criteria followed at site must be based on compromise between available resources and site specific parameters such as size of the city, nature of terrain and spatial variations in the concentrations of the pollutants etc. It is assumed in these tables that population figures are indicators of region size and pollution variability. The number of monitoring stations are generally based on experience gathered over the years in monitoring and can be increased or decreased based on the analysis of data obtained in monitoring. Resource availability is also an important factor in determining the number of monitoring stations in a city. Generally three monitoring stations are chosen as one each in residential (or commercial), sensitive and industrial area. Distribution of monitoring station in a city depend on the distribution of pollution sources and population in a city. More stations should be located in areas where population density is high, number of industries are more and vehicular density is high. Distribution of stations can also be carried out by dividing the entire area in a grid and locating stations at intersections of a grid or within a grid. However, the grid pattern is not very economical as most often it requires large number of stations in a city. Dispersion models can be used to find maximum pollution levels and spatial variation of pollutant concentration can be used to determine distribution of stations.

Table: 4.2 Distribution of Sampling Stations (Source: WHO, 1977)

Total number of stations	Number of stations	
	In city centre or industrial areas	In residential areas
1	1	0
2	1	1
3	2	1
4	2	2
5	3	2
10	6	4

4.2.2 Selection of Monitoring Location

Principal factors governing the locations of the sampling stations are the objectives, the particular method of instrument used for sampling, resources available, physical access and security against loss and tampering. Air quality monitoring should be done in areas where pollution problem exists or is expected i.e. mainly in industrial areas, urban

areas, traffic intersections etc. One of the objective of monitoring is to determine status and trends and the air quality monitoring should be done in metropolitan cities and other urban areas so as to compare their levels and determine trends. Selection of site is very important as a incorrect location may result in data that may not meet the objectives of monitoring and will be of limited value. In general the following requirements should be satisfied for site selection.

(a) Representative Site

A site is representative if the data generated from the site reflects the concentrations of various pollutants and their variations in the area. It is not easy to specify whether the location of the station is satisfactory or not, however it may be checked by making simultaneous measurements at some locations in the area concerned. The station should be located at a place where interferences are not present or anticipated. In general the following conditions should be met:

1. The site should be away from major pollution sources. The distance depends upon the source, its height and its emissions. The station should be at least 25 m away from domestic chimneys, especially if the chimneys are lower than the sampling point ; with larger sources the distance should be greater (WHO,1977).
2. The site should be away from absorbing surfaces such as absorbing building material. The clearance to be allowed will depend on the absorbing properties of the material for the pollutant in question, but it will normally be at least 1 m. (WHO, 1977).
3. The objective of monitoring is often to measure trends in air quality and measurements are to be conducted over a long time; thus the site should be selected such that it is expected to remain a representative site over a long time and no landuse changes, rebuildings etc. are foreseen in near future.

The instrument must be located in such a place where free flow of air is available. The instrument should not be located in a confined place, corner or a balcony.

(b) Comparability

For data of different stations to be comparable, the details of each location should be standardised. The following is recommended in IS 5182 (Part 14) 2000

- (i) On all the sides it should be open, that is the intake should not be within a confined space, in a corner, under or above a balcony.
- (ii) For traffic pollution monitoring the sampling intake should be 3 m above the street level. The height of 3m is recommended to prevent re-entrainment of particulates from the street, to prevent free passage of pedestrians and to protect the sampling intake from vandalism.

- (iii) Sampling in the vicinity of unpaved roads and streets results in entrainment of dust into the samplers from the movement of vehicles. Samplers are therefore to be kept at a distance of 200 m from unpaved roads and streets.

(c) Physical requirement of the monitoring site

Following physical aspects of the site must be met

- The site should be available for a long period of time
- Easy access to the site should be there anytime throughout the year.
- Site sheltering and facilities such as electricity of sufficient rating, water , telephone connection etc. should be available.
- It should be vandal proof and protected from extreme weather

Highest concentrations and concentration gradients of carbon monoxide are likely to be in the vicinity of roads, highways. The gradients vary in both time and space on the micro and on the neighbourhood scale. The recommended criteria for siting monitoring stations for CO is given in Table 4.3 (IS 5182 (Part 14) : 2000). These criteria is for reference only, actual criteria followed at site must be based on compromise between available resources and site specific parameters such as nearby sources, concentration gradients of pollutants etc.

Table 4.3: Recommended Criteria for Siting Monitoring Stations (Source: IS : 5182 (Part 14), 2000).

Station Type	Description
Type A	<p>Downtown pedestrian exposure stations</p> <p>Locate station in the central urban area in a congested, downtown street surrounded by building where many pedestrian walk. Average daily travel on the street should exceed 10000 vehicles with average speed of less than 6.7 m/s. Monitoring probe is to be located 0.5 m from the curb at a height of 3 ± 0.5 m</p>
Type B	<p>Downtown neighborhood exposure station</p> <p>Locate station in the central urban area but not close to any major street. Specifically streets with average daily travel exceeding 500 vehicles should be located at atleast 100 m away from the monitoring station. Typical locations are parks, malls or landscaped areas having no traffic. Probe height is to be 3 ± 0.5 m above the ground.</p>

Station Type	Description
Type C	<p>Residential Station</p> <p>Locate station in the midst of a residential area or sub-urban area. Station should be more than 100 m away from any street having a traffic volume in excess of 500 vehicles/day. Station probe height must be 3 ± 0.5 m.</p>
Type D	<p>Mesoscale Station</p> <p>Locate station in the urban area at appropriate height to collect meteorological and air quality data at upper elevations. The purpose of this station is not to monitor human exposure but to gather trend data and meteorological data at different height. Typical locations are tall buildings and broadcast towers. The height of the probe, along with the nature of the station location must be carefully documented in each case.</p>
Type E	<p>Non – urban station</p> <p>Locate station in a remote non- urban area having no traffic and no industrial activity. The purpose of this station is to monitor for trend analysis for non – degradation assessments and for large scale geographical surveys, the location or height must not be changed during the period over which trend is examined. The height of the probe must be documented in each case. A suitable height is 3 ± 0.5 m.</p>
Type F	<p>Specialised source survey station</p> <p>Locate station very near a particular air pollution source scrutiny. The purpose of the station is to determine the impact on air quality, at specified locations, of a particular emission source of interest. Station probe height should be 3 ± 0.5 m unless special considerations of the survey require non – uniform height.</p>

(d) Topographical and Meteorological Factors

Topographical and meteorological factors must also be considered for selecting a monitoring site. The topographical factors that must be considered are mountains, valleys, lakes, oceans and rivers. These factors cause a meteorological phenomena that may affects air pollutants distribution.

Winds caused by daytime heating and nighttime cooling may affect pollutant transport causing either buildup of pollutants or dilution. Canyons or valleys may channel the local winds into a particular direction resulting in increase in wind speed. The presence of

large water bodies may cause a land-sea breeze wind pattern which may determine pollutant transport. The mountain or hilly terrain may cause precipitation that may affect pollutant concentration. A minimum distance of the sampler from road for measurement of Ozone and NOx is given in Table 4.4 (Source: ETC, Canada). These criteria is for reference only, actual criteria followed at site must be based on compromise between available resources and site specific parameters such as nearby sources, concentration gradients of the pollutants, topographical features etc.

Table 4.4: A minimum distance of the sampler from road for measurement of Ozone and NOx (Source: ETC, Canada, 1995).

Average Traffic (vehicle per day)	≤ 10,000	15,000	20,000	40,000	70,000	≥ 110,000
Minimum distance of sampler from road (meters)	≥ 10	20	30	50	100	≥ 250

In general the following requirement may be met for siting the monitoring station.

- (i) Height of the inlet must be 3 – 10 m above the ground level.
- (ii) The sampler must be more than 20 m from trees.
- (iii) Distance of the sampler to any air flow obstacle i.e. buildings, must be more than two times the height of the obstacle above the sampler.
- (iv) There should be unrestricted airflow in three of four quadrants
- (v) There should be no nearby furnace or incinerator fumes.

Once a area has been selected for locating a monitoring stations, the site can be selected by finding maximum concentration using air quality modeling. Modeling refers to the mathematical expression for the fate of pollutants when they are released into the atmosphere taking into consideration the various aspects of atmospheric effects such as dispersion, advection etc. Air quality models are capable of predicting the temporal and spatial distribution of pollutants for a given domain of interest. Air quality modeling can be applied to ground level sources, elevated points sources, line sources, areas sources, flying sources under unlimited mixing, limited mixing, inversion, fumigation, trapping and also on complex terrain, flat terrain and coastal areas. The methodology is different in each case. Maximum ground level concentrations can be calculated where the air quality monitoring station can be located.

4.2.3 Selection of Pollutants

Prior to selection of pollutants, an emission inventory study or modeling results can be carried out or used if available. The pollutants expected from the sources present should be monitored. For monitoring in metropolitan cities and urban areas, the common urban air pollutants such as carbon monoxide, SO₂, NO₂, SPM and RSPM should be measured on a regular basis. Resource availability can play a very important role in determining the pollutants to be measured in an area. If enough resources are

ANNEXURE - III

F. No. IA 3-22/15/2022-IA-III [Computer No 178038]
Government of India
Ministry of Environment, Forest and Climate Change
(Impact Assessment Division)

Indira Paryavaran Bhawan
Jor Bagh Road, Aliganj
New Delhi-110003

Dated: 6th May, 2022

CIRCULAR

Subject: Mechanism for handling ToR applications for issuing Standard Terms of Reference(ToRs) or referring to EAC/ SEAC through PARIVESH portal - reg.

The Ministry of Environment, Forest and Climate Change vide S.O.996(E) dated 10th April 2015 amended the EIA Notification 2006 to *inter-alia* state that the Standard ToR developed by the Ministry and displayed on the website shall be the deemed approved ToR for the projects or activities listed in the Schedule of the EIA Notification, 2006, provided that the Expert Appraisal Committee (EAC) or State Expert Appraisal Committee (SEAC) may finalise amendment, if found necessary for a project within thirty days of the acceptance of application. The Standard ToRs were developed to enable the Project Proponent to commence preparation of an Environment Impact Assessment Report after successful online submission and registration of the application.

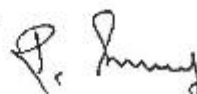
2. Subsequently, in order to expedite the process of granting Standard ToR in respect of expansion proposals and projects located within notified Industrial Estates, where there is no examination of alternative sites involved, the Ministry vide S.O. 751(E) dated 17th February 2020 amended the EIA Notification 2006, to introduce the concept of issuance of an online Standard ToR after acceptance of the proposal by the Regulatory Authority, automatically through the web portal developed by the Ministry to the Project Proponent. Further the provisions of the Notification were amended to state that sector specific Standard ToR developed by the Ministry from time to time shall be displayed on its website. The above-said notification also provided that all new projects or activities other than those specified shall be referred to the EAC or SEAC by the Regulatory Authority, as the case may be, within 30 days from the date of application, for recommending the specific ToR in addition to the Standard ToR, deemed necessary.

3. Based on the experience gained in the past while implementing the above mentioned provisions of the EIA Notification 2006, the Standard ToRs, have been further updated to ensure environmental protection and have been placed on PARIVESH portal. Further, guidelines have also been developed in the form of a matrix for the projects where the online system generated ToR can be issued taking into account the environmental sensitivity involved in the project (Copy enclosed as Annexure).

4. Based on the above matrix, the mechanism for issuing online system generated Standard ToR as well as reference to EAC/SEAC has been enabled on the PARIVESH Portal, on the acceptance of the complete application online. The concerned Member Secretary of EAC/SEAC shall refer the project to the concerned EAC/SEAC for prescribing additional ToR within fifteen days, if deemed necessary, depending on environmental sensitivity involved in siting the project at proposed location or any other issues involved in the project.

5. In this regard, it is hereby directed that the Member Secretaries of the concerned EAC/SEAC shall scrutinize the applications as per the provisions mentioned above within seven days from the date of application for issuing online system generated Standard ToR and shall refer the application for grant of ToR to EAC/SEAC only as an exception depending upon the environmental sensitivity involved or as aforementioned guidelines mandate .

6. This is issued with the approval of the Competent Authority.


16/5/2022
(Sundar Ramanathan)
Scientist E

To,

1. The Chairman all the Expert Appraisal Committees
2. The Chairman/Member Secretaries of all the SEIAAs/SEACs
3. All the Officers of IA Division
4. Chairpersons/Member Secretaries of all SPCBs/UTPCCs

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS(EF&CC)
3. PPS to Secretary (EF&CC)
4. PPS to AS(TK)
5. PPS to JS(SKB)
6. Website, MoEF&CC
7. Guard File

Annexure to OM No. IA 3-22/15/2022-IA-III [Computer No 178038]

Project/Activity which can be given Standard ToR

S. No	Project/Activity	Green Field	Brown Field
1	Mining, extraction of natural resources and power generation (for a specified production capacity)		
1(a)	(i) Mining of minerals	No (Greenfield project requires examination in EAC only when river diversion within mine area, CPA/SPA, WL sanctuary, inappropriate siting criteria exists)	Yes
			No (Depending on the application, brown field project can be considered for standard TOR, if no area of project increases)
	(ii) Slurry pipelines (coal, lignite and other ores) passing through national parks / sanctuaries / coral reefs, ecologically sensitive areas.	Yes	Yes
1(b)	Off-shore and onshore oil and gas exploration, development and production	Yes	Yes
1(c)	(i) River Valley projects	No	No
	(ii) Irrigation projects	No	No
1(d)	Thermal Power Plants	No	No
1(e)	Nuclear power projects and processing of nuclear fuel	Yes	Yes
2	Primary Processing		
2(a)	Coal washeries	No	Yes
2 (b)	Mineral beneficiation	Yes	Yes

Annexure to OM No. IA 3-22/15/2022-IA-III [Computer No 178038]

Project/Activity which can be given Standard ToR

S. No	Project/Activity	Green Field	Brown Field
3	Materials Production		
3(a)	Metallurgical industries (ferrous & nonferrous)	Yes	Yes
3(b)	Cement plants	Yes	Yes
4	Materials Processing		
4(a)	Petroleum refining industry	Yes	Yes
4(b)	(i)Coke oven plants (ii) Coal tar processing units	Yes Yes	Yes Yes
4(c)	Asbestos milling and asbestos based products	Yes	Yes
4(d)	Chlor-alkali industry	Yes	Yes
4(e)	Soda ash Industry	Yes	Yes
4(f)	Skin/hide processing including tanning industry ²	Yes	Yes
5	Manufacturing/Fabrication		
5(a)	Chemical fertilizers	Yes	Yes
5(b)	Pesticides industry and pesticide specific intermediates (excluding formulations)	Yes	Yes
5(c)	Petro-chemical complexes (industries based on processing of petroleum fractions & natural gas and/or reforming to aromatics)	Yes	Yes
5(d)	Manmade fibres manufacturing	Yes	Yes
5(e)	Petroleum products and petrochemical based processing such as production of carbon black and electrode grade graphite (processes other than cracking & reformation and not covered under the complexes) ² .	Yes	Yes

Annexure to OM No. IA 3-22/15/2022-IA-III [Computer No 178038]

Project/Activity which can be given Standard ToR

S. No	Project/Activity	Green Field	Brown Field
5(l)	Synthetic organic chemicals industry (dyes & dye intermediates; bulk drugs and intermediates excluding drug formulations; synthetic rubbers; basic organic chemicals, other synthetic organic chemicals and chemical intermediates)	Yes	Yes
5(g)	Distilleries	Yes	Yes
5(h)	Integrated paint industry	Yes	Yes
5(i)	Pulp & paper industry	Yes	Yes
5(j)	Sugar Industry	Yes	Yes
6	Service Sectors		
6(a)	Oil & gas transportation pipe line (crude and refinery/ petrochemical products), passing through national parks /sanctuaries/coral reefs /ecologically sensitive areas including LNG Terminal	Yes	Yes
7	Physical Infrastructure including Environmental Services		
7(a)	Air ports	Yes	Yes
7(b)	All ship breaking yards including ship breaking units	Yes	Yes
7(c)	Industrial estates/ parks/ complexes/ areas, export processing Zones (EPZs), Special Economic Zones (SEZs), Biotech Parks, Leather Complexes.	Yes	Yes
7(d)	Common hazardous waste treatment, storage and disposal facilities (TSDFs)	Yes	Yes

Annexure to OM No. IA 3-22/15/2022-IA-III [Computer No 178038]			
Project/Activity which can be given Standard ToR			
S. No	Project/Activity	Green Field	Brown Field
7(da)	Bio-Medical Waste Treatment Facilities	Yes	Yes
7(e)	Ports, harbours, break waters, dredging	No	No
7(f)	Highways	No	Yes (Brownfield projects shall be placed before EAC for prescribing specific ToRs (in case of expansion projects) if the alignment crossing national parks/sanctuaries/CRZ/ecologically sensitive areas/violation etc)
7(h)	Common Effluent Treatment Plants (CETPs)	Yes	Yes
7(i)	Common Municipal Solid Waste Management Facility (CMSWMF)	Yes	Yes
8	Building or Construction projects or Area Development projects and Townships as well as for industrial sheds, educational institutions, hospitals and hostels for educational institutions		
8(a)	Building and Construction projects	NA	NA
8(b)	Townships and Area Development Projects	Yes	Yes

ANNEXURE - IV

F.No.IA3-22/10/2022-IA.III [E177258]
Government of India
Ministry of Environment, Forest and Climate Change
Impact Assessment Division

Indira Paryavaran Bhawan
3rd Floor, Vayu Wing, Jor Bagh Road
Ali Ganj, New Delhi-3

27th September 2022

OFFICE MEMORANDUM

Subject: Procedure for transfer of proposals from Central Level to State Level and vice versa - reg.

The State Environmental Impact Assessment Authorities (SEIAAs)/State Expert Appraisal Committees (SEACs) have been constituted in exercise of the powers conferred by sub-section (3) of section 3 of the Environment (Protection) act, 1986 for decentralisation of the Environment Clearance (EC) process for expeditious clearances at the State level. All projects or activities under Category 'B' in the Schedule of the EIA Notification are appraised at the respective SEIAAs/SEACs of the States/UTs.

2. The EIA Notification 2006 has been amended from time to time to streamline the EC process. As the SEIAAs/SEACs have gained substantial experience in appraising projects over time, the threshold levels of category B projects have been accordingly increased from time to time so as to delegate more projects to SEIAAs.

3. At the time of issue of such amendments in EIA Notification 2006, there could be a possibility that certain projects under various stages of consideration (Scoping/ Appraisal) at the Central level were categorized as category 'B' projects before the final decisions were taken at the Central level.

4. Further, the EIA Notification, 2006 was amended vide Notification no. S.O. 1886 (E) dated 20/04/2022, wherein it is inter-alia stated that Category 'B' projects which are inordinately delayed at the SEIAA level, beyond the stipulated timeline as laid down in this notification and also meet the criteria as laid down in this regard from time to time, shall be considered at the Central level as Category 'B' projects.

5. In this regard, the Ministry deems it necessary to clarify the process for handling such proposals, as mentioned at para 3 and 4 above. The procedures for the same is as below:

A. Procedure for transferring category B proposals from SEIAAs subsequent to change in threshold arising due to amendments in EIA Notification 2006 from time to time

6. The Member Secretaries of the Expert Appraisal Committees (EACs) are hereby directed to transfer the proposals to SEIAA, subsequent to categorization of such proposals as category 'B' project due to amendments in the EIA Notification 2006 issued from time to time, in case they are in the following stages of consideration (Scoping/ Appraisal) at the Central level:

- i. Submission stage (ToR/EC)
- ii. Placed in agenda for ToR but not considered even once by EAC
- iii. Placed in agenda for EC but not considered even once by EAC .

7. The concerned Member Secretaries, while transferring the proposal online to the concerned SEIAAs shall inform the Project Proponent also regarding the same.

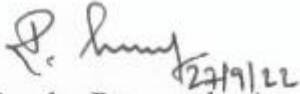
8. The proposals which have been considered/ appraised once by EAC either for ToR or EC, but final decision has not been taken, shall continue to be appraised at the Central level only, till final disposal for ToR/EC, even after the amendments in the EIA Notification are issued from to time regarding delegation of projects to SEIAAs.

B. Procedure for considering category B proposals at the Centre which are inordinately delayed at SEIAAs

9. With regard to projects that are inordinately delayed at the SEIAA level for grant of EC, the Ministry shall consider them at the Central level on a case to case basis based on the following criteria:

- i. This provision is applicable only for EC applications which are inordinately delayed at the SEIAA level.
- ii. The project proponent is eligible to make a request to the Ministry for consideration at the Central level if the recommendations of SEAC has not been communicated to the project proponent, within 210 days of the receipt of the complete application excluding the time taken for the project proponent to submit the essential and additional details sought.
- iii. In case of Central/State Government Projects where larger issue of public interest is involved , the project proponent is eligible to make a request to the Ministry for consideration at the Central level if the recommendations of SEAC has not been communicated to the project proponent, after the expiry of 105 days and within 210 days of the receipt of the complete application excluding the time taken for the project proponent to submit the essential and additional details sought , for reasons to be recorded in writing and upon a reference made to that effect by the Central Government or State Government.

- iv. The application shall not be pending with the project proponent for want of information/details/documents at the time when the project proponent is applying for consideration at the Centre.
 - v. The application shall be accompanied by an endorsement from the concerned Secretary, Environment of the State Government Department or concerned Joint Secretary of the Central Government Ministry to which the project pertains to, recommending the aforesaid application of the Project Proponent.
10. The projects which qualify all the above criteria mentioned at para 9 above shall be considered at the Central level on a case to case basis as per the following procedure:
- i. A detailed report shall be sought from SEIAA to ascertain the factual status of the project proposal and the reason for delay.
 - ii. If legitimate reason is found on the part of SEIAA, then the proposal shall be considered at the Central level, subject to approval of the Hon'ble Minister of Environment Forest and Climate Change, Government of India.
 - iii. An alert through PARIVESH shall be sent to SEIAA/SEAC to maintain status-quo of the proposal and not consider it further for appraisal as soon as decision is taken to take up the Project at the Central level.
 - iv. In the SEIAA ranking, one mark shall be deducted for every inordinately delayed proposal which is considered at the central level.
 - v. Such proposals, once considered at the Central level, shall not be sent back to SEIAA till the final decision is taken on such proposal by the Ministry.
11. The project proponent of the inordinately delayed projects shall apply online on PARIVESH in the prescribed format through the provision created for this purpose.
12. This is issued with the approval of Competent Authority.


(Sundar Ramanathan)
Scientist E

To

1. Chairman, Central Pollution Control Board (CPCB).
2. Chairman of all the Expert Appraisal Committees
3. Chairperson/Member Secretaries of all the SEIAAs/SEACs
4. Chairpersons/Member Secretaries of all SPCBs/UTPCCs
5. All the Officers of IA Division

Copy for information to:

1. PS to Hon'ble Minister for Environment, Forest and Climate Change
2. PS to Hon'ble MoS (EF&CC)
3. Sr.PPS to Secretary (EF&CC)
4. Sr.PPS to AS(TK) / AS (NPG)
5. Sr.PPS to JS (SKB)
6. Website, MoEF&CC
7. Guard file.

ANNEXURE - V

FC-11/119/2020-FC
Government of India
Ministry of Environment, Forest and Climate Change
(Forest Conservation Division)

Indira Prayavaran Bhawan,
Aliganj, Jorbagh Road,
New Delhi-110003

Dated: 17th May, 2022

OFFICE MEMORANDUM

Subject: Clarification on Requirement of Various Environmental and Forest Clearances for Project/Activity in Eco-Sensitive Zone and Other Such Areas outside Protected Area – regarding.

Ministry has been receiving communications from States/Union Territories, Project Proponents, associated organizations and other stakeholders seeking clarifications regarding requirement of various statutory clearances viz. Environmental Clearance (EC), Forest Clearance (FC) and consideration by the National Board for Wild Life/Standing Committee of the National Board for Wild Life (NBWL/SCNBWL) for Project/Activity falling in Eco Sensitive Zones (ESZ)/ Eco Sensitive Area (ESA) and other such ecologically significant areas around Protected Areas (PAs) as defined in Wild Life (Protection) Act, 1972.

2. In this reference, it is imperative to take note of some of the important related court judgements, which are as enumerated below:

- i. The Hon'ble Supreme Court Order dated 4.12.2006 in Writ Petition No. 460 of 2004 in the matter of Goa Foundation Vs. Union of India, *inter alia* directed that "(MoEF) would also refer to the Standing Committee of the National Board for Wild Life, under Section 5(b) & 5(c) (ii) of the Wild Life (Protection) Act, 1972, the cases where Environmental Clearances have already been granted where activities are within 10km zone of the boundaries of the Sanctuaries and National Parks".
- ii. Many of developmental activities are prohibited /regulated in ESZs *inter alia* including mining operations to be carried out in accordance with the Order of the Hon'ble Supreme court dated 4.08.2006 in the T.N. Godavarman Thirumulpad vs UOI matter in WP(C) No. 202 of 1995 and Order dated 21.04.2014 in the matter of Goa Foundation Vs. UOI in WP(C) No. 435 of 2012.

3. Taking cognizance of conservation need of ecologically rich area outside notified PAs and aforesaid Court Orders, Ministry has issued clarifications in reference to the subject matter in the past vide OM No. 22-43/2018-IA.III dated 08.08.2019 followed by OM No. 6-60/2020WL Part (I) dated 16.07.2020.

4. The matter has been further examined in detail in the Ministry with reference to various recent communications received seeking further clarifications w.r.t. applicability of EC, FC and WC in ESZ/ESA and other ecologically significant areas outside PAs.

5. Accordingly, in supersession of Ministry's previous OM No. 22-43/2018-IA.III dated 08.08.2019 and OM No. 6-60/2020WL Part (I) dated 16.07.2020, the following procedure is


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prescribed w.r.t. applicability of EC, FC and WC in ESZ/ESA and other ecologically significant areas outside PA:

Clearance Category	Project/Activity in Notified ESZ Around PA or in notified ESA	Project/Activity outside PA wherein ESZ is not notified or ESZ Notification is at draft stage	Project/Activity outside PA in area which is part of Tiger Reserve or linking one PA or Tiger Reserve to another PA or Tiger Reserve
Environmental Clearance (EC)	Project/Activity shall be regulated and governed by the concerned ESZ/ESA Notification. Accordingly, activities prohibited under the ESZ/ESA Notification cannot be undertaken. Whereas, for regulated and other activities in ESZ/ESA Notification covered under the Schedule of EIA Notification, 2006; prior EC as per the prescribed procedure is mandatory.	For Project/Activity covered under the Schedule of EIA Notification, 2006; prior EC as per the prescribed procedure is mandatory, anywhere outside the PA.	For Project/Activity covered under the Schedule of EIA Notification, 2006; prior EC as per the prescribed procedure is mandatory anywhere outside the PA.
Forest Clearance (FC)	Projects shall be regulated and governed by the concerned ESZ/ESA Notification. Accordingly, activities prohibited under the ESZ Notification cannot be undertaken. Whereas, for regulated and other activities; Forest Clearance will be required, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under.	Forest Clearance will be required anywhere outside the PA, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under, irrespective of the notified limits/default limits of ESZ/ESA.	Forest Clearance will be required anywhere outside the PA, only if forest land is involved and proposed activity is for non-forestry use, as per provisions of Forest (Conservation) Act, 1980 and Rules and guidelines made there under, irrespective of the notified limits/default limits of ESZ/ESA.
Consideration by the National Board of Wild Life/Standing	Projects/activities proposed to be located within notified ESZ/ESA shall be regulated and	Project/Activity covered under the Schedule of EIA Notification, 2006 and located within 10 km	Approval of NBWL/SCNBWL is mandatory if the project/activity is


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Committee of the National Board for Wild Life (NBWL/SCNBWL)	governed by the concerned ESZ Notification. Accordingly, activities prohibited under the ESZ Notification shall not be undertaken. Whereas, regulated and other activities proposed within notified ESZ around National Park or Sanctuary shall require consideration by the NBWL/SCNBWL, if such activity is covered under the Schedule of EIA Notification, 2006.	of National Park or Sanctuary shall require consideration by the NBWL/SCNBWL.	proposed to be located in an area which forms part of a Tiger Reserve or area linking one PA or Tiger Reserve with another PA or Tiger Reserve as per section 38O(1)(g) of the Wild Life (Protection) Act, 1972.
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6. In all such cases, the project proponent may submit the application simultaneously for grant of Terms of Reference under EIA Notification as well as for FC and consideration by the NBWL/SCNBWL.

7. In addition, mining operations shall be carried out in accordance with the Order of the Hon'ble Supreme court dated 4.08.2006 in the T.N. Godavaman Thirumulpad vs UOI matter in WP(C) No. 202 of 1995 and Order dated 21.04.2014 in the matter of Goa Foundation Vs. UOI in WP(C) No. 435 of 2012.

This issues with the approval of Competent Authority.


(Sunect Bhardwa) 11/11/24
Assistant Inspector General of Forest (FC)

To:

1. The Chief Secretary, All States/UTs
2. Chairman, CPCB
3. The Addl Chief Secretary/Principal Secretary/Secretary, Environment & Forest Department, All States/UTs.

Copy to:

- i. Principal Chief Conservator of Forests, All State Governments/ UT Administrations
- ii. Chief Wild Life Wardens, All State Governments/ UT Administrations
- iii. All Integrated Regional Offices, Ministry of Environment, Forest and Climate Change (MoEF&CC), Government of India
- iv. All ADGFs/Addl. Secretaries/IGFs/ JSs/ Advisors in MoEF&CC, GoI, New Delhi.
- v. Member Secretary, National Tiger Conservation Authority, New Delhi
- vi. Sr. Director (Technical), NIC, MoEF&CC with a request to place a copy of the letter on website of this Ministry.
- vii. PPS to Secretary (EF&C C)/DGF&SS, MoEF&CC, New Delhi.

ANNEXURE - A

**Report of the CPCB In-house Committee on
Methodology for Assessing Environmental
Compensation and Action Plan to Utilize the Fund**



**CENTRAL POLLUTION CONTROL BOARD
"Parivesh Bhawan", East Arjun Nagar,
Delhi-110032**

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Abstract

Environmental compensation is a policy instrument for the protection of the environment which works on the Polluter Pay Principal. Environmental compensation has already been implemented in various countries, although limited in scope. Experiences from these implementations are mixed and tend to stress the importance of certain principles in order to achieve the overall objective of protection of the environment.

The Hon'ble National Green Tribunal through its various judgments has empowered the Central Pollution Control Board to lay down the methodology to assess and recover compensation for damage to the environment and utilize such amount in terms of an action plan for protection of the environment.

An attempt has been made by the CPCB in-house Committee to develop a methodology for assessing environmental compensation to be levied on concerned industry, authority, individual etc. for the protection of environment. Expert institutions/ NGOs like The Energy and Resources Institute, Centre for Science and Environment-India, Institute of Economic Growth etc. were also consulted to finalize the report. Overall objective is to develop self-sense of responsibility towards the environment and to make defaulters realize their mistake by imposing compensation, which will be utilized for the protection/restoration of the environment.

Although, this is the first attempt in India towards development of methodology for assessing environmental compensation, however, efforts have been made to simplifying the process so that regulatory institutions can easily adopt the methodology for implementation.

Chapter-I: Environment Compensation to be levied on Industrial Units

1.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of OA No. 593/2017 (WP (CIVIL) No. 375/2012, Paryavaran Suraksha Samiti & Anr. Vs. Union of India & Ors. directed Central Pollution Control Board (CPCB) that:

"The CPCB may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. CPCB may also assess and recover compensation for damage to the environment and said fund may be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the CPCB within three months" (Annexure-I).

1.2 Constitution of the Committee

In this context, Chairman, CPCB constituted a Committee under the Chairmanship of Shri A. Sudhakar, I/c WQM-I with Shri A. K. Vidyarthi, I/c WQM-II, Shri P. K. Gupta, I/c IPC-VI, Shri Nazimuddin I/c IPC-II and Dr. S. K. Paliwal, Scientist 'D' as members. The Committee was asked to deliberate on this issue and come up with a draft formulation before 15.9.2018.

1.3 Methodology for Assessing Environmental Compensation

The Committee discussed the issue on 4.9.2018, 13.9.2018, 17.9.2018 and 09.10.2018. A meeting was also held with Senior Officers of CPCB Head Office and Regional Directorates through video conferencing on 28.09.2018 to discuss the draft report and to seek comments/feedbacks. The comments/feedbacks received and deliberations of the Committee on the same are given in **Annexure-II**.

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). A meeting to incorporate the comments of the expert institutions and to finalize the report, was held on 27/03/2019. The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are attached as **Annexure-III**.

It was deliberated for developing a formula for imposing environmental compensation on industrial units for violation of directions issued by regulatory bodies and this is the first attempt made. The committee discussed that environmental compensation should be based on "Polluter Pay Principle". The Committee decided to list the instances for taking cognizance of cases fit for violation and levy environmental compensation.

Cases considered for levying Environmental Compensation (EC):

- a) Discharges in violation of consent conditions, mainly prescribed standards / consent limits.
- b) Not complying with the directions issued, such as direction for closure due to non-installation of OCEMS, non-adherence to the action plans submitted etc.
- c) Intentional avoidance of data submission or data manipulation by tampering the Online Continuous Emission / Effluent Monitoring systems.
- d) Accidental discharges lasting for short durations resulting into damage to the environment.
- e) Intentional discharges to the environment -- land, water and air resulting into acute injury or damage to the environment.
- f) Injection of treated/partially treated/ untreated effluents to ground water.

1.3.1 In the instances as mentioned at *a, b and c* above, Pollution Index may be used as a basis to levy the Environmental Compensation. CPCB has published guidelines for categorization of industries into Red, Orange, Green and White based on concept of Pollution Index (PI). The Pollution Index is arrived after considering quantity & quality of emissions/ effluents generated, types of hazardous wastes generated and consumption of resources. Pollution Index of an industrial sector is a numerical number in the range of 0 to 100 and can be represented as follows:

$$PI = f(\text{Water Pollution Score, Air Pollution Score \& HW Generation Score})$$

Pollution Index is a number from 0 to 100 and increasing value of PI denotes the increasing degree of pollution hazard from the industrial sector.

CPCB has issued directions to all SPCBs/PCCs on 07.03.2016 to adopt the methodology and follow guidelines prepared by CPCB for categorization of industrial sectors into Red, Orange, Green and White.

The concept of Pollution Index, which was deliberated widely with all stakeholders and agreed, shall be used for calculating Environmental Compensation. This may help in implementation of such provision throughout the country, a successful initiative in vital field of industrial pollution control.

After considering various factors including the policy implementation issues, Committee has come up with following formula for levying the Environmental Compensation in instances as mentioned at *a, b and c* including non-compliance of the environmental standards / violation of directions.

The Environmental Compensation shall be based on the following formula:

$$EC = PI \times N \times R \times S \times LF$$

Where,

EC is Environmental Compensation in ₹

PI = Pollution Index of industrial sector

N = Number of days of violation took place

R = A factor in Rupees (₹) for EC

S = Factor for scale of operation

LF = Location factor

The formula incorporates the anticipated severity of environmental pollution in terms of Pollution Index, duration of violation in terms of number of days, scale of operation in terms of micro & small/medium/large industry and location in terms of proximity to the large habitations.

Note:

- The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. It was suggested that the average pollution index of 80, 50 and 30 may be taken for calculating the Environmental Compensation for Red, Orange and Green categories of industries, respectively.
- N, number of days for which violation took place is the period between the day of violation observed/due date of direction's compliance and the day of compliance verified by CPCB/SPCB/PCC.
- R is a factor in Rupees, which may be a minimum of 100 and maximum of 500. It is suggested to consider R as 250, as the Environmental Compensation in cases of violation.
- S could be based on small/medium/large industry categorization, which may be 0.5 for micro or small, 1.0 for medium and 1.5 for large units.
- LF, could be based on population of the city/town and location of the industrial unit. For the industrial unit located within municipal boundary or up to 10 km distance from the municipal boundary of the city/town, following factors (LF) may be used:

Table No. 1.1: Location Factor Values

S. No.	Population* (million)	Location Factor# (LF)
1	1 to <5	1.25
2	5 to <10	1.5
3	10 and above	2.0

*Population of the city/town as per the latest Census of India

#LF will be 1.0 in case unit is located >10km from municipal boundary

LF is presumed as 1 for city/town having population less than one million.

For notified Ecologically Sensitive areas, for beginning, LF may be assumed as 2.0. However, for critically Polluted Areas, LF may be explored in future.

- f. In any case, minimum Environmental Compensation shall be ₹ 5000/day.
- g. In order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2 times on 1st repetition, 4 times on 2nd repetition and 8 times on further repetitions.
- h. If the operations of the industry are inevitable and violator continues its operations beyond 3 months then for deterrent compensation, EC may be increased by 2, 4 and 8 times for 2nd, 3rd and 4th quarter, respectively. Even if the operations are inevitable beyond 12 months, violator will not be allowed to operate.
- i. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required.

A sample calculation for Environmental Compensation (without deterrent factor) is given at Table No. 1.2. It can be noticed that for all instances, EC for Red, Orange and Green category of industries varies from 3,750 to 60,000 ₹/day.

Table No. 1.2: A sample calculation for Environmental Compensation

Industrial Category	Red	Orange	Green
Pollution Index (PI)	60-100	41-59	21-40
Average PI	80	50	30
R-Factor	250		
S-Factor	0.5-1.5		
L-Factor	1.00-2.00		
Environmental Compensation (₹/day)	10,000-60,000	6,250-37,500	5,000-22,500

1.3.2 In other instances i.e. *d, e and f*, the environmental compensation may contain two parts – one requires providing immediate relief and other long-term measures such as remediation. In all these cases, detailed investigations are required from expert institutions/organizations based on which environmental compensation will be decided. CPCB shall list the expert institutions for this purpose.

In such cases, comprehensive plan for remediation of environmental pollution may be prepared and executed under the supervision of a committee with representatives of SPCB, CPCB and expert institutions/organizations.

1.4 Action Plan for Utilization of Environmental Compensation Fund

The Committee discussed about the utilization of funds, which will be received by imposing Environmental Compensation. The following Action Plan is proposed to utilize the fund for protection of the environment.

1.4.1. When Environmental Compensation is calculated through the Pollution Index:

The amount received by imposing the Environmental Compensation to the industries / organization non-complying with the environmental standards / violating any CPCB's directions shall be deposited in a separate bank account. The amount accumulated will be utilized for Protection of Environment. The following schemes were identified, which may be considered for utilization of Environmental Compensation Fund:

- a. Industrial Inspections for compliance verification
- b. Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network
- c. Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology
- d. Investigations of environmental damages, preparation of DPRs
- e. Remediation of contaminated sites
- f. Infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs

The above proposed list may include other schemes also, depending upon the requirement.

Considering the availability of accumulated funds, CPCB will finalize the scheme, keeping in mind the priority, to utilize the funds of Environmental Compensation.

1.4.2. When Environmental Compensation is assessed based on actual damage to the environment by Expert Organization/ Agency:

The amount of Environmental Compensation under this case will be remediation costs, measures requiring immediate and short-term actions, compensation towards loss of ecology, etc., and will be utilized exclusively for the purpose at specific site, based on the detailed investigations by the Expert Organizations/ agencies.

1.5 Recommendations

The Committee made following recommendations:

- 1.5.1 To begin with, Environmental Compensation may be levied by CPCB only when CPCB has issued the directions under the Environment (Protection) Act, 1986. In case of a, b and c, Environmental Compensation may be calculated based on the formula " $EC = PI \times N \times R \times S \times LF$ ", wherein, PI may be taken as 80, 50 and 30 for red, orange and green category of industries, respectively, and R may be taken as 250. S and LF may be taken as prescribed in the preceding paragraphs.

- 1.5.2 In case of d, e and f, the Environmental Compensation may be levied based on the detailed investigations by Expert Institutions/Organizations.
- 1.5.3 The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed that all running industrial units which require "consent to operate" from concerned State Pollution Control Board, have a primary effluent treatment plant in place. Therefore, no industry requiring ETP, shall be allowed to operate without ETP.
- 1.5.4 EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts and Rules.

Chapter-II: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in NCR.

2.1 Background

The CPCB In-house Committee also discussed that the EC shall also be levied on all violations of Graded Response Action Plan (GRAP) in NCR. The implementing agencies for each activity have been identified and the EC will be levied on these agencies. These violations attract graded amounts of EC depending on the state of ambient air quality, which is given in table below:

Table No. 2.1: Environmental Compensation to be levied on all violations of Graded Response Action Plan (GRAP) in Delhi-NCR.

Activity	State Of Air Quality	Environmental Compensation (₹)
Industrial Emissions	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Vapour Recovery System (VRS) at Outlets of Oil Companies		
i. Not installed	Target Date	Rs 1.0 Crore
ii. Non-functional	Very poor to Severe +	Rs 50.0 Lakh
	Moderate to Poor	Rs 25.0 Lakh
Construction sites (Offending plot more than 20,000 Sq.m.)	Severe +/-Emergency	Rs 1.0 Crore
	Severe	Rs 50 Lakh
	Very Poor	Rs 25 Lakh
	Moderate to Poor	Rs 10 Lakh
Solid waste/ garbage dumping in Industrial Estates	Very poor to Severe +	Rs 25.0 Lakh
	Moderate to Poor	Rs 10.0 Lakh
Failure to water sprinkling on unpaved roads		
a) Hot-spots	Very poor to Severe +	Rs 25.0 Lakh
b) Other than Hot-spots	Very poor to Severe +	Rs 10.0 Lakh

2.2 Action Plan for Utilization of Environmental Compensation Fund

EC levied on all violations of Graded Response Action Plan (GRAP) in Delhi NCR will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

Chapter-III: Environmental Compensation to be levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules

3.1 Background

The Hon'ble Supreme Court in its order dated 22.02.2017 in the matter of Paryavaran Suraksha Samiti and another v/s Union of India and others (Writ Petition (Civil) No. 375 of 2012), directed State Governments (including the concerned Union Territories) to set-up Sewage Treatment Plants (STPs), which are already under implementation, within the time lines already postulated. Further, the STPs, which are yet to set-up, to be completed within a period of three years, from today, i.e. by 22.02.2020.

The Hon'ble NGT in its order dated 06.12.2018 (**Annexure-III**) in the matter of Court of its own motion v/s State of Karnataka (Original Application No. 125/2017 and M.A. No. 1337/2018) has given following directions:

“Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.”

3.2 Ideology of Environmental Compensation Formula

In compliance of the directions of the Hon'ble Tribunal, the Committee deliberated on the issue of environmental compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid and other waste management rules. The Committee has suggested that environmental compensation in these cases should be comprised of two components i.e.

1. Cost saved/benefits achieved by the concerned individual/authority by not having proper waste/sewage management system; and
2. Cost to the environment (environmental externality) due to untreated/partially treated waste/sewage because of insufficient capacity of waste/sewage management/treatment facility.

Cost saved/benefits achieved by not having proper waste/sewage management system includes the interest on capital cost of the waste/sewage management facility and daily operation and maintenance (O&M) cost associated with the facility.

The Committee suggested that annual interest rate as 10% on loan amount, borrowed by concerned individual/authority for setting-up waste/sewage management facility, may be assumed as Capital Cost Factor for calculation of environment compensation. Further, as whole O&M cost is saved by concerned individual/authority for not managing required waste/sewage management system, 100% of the O&M cost saved may be considered as O&M cost factor.

Therefore, generalized formula for Environmental Compensation may be described as:

$$EC = \text{Capital Cost Factor} \times \text{Marginal Average Capital Cost for Establishment of Waste or Sewage Management or Treatment Facility} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) + \text{O\&M Cost Factor} \times \text{Marginal Average O\&M Cost} \times (\text{Waste or Sewage Management or Treatment Capacity Gap}) \times \text{No. of Days for which facility was not available} + \text{Environmental Externality}$$

Cost to the environment due to untreated/partially treated waste/sewage discharge by concerned individual/authority may be assumed as recommended by the committee, which is mentioned below:

Table No. 3.1: Environmental externality for untreated/partially treated sewage discharge

Sewage Treatment Capacity Gap (MLD)	Marginal Cost of Environmental Externality (Rs. per MLD/day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	75	Min. 0.05, Max. 0.10
201-500	85	Min. 0.25, Max. 0.35
501 and above	90	Min. 0.60, Max. 0.80

Table No. 3.2: Environmental externality for improper municipal solid waste management

Municipal Solid Waste Management Capacity Gap (TPD)	Marginal Cost of Environmental Externality (Rs. per ton per day)	Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)
Up to 200	15	Min. 0.01, Max. 0.05
201-500	30	Min. 0.10, Max. 0.15
501-1000	35	Min. 0.25, Max. 0.35
1001-2000	40	Min. 0.50, Max. 0.60
Above 2000		Max. 0.80

The Committee further decided to fix a cap for minimum and maximum cost for capital and O&M component for Environmental Compensation, which are given in below tables:

Table No. 3.3: Minimum and Maximum EC to be levied for untreated/partially treated sewage discharge

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5

Table No. 3.4: Minimum and Maximum EC to be levied for improper municipal solid waste management

Class of the City/Town	Mega-City	Million-plus City	Class-I City/Town and others
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0

The application of formula for calculation of EC may be further understood with the example of two typical cases.

3.3 Environment Compensation for Discharge of Untreated/Partially Treated Sewage by Concerned Individual/Authority:

BIS IS 1172:1993 suggests that for communities with population above 100,000, minimum of 150 to 200 lpcd of water demand is to be supplied. Further, 85% of return rate (CPHEEO Manual on Sewerage and Sewage Treatment Systems, 2013), may be considered for calculation of total sewage generation in a city. CPCB Report on "Performance evaluation of sewage treatment plants under NRCD, 2013", describes that the capital cost for 1 MLD STP ranges from 0.63 Cr. to 3 Cr. and O&M cost is around Rs. 30,000 per month. After detail deliberations, the Committee suggested to assume capital cost for STPs as Rs. 1.75 Cr./MLD (marginal average cost). Further, expected cost for conveyance system is assumed as Rs. 5.55 Cr./MLD (marginal average cost) and annual O&M cost as 10% of the combined capital cost. Population of the city may be taken as per the latest Census of India. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

EC= Capital Cost Factor x [Marginal Average Capital Cost for Treatment Facility x (Total Generation-Installed Capacity) + Marginal Average Capital Cost for Conveyance Facility x (Total Generation-Operational Capacity)] + O&M Cost Factor x Marginal Average O&M Cost x (Total Generation- Operational Capacity) x No. of Days for which facility was not available + Environmental Externality x No. of Days for which facility was not available

Alternatively;

EC (Lacs Rs.) = [17.5(Total Sewage Generation – Installed Treatment Capacity) + 55.5(Total Sewage Generation-Operational Capacity)] + 0.2(Sewage Generation-Operational Capacity) x N + Marginal Cost of Environmental Externality x (Total Sewage Generation-Operational Capacity) x N

Where; N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Quantity of Sewage is in MLD

Table No. 3.5: Sample calculation for EC to be levied for discharge of untreated/partial treated Sewage

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Sewage Generation (MLD) (as per the latest data available with CPCB)	4195	381	486	37
Installed Treatment Capacity (MLD) (as per the latest data available with CPCB)	2500	220	404	45.5
Operational Capacity (MLD) (as per the latest data available with CPCB)	1900	140	300	24.5
Treatment Capacity Gap (MLD)	2295	241	186	12.5
Calculated EC (capital cost component for STPs) in Lacs Rs.	29662.50	2817.50	1435.00	0.00
Calculated EC (capital cost component for Conveyance System) in Lacs. Rs.	127372.50	13375.50	10323.00	693.75
Calculated EC (Total capital cost component) in Lacs Rs.	157035.00	16193.00	11758.00	693.75
Minimum and Maximum values of EC (Total Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 2000 Max. 20000	Min. 1000 Max. 10000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (Total Capital Cost Component) in Lacs Rs.	20000.00	10000.00	1000.00	693.75
Calculated EC (O&M Component in Lacs Rs./day)	459.00	48.20	37.20	2.50
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./day)	Min. 2 Max. 20	Min. 1 Max. 10	Min. 0.5 Max. 5	Min. 0.5 Max. 5
Final EC (O&M Component) in Lacs. Rs./Day	20.00	10.00	5.00	2.50
Calculated Environmental Externality (Lacs Rs .Per Day)	2.0655	0.2049	0.1395	0.0094
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. Per Day)	Min. 0.60 Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.05 Max. 0.10	Min. 0.05 Max. 0.10
Final Environmental Externality (Lacs Rs. Per day)	0.80	0.25	0.10	0.05

3.4 Environment Compensation to be Levied on Concerned Individual/Authority for Improper Solid Waste Management:

It is known that estimated MSW generation is approximately 1.5 lakh MT/Day in India (MoHUA Report-2016). As per the principles of SWM Rules, 2016 and PWM Rules 2016, as amended in 2018, the total cost of Municipal Solid Waste management in a city/town includes cost for door to door collection, cost of segregation at source, cost for transportation in segregated manner, cost for processing of MSW and disposal through facility like composting, biomethanation, recycling, co-processing in cement kilns etc.

In view of above, it is estimated that the total cost of processing and treatment of MSW for a city having population size of 1 lakh and generating approximately 50 tons/day of MSW is Rs.15.5 Crores, including capital cost (one time) and O & M cost for one year. The expenditure for subsequent years would be only Rs. 3.5 crores/annum.

CPCB sponsored a survey to ascertain the status of municipal solid waste disposal in 59 cities/towns of India. The survey was conducted by the Environment Protection Training Research Institute (EPTRI), Hyderabad. As per the survey, it is estimated that solid waste generated in small, medium and large cities and towns is about 0.1 kg (Class-III), 0.3-0.4 kg (Class-II) and 0.5 kg (Class-I) per capita per day respectively. The committee opined that 0.6 kg/day, 0.5 kg/day and 0.4 kg/day per capita waste generation may be assumed for mega-cities, million-plus UAs/towns and Class-I UA/Towns respectively for calculation of environmental compensation purposes. Based on these assumptions, Environmental Compensation to be levied on concerned ULB may be calculated with the following formula:

EC = Capital Cost Factor x Marginal Average Cost for Waste Management x (Per day waste generation-Per day waste disposed as per the Rules) + O&M Cost Factor x Marginal Average O&M Cost x (Per day waste generation-Per day waste disposed as per the Rules) x Number of days violation took place + Environmental Externality x N

Where;

Waste Quantity in tons per day (TPD)

N= Number of days from the date of direction of CPCB/SPCB/PCC till the required capacity systems are provided by the concerned authority

Simplifying;

EC (Lacs Rs.) = 2.4(Waste Generation - Waste Disposed as per the Rules) +0.02 (Waste Generation - Waste Disposed as per the Rules) x N + Marginal Cost of Environmental Externality x (Waste Generation - Waste Disposed as per the Rules) x N

Table No. 3.6: Sample calculation for EC to be levied for improper management of Municipal Solid Waste

City	Delhi	Agra	Gurugram	Ambala
Population (2011)	1,63,49,831	17,60,285	8,76,969	5,00,774
Class	Mega-City	Million-plus City	Class-I Town	Class-I Town
Waste Generation (kg. per person per day)	0.6	0.5	0.4	0.4
Waste Generation (TPD)	9809.90	880.14	350.79	200.31
Waste Disposal as per Rules (TPD) (<i>assumed as 25% of waste generation for sample calculation</i>)	2452.47	220.04	87.70	50.08
Waste Management Capacity Gap (TPD)	7357.42	660.11	263.09	150.23
Calculated EC (capital cost component) in Lacs. Rs.	17657.82	1584.26	631.42	360.56
Minimum and Maximum values of EC (Capital Cost Component) recommended by the Committee (Lacs Rs.)	Min. 1000 Max. 10000	Min. 500 Max. 5000	Min. 100 Max. 1000	Min. 100 Max. 1000
Final EC (capital cost component) in Lacs. Rs.	10000.00	1584.26	631.42	360.56
Calculated EC (O&M Component) in Lacs. Rs./Day	147.15	13.20	5.26	3.00
Minimum and Maximum values of EC (O&M Cost Component) recommended by the Committee (Lacs Rs./Day)	Min. 1.0 Max. 10.0	Min. 0.5 Max. 5.0	Min. 0.1 Max. 1.0	Min. 0.1 Max. 1.0
Final EC (O&M Component) in Lacs. Rs./Day	10.00	5.00	1.00	1.00
Calculated Environmental Externality (Lacs Rs. Per Day)	2.58	0.18	0.03	0.02
Minimum and Maximum value of Environmental Externality recommended by the Committee (Lacs Rs. per day)	Max. 0.80	Min. 0.25 Max. 0.35	Min. 0.01 Max. 0.05	Min. 0.01 Max. 0.05
Final Environmental Externality (Lacs Rs. per day)	0.80	0.25	0.03	0.02

3.3 Action Plan for Utilization of Environmental Compensation Fund

EC levied in case of failure of preventing the pollutants being discharged in water bodies and failure to implement waste management rules will be deposited in the same fund and will be utilized in the same manner as mentioned in para 1.4.1 of Chapter-I of this report.

3.4 Recommendations

1. The Committee recommended that to begin with, Environmental Compensation to be recovered from individuals/authorities in case of failure of preventing the pollutants being discharged in water bodies and failure to implement solid waste management rules may be calculated with the methodology described in the report.
2. If mixing of Bio-medical Waste or Hazardous Waste is found in Municipal Solid Waste than capital cost component of EC may be increased by a multiplication factor of 1.5.

3. In order to include deterrent effect for continuous violations, component of O&M and Environmental Externality in EC formula may be increased on exponential basis by 2, 4, and 8 times after every six-months, beyond the time prescribed by authority for ensuring complete treatment of sewage/waste of the city/town.

Chapter-IV: Environmental Compensation in Case of Illegal Extraction of Ground Water

4.1 Background

The Hon'ble National Green Tribunal (NGT), Principal Bench in the matter of Shailesh Singh v/s Central Ground Water Board & Ors. (Original Application No. 327/2018) vide order dated 03/01/2019 (**Annexure-V**) directed Central Pollution Control Board (CPCB) that:

"CPCB may constitute a mechanism to deal with individual cases of violation of norms, as existed prior to Notification of 12/12/2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per law."

4.2 Constitution of the Committee

In compliance to Hon'ble NGT dated 03/01/2019, CPCB constituted a committee under the Chairmanship of Shri A. Sudhakar, DH, WQM-I Division with Shri P. K. Gupta, DH, IPC-VI, Shri Vishal Gandhi, Sc. D, UPC-I Division and Smt. Suniti Parashar, Scientist B, WQM-I Division as members. The committee was asked to deliberate on this issue and come up with draft formulation of mechanism to determine the Environmental Compensation for illegal extraction of ground water.

4.3 Methodology for Assessing Environmental Compensation

The committee discussed the issue on 07/02/2019, 07/03/2019 and 20/3/2019. The committee deliberated on the issue of Environmental Compensation to be recovered from individuals/industries such as domestic, packaging drinking water units, mining & infrastructure projects and industrial units in case of illegal extraction of ground water. The Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 were also discussed and based on this further formulation to levy Environmental Compensation has been evolved.

4.4 Ideology of Environmental Compensation w.r.to illegal extraction of ground water

Ground water is becoming an increasingly scarce resource because of its unabated and indiscriminate over-exploitation. Growth in ground water exploitation, however, has led to a steep fall in water table in several parts of the country. Use of ground water is becoming unsustainable day by day. The falling water table is a matter of special concern since it tends to reduce the accessibility of the resource to small and marginal farmers due to increase in costs of extractions.

Specific conditions applicable in Notified/Non-Notified areas for various users, as mentioned in Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015 are given below:

For Notified Areas:

1. Permission to abstract ground water through any energized means will not be accorded for any purpose other than drinking water.

2. Central Ground Water Authority (CGWA) so far has notified 162 areas, in the country for the purpose of regulation of ground water development.
3. Regulation of Ground Water development in Notified areas is through District Administrative Heads assisted by Advisory Committees under the provisions of Section 4 of the Environment (Protection) Act, 1986.
4. In Notified areas, ground water use in individual houses, infrastructure complexes like group housing societies, hospitals, schools etc. and drinking water requirements of workers in industries can be allowed.
5. NOC for ground water withdrawal will be considered only if Water Supplying Department is not providing adequate water in the area/premises. Proof for this is to be produced from the concerned authority by the applicant.
6. For individual houses, the maximum diameter of the tube-well should be restricted to 4 inch only and the capacity of the pump should not exceed 1HP. For infrastructure projects, maximum diameter of the ground water abstraction structures should be restricted to 150 mm (6 inches) only and capacity of the pump should not exceed 5 HP.
7. Any violation of the above conditions will attract legal action under Section 15 of the Environment (Protection) Act, 1986.

For Non-Notified Areas:

NOC for ground water withdrawal will be considered for industries/infrastructure/packaging as per safe, semi critical, critical and over-exploited criteria.

4.5 Formula for Environmental Compensation for illegal extraction of ground water

The committee decided that the formula should be based on water consumption (Pump Yield & Time duration) and rates for imposing Environmental Compensation for violation of illegal abstraction of ground water. The committee has proposed following formula for calculation of Environmental Compensation (EC_{GW}):

EC_{GW}	=	Water Consumption per Day x No. of Days x Environmental Compensation Rate for illegal extraction of ground water (ECR_{GW})
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Where water Consumption is in m^3/day and ECR_{GW} in $Rs./m^3$

Yield of the pump varies based on the capacity/power of pump, water head etc. For reference purpose, yield of the pump may be assumed as given in **Annexure-VI**.

Time duration will be the period from which pump is operated illegally.

In case of illegal extraction of ground water, quantity of discharge as per the meter reading or as calculated with assumptions of yield and time may be used for calculation of EC_{GW} .

4.6 Environmental Compensation Rate (ECR_{GW}) for illegal use of Ground Water

The committee decided that the Environmental Compensation Rate (ECR_{GW}) for illegal extraction of ground water should increase with increase in water consumption as well as water scarcity in the area. Further, ECR_{GW} are kept relaxed for drinking and domestic use as compared to other uses, considering the basic need of human being.

As per CGWB, safe, semi-critical, critical and over-exploited areas are categorized from the ground water resources point of view (CGWB, 2017). List of safe, semi-critical, critical and over-exploited areas are available on the website of CGWB and can be accessed from- <http://cgwa-noc.gov.in/LandingPage/NotifiedAreas/CategorizationOfAssessmentUnits.pdf#ZOOM=150>.

Environmental Compensation Rates (ECR_{GW}) for illegal use of ground water (ECR_{GW}) for various purposes such as drinking/domestic use, packaging units, mining and industrial sectors as finalized by the committee are given in tables below:

4.6.1 ECR_{GW} for Drinking and Domestic use:

Drinking and Domestic use means uses of ground water in households, institutional activity, hospitals, commercial complexes, townships etc.

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<2	2 to <5	5 to <25	25 & above
Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3					
1	Safe	4	6	8	10
2	Semi Critical	12	14	16	20
3	Critical	22	24	26	30
4	Over-Exploited	32	34	36	40
Minimum EC_{GW} =Rs 10,000/- (for households) and Rs. 50,000 (for institutional activity, commercial complexes, townships etc.)					

4.6.2 ECR_{GW} for Packaged drinking water units:

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3					
1	Safe	12	18	24	30
2	Semi critical	24	36	48	60
3	Critical	36	48	66	90
4	Over-exploited	48	72	96	120
Minimum EC_{GW} =Rs 1,00,000/-					

4.6.3 ECR_{GW} for Mining, Infrastructure and Dewatering Projects

Sl. No.	Area Category	Water Consumption (m^3/day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR_{GW}) in Rs./ m^3					
1	Safe	15	21	30	40
2	Semi critical	30	45	60	75
3	Critical	45	60	85	115
4	Over-exploited	60	90	120	150
Minimum EC_{GW} =Rs 1,00,000/-					

4.6.4 ECR_{GW} for Industrial Units:

Sl. No.	Area Category	Water Consumption (m ³ /day)			
		<200	200 to <1000	1000 to <5000	5000 & above
Environmental Compensation Rate (ECR _{GW}) in Rs./m ³					
1	Safe	20	30	40	50
2	Semi critical	40	60	80	100
3	Critical	60	80	110	150
4	Over-exploited	80	120	160	200
Minimum EC _{GW} =Rs 1,00,000/-					

For better understanding of implementation of EC_{GW} policy, some example calculations are given below:

Example No. 1 (For drinking and domestic Use):

It is observed that a household in safe zone is extracting ground water illegally from past 2 year and 3 months with the help of 1 HP pump, dia 4 inches and head as 25 meter. It is assumed that the house-owner runs the pump for 0.5 hr/day. What Environmental Compensation (EC_{GW}) will be charged to the owner?

Solution: Pump Yield (Please refer Annexure-VI) = 3 m³/hr
 Daily Consumption = 3 x 0.5 = 1.5 m³
 ECR_{GW} = 4 Rs./m³ (Please refer para 4.6.1)
 EC to be levied = 4 x 1.5 = 6 Rs./day
 Total time period = 820 days

Then, EC_{GW} = 6 x 820

Calculated EC_{GW} = 4,920 Rs.

EC_{GW} to be levied = 10,000 Rs. (minimum prescribed EC_{GW}, please refer para 4.6.1)

Example 2 (For Industrial Units):

It is observed that an industry in critical zone is extracting ground water illegally from past 1 year with the help of 5 HP pump, dia 6 inches and head as 50 meter. It is assumed that the industry runs the pump for 3 hrs/day. What Environmental Compensation (EC_{GW}) will be charged to the owner?

Solution: Pump Yield (Please refer Annexure-VI) = 12 m³/hr
 Daily Consumption = 12 x 3 = 36 m³/day
 ECR_{GW} = 60 Rs./m³ (Please refer para 4.6.4)
 EC to be levied = 60 x 36 = 2,160 Rs./day
 Total time period = 365 days

Then, EC_{GW} = 2,160 x 365

EC_{GW} = 7,88,400 Rs.

4.7 Relaxation

Central Ground Water Authority (CGWA) reserves to right to relax or interpret these mechanisms in case of any exigency or situation of National strategic importance, as per Guidelines/Criteria for evaluation of proposals/requests for Ground Water Abstraction, 2015.

4.8 Recommendations

The committee has given following recommendations:

- The minimum Environmental Compensation for illegal extraction of ground water for domestic purpose will be Rs. 10,000, for institutional/commercial use will be 50,000 and for other uses will be 1,00,000.
- In case of fixation of liability, it always lies with current owner of the premises where illegal extraction is taking place.
- Time duration may be assumed to be one year in case where no evidence for period of installation of bore well could be established.
- For Drinking and Domestic use, where metering is not present but storage tank facility is available, minimum water consumption per day may be assumed as similar to the storage capacity of the tank.
- For industrial ground water use, where metering is not available, water consumption may be assumed as per the consent conditions. Further, where in case industry is operating without consent, water consumption may be calculated based on the plant capacity (on the recommendation of SPCB/PCC, if required). SPCB/PCC may bring the issue of illegal extraction of ground water in industries in to the notice of CGWA for appropriate action by CGWA.
- Authorities assigned for levy EC and taking penal action are listed below:

S. No.	Actions	Authority
1.	To seal the illegal bore-well/tube-well to stop extraction of water and further closure of project	District Collector
2.	To levy EC _{GW} as per prescribed method	District Collector, CGWA
3.	To levy FC on water pollution, as per the method prescribed in report of CPCB- "EC on industrial pollution"	CPCB/SPCB/PCC
4.	Prosecution of violator	CGWA under EP Act SPCB/PCC under Air and Water Act

- CGWA may maintain a separate account for collection and utilization of fund, collected through the prescribed methodology in this report.

**BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI**

**Original Application No. 593/2017
(W.P. (Civil) No. 375/2012)**

In the matter of:

**Paryavaran Suraksha Samiti & Anr.
Vs.
Union of India & Ors.**

**CORAM : HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE DR. JUSTICE JAWAD RAHIM, JUDICIAL MEMBER
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER**

Present: Applicant: Mr. Rohit Prajapati, Applicant in person
Amicus Curiae: Mr. Jai A. Dahadri, Adv.
Respondent Nos. Mr. Nishe Rajan Shonker, Adv. for State of Kerala
Mr. Tarunvir Singh Khehar, Ms. Guneet Khehar
Mr. Sandeep Mishra Adv. for GNCTD
Mr. Anil Shrivastava Mr. Nituraj Bewas and
Ms. Sujaya Bardhan, Adv. for State of
Assam
Mr. Jigy Soaria, Ms. Beena Victor, Adv. for
Kerala State Pollution Control Board
Mr. Avijit Roy, Adv. for Assam Pollution Control
Board
Mr. Leishangthem Koshmani Kh, Ms. Matham
Babina, Adv. for State of Manipur
Mr. Nikhil Nayyar, Mr. Dhananjay Bajaj, Adv.
for APCCB and TSPCB
Mr. Mukesh Verma, Adv.
Mr. Tarunvir Singh Khehar, Adv., Mr. Sandeep
Mishra and Ms. Guneet Khehar, Adv.
Mr. Dinesh Jindal, LO for DPCC
Ms. Arun Mukherjee, Mr. Avinash Arputham, Ms.
Srinaj Jeet and Ms. Anuradha Arputham, Adv.
for State of Sikkim
Mr. Raja Chatterjee, Mr. Piyush Sachdev, Ms.
Abhinandini Yadav, Adv. and Adv. for State of
WB
Mr. Edward Belho, AAG, Mr. E. Lukang Michael
and Ms. Holseithiam, Adv. for State of
Nagaland
Ms. Enateli Scma, Adv. for State of Nagaland
and Pollution Control Board
Mr. M. Palkar and Mr. A.K. Panda, Adv. for
SPCB, Odisha
Mr. Dhruv Pal, Adv. for State of Gujarat
Mr. V.K. Shukla, Adv. for State of MP
Mr. Jayesh Gaurav, Adv. for E-47
Mr. Tayenjam Momo Singh, Adv. for Meghalaya
Pollution Control Board
Mr. Shlok Chandra and Mr. Ritesh Kumar
Sharma, Adv.
Mr. Gautam Singh and Mr. Shoesh Alam, Adv.
for State of Bihar
Ms. Aprajita Mukherjee, Adv.
Ms. G. Indira, Adv. for UT of Andaman &
Nicobar
Mr. Balendu Shekhar, Mr. Brianah Prakash and
Mr. Rajkumar Maurya, Adv. for Ministry of
Environment, Forest and Climate Change
Ms. Puja Kalra, Adv. for SDMC & NDMC
Mr. Anil Grover, AAG, Mr. Rahul Khurana and
Mr. Mishal Vij, Adv. for State of Haryana and
HSPCB

Ms. Yogmaya Agnihotri, Adv. and Ms. Prity, Adv. for CECEB
 Ms. Sakshi Popli, Adv. for Ministry of Environment, Forest and Climate Change
 Mr. Shuvodeep Roy, Adv. and Mr. Rituraj Biswas, Adv. for State of Tripura & Tripura Pollution Control Board
 Mr. Shashank Bajpai and Mr. Shakun S. Shukla, Adv. for State of Odisha
 Ms. Asha Nayar Basu and Ms. Aradhita Ghosh Mandal, Adv.
 Ms. Priyanka Sinha, Adv. for State of Jharkhand
 Mr. Rajul Shrivastav, Adv. for MPPCB
 Mr. Pradeep Misra and Mr. Daleep Dhyani Adv. for UPPCB
 Mr. R. Rakesh Sharma and Mr. V. Mowli, Adv. for State of TN & TNPCB
 Mr. Shubham Bhalla, Adv.
 Mr. Shiv Mangal Sharma, AAG, Mr. Saurabh Rajpal, Mr. Adhiraj Singh, Ms. Shikha Sandhu and Mr. Vikramjeet Singh, Adv. for State of Rajasthan and Pollution Control Board
 Mr. G. M. Kawoosa, Adv. for State of J & K
 Mr. Divya Prakash Pandey, Adv. For HPSPCB
 Mr. Manish Kumar, Adv.

Date and Remarks	Orders of the Tribunal
<p>Item No. 12 August 03, 2018 A</p>	<p>1. This matter was taken by this Tribunal in furtherance to the orders of the Hon'ble Supreme Court dated 22.02.2017 <i>Paryavaran Suraksha Samiti Vs. Union of India</i> (2017) 5 SCC 326, establishment and functioning of ETPs/CETP/STPs.</p> <p>2. Vide order dated 25.05.2017, Notice was issued to Central Pollution Control Board and all the States Pollution Control Boards/Committees and the Ministry of Environment, Forest and Climate Change. They were directed to file status-cum-compliance report in terms of the orders of the Hon'ble Supreme Court. Accordingly, various status reports have been filed. An affidavit has been filed by the Ministry of Environment, Forest and Climate Change dated 04th July, 2017 stating as follows:</p> <p style="margin-left: 40px;"><i>"4. That the answering Respondent is engaged in policy formulation, prescribing standards and its implementation through the Central Pollution Control Board (CPCB), State Pollution Control Boards (SPCBs) and Pollution Control Committees (PCCs) for UTs. This Ministry has written to all SPCBs and PCCs as well as to CPCB to ensure compliance of the judgment of the Hon'ble Supreme Court and to submit detailed compliance report.</i></p>

<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>5. That the CPCB has also followed up with all SPCBs and PCCs through letters and review meetings to ensure compliance of the aforementioned judgment and that the matter was also discussed in the 62nd Conference of the Chairmen and Member Secretaries of SPCBs and PCCs held on 27.06.2017. That 26 SPCBs/PCCs have submitted the compliance report, which has been summarized at Annexure-I.</p> <p>6. That the CPCB has also carried out inspections of 17 categories of industries to verify compliance with its directions issued on online effluent/emission monitoring system and to cross-verify online results with manual sampling. During February-June, 2017, 64 industries were inspected and directions under section 5 of the Environment (Protection) Act, 1986 have been issued to 24 non-complying industries; 18 industries were complying; 8 were found closed and inspection reports of 14 industries are under process.</p> <p>7. That the CPCB and NMCG through 11 technical institutions, inspected 751 industries located in the River Ganga main stem during March-April, 2017 to verify the status of installation and connectivity of industries discharging effluents as well as their compliance with the standards. Closure directions have been issued to 154 industries; show cause notices issue to 36 industries; 149 industries were found complying and direction issued to 91 self closed Grossly Polluting Industries (GPI) to remain closed; 93 GPI units were found closed as per directions; 38 GPI units found operational in violation of closure directions and inspection reports of 190 industries are under process².</p> <p>3. We have heard learned Amicus Curiae Sh. Jai A. Dehadrai and the learned counsel for Ministry of Environment, Forest and Climate Change, Central Pollution Control Board, various State Pollution Control Boards and the Pollution Control Committees.</p> <p>4. Learned Amicus Curiae has drawn our attention to orders dated 04.07.2017, 18.09.2017 and 11.10.2017 of the Tribunal directing the State Pollution Control Boards to file a statement as to how many Industrial Units discharging trade effluents or causing emissions exist in the State, how many are having their own STPs, ETPs and/or connected to Common Effluent Treatment Plant</p>
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<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>(CETP), whether any such CETP or ETP or STP is properly functioning and treating the effluents as per prescribed limits or not.</p> <p>5. Learned Amicus Curiae submitted that contamination of water due to industrial effluents can lead to various diseases and adverse consequences on the aquatic organism due to decreased level of oxygen. The use of technology can help reduction of adverse consequences. However, the best solution is to prevent pollution by soil conservation and proper disposal of toxics and chemicals which may include chemical recycling.</p> <p>6. Having monitored the matter for the last more than one year on several dates, we are of the view that the matter requires continuous monitoring by statutory authorities as per directions which we proceed to issue today.</p> <p>(j) We direct the Central Pollution Control Board (CPCB) to forthwith prepare an action plan after looking into all the status reports. The action plans must have mechanism to ensure compliance or all the directions in the order of the Hon'ble Supreme Court. To enable this to be done, a Nodal officer must be identified to deal with the issue of CETPs/ETPs/STPs.</p> <p>(ii) A representative of the Ministry of Environment, Forest and Climate Change may be associated with the Nodal Officer of the CETP for monitoring. The Monitoring by the said two officers- the representative of the MoEF and the Nodal Officer of the CPCB must be held atleast once in a month and on the basis of such meeting and the feedback taken further follow up action must be taken and</p>
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	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>appropriate directions issued. This process may be a continuous process.</p> <p>(iii) It must be ensured that STPs, CETPs and ETPs are functional and meet the requisite standards.</p> <p>(iv) There is already a direction in the above judgment under which 50% of the funds for the purpose are to be provided by the Central Government, 25% by the States and remaining 25% to be arranged by way of loans which is to be re-paid by the user industries. Local bodies and the States have duties as clearly stipulated in the judgment. There has to be online monitoring system by each State to display emission levels in public domain in terms of paragraph 17 of the order of the Hon'ble Supreme Court.</p> <p>(v) A report of the steps taken may be placed on the website of the Central Pollution Control Board atleast once in three months. Deficiencies if any may also be so displayed.</p> <p>(vi) The Central Pollution Control Board may take penal action for failure, if any, against those accountable for setting up and maintaining STPs, CETPs and ETPs. Central Pollution Control Board may also assess and recover compensation for damage to the environment and the said fund be kept in a separate account and utilized in terms of an action plan for protection of the environment. Such action plan may be prepared by the Central Pollution Control Board within three months from today.</p> <p>(vii) A compliance report in terms of the above order may be furnished to this Tribunal within four months from today by e-mail at filing.ngt@gmail.com.</p>
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	<p>Item No. 12</p> <p>August 03, 2018</p> <p>A</p>	<p>(7) Proceedings are disposed of.</p> <p>However, the report received from the Central Pollution Control Board may be placed for consideration before this Tribunal on 04.09.2018.</p> <p>We place on record our appreciation for the services rendered by the learned Amicus Curiae.</p> <p>....., CP (Adarsh Kumar Goel)</p> <p>....., JM (Dr. Jawad Rahim)</p> <p>....., JM (S.P. Wangdi)</p> <p>....., EM (Dr. Nagin Nanda)</p> <p>03.08.2018</p>
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Annexure-II

Comments Received from Various RDs on Draft Report for Environmental Compensation

S. No.	Item	RD Kolkata	RD Vadodara	RD Bengaluru	RD Lucknow	Committee Deliberations
1	Case- a, b & c	By-passing of effluent/emission should be given special consideration. EC levied on ROG categories of industries should be on the basis of inspection by CPCB, complaint verification and routine inspection.	Instead of "Compensation", "Penalty" word should be used. In case common facilities like CETPs, factor may be introduced based on member industries. Clarify the applicability of penalty in addition to closure directions for pro-longed and gross non-compliance.			The Committee discussed that the points highlighted by RD Kolkata are already the part of cases fit for violation and levy environmental compensation. However, as mentioned by RD Vadodara, word "Penalty" may be used for case a, b and c. For CETPs, a factor may be considered in future based on the capacity of the plant.
2	Case- d, e & f	Higher rates for irreparable damages crop, soil, health etc. Leakages/spillage should have different compensation value.	It should be mentioned that instances d, e & f shall be dealt for environmental compensation in line with the polluter pays principle, besides of environmental penalty for cases a, b and c.	Similar to 'Guidelines on Liabilities for Environmental Damages due to Handling & Disposal of Hazardous Waste and Penalty', Guidelines may be prepared.		Suggestions made by RD Kolkata and Vadodara has already been taken care. Concept of environmental compensation is based on the philosophy of "polluters pay" and for grievance injury to environment, compensation will be charged as per the assessment of remediation cost, on case to case basis.
3	Pollution Index (PI)			Instead of average PI, Actual PI may be used.		Committee suggested that to make the implementation of EC simple and easy, use of average PI may be considered for calculation of EC.
4	R-factor	Should be based on pollution load. For ex. Amount of BOD/NOx etc. discharged.		May be classified based on the contribution of pollution load based on quantity of effluent, concentration, emissions	May be as per the category of industry, for ex. Red-500, Green-300, Green-100.	As PI is based on the pollution load, suggestion of RDs are already taken care in the formula.
5	L-factor			May be redefined based on the features, activities involved and habitation.		L-factor may be covered in future as already indicated in the report.

S. No.	Item	RD Kolkata	RD Vadodara	RD Bengaluru	RD Lucknow	Committee Deliberations
6	Defining period of violations for which EC will be levied		Duration of violations needs more clarity.	For industry having OCEMS, no. of days may be counted based on the recorded data. Industry without OCEMS- based on break down of ETP/APCD, disturbance of power supply or any failure of auxiliary machineries w.r.t. control system.	May be clearly defined as the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.	The committee agreed that period of violation for which EC may be levied will be the period between the day of violation observed and the day of compliance verified by CPCB/SPCB/PCC.
7	Repeated Violations		Some number of days may be specified after which the penalty amount may get a factor of 1.5 or 2.		Multiplying factor for repeated violations may be included. For ex. 1 st Repetition- 25% 2 nd Repetition- 50% 3 rd Repetition- 100%	For habitual offenders, higher amount of penalty/compensation may be charged in future.
8	Utilization of fund	An environmental damage assessment cell may be created. Expertise in the field may be achieved by involving scientist/engineers and providing them training in country/abroad.	Amount should not be utilized for a) Industrial Inspections for compliance verification, b) Installation of Continuous water quality monitoring stations / Continuous ambient air quality monitoring stations for strengthening of existing monitoring network, c) Preparation of Comprehensive Industry Documents on Industrial Sectors / clean technology f) Funding to financially weaker municipalities for installation of STPs The amount should be utilized solely for damage assessment, remediation of affected sites, orphan contaminated sites and creating awareness. The purpose should not get inclined towards revenue generation.			RD Vadodara suggested that amount should be utilized only for remediation purpose. However, committee discussed that the proposal for utilization of fund is prepared considering the other aspects (i.e. direct and indirect) for protection of environment, which include research, monitoring etc. Suggestion of RD Kolkata may be considered in future.

9	Others	Higher EC for non-installation of pollution control measures. Expected sources should have different scoring methodology based on their weightage.	Thus, the functional fabric of CPCB shall remain intact.		The committee discussed that CPCB is already taking appropriate action including closure direction against the industries found operating without pollution control measures.
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Comments Received from Various Expert Institutions on the Report on Environmental Compensation

As per the Hon'ble NGT suggestion, CPCB has invited comments of 3 expert institution, namely, Centre for Science and Environment (CSE), Institute of Economic Growth (IEG) and The Energy Research Institute (TERI). The CPCB in-house committee on Environmental Compensation has deliberated on the comments and finalized the report accordingly. The Committee's deliberations are summarized in table below:

S. No.	Item	Comments from TERI	Comments of CSE	Comments of IEG	Committee's Deliberations
1	Cases d, e and f	Distinction between categories 'a, b, c' and 'd, e, f' is not clear. Case specific investigations should be minimized. Proposed cases deals separately with intentional and accidental cases but sometimes they are not easy to establish.	.	Why cases 'e' and 'f' are left for later remediation and study?	There may be a varied damage to the environment as considered in cases 'e' and 'f'. Such damage assessment requires detailed case specific study and remediation measures. Therefore, whenever such case comes into the notice, Environmental Compensation may be levied based on the detailed investigation made by Expert Institutions/Organizations.
2	R-factor	.	R-factor should be Rs. 1,000/day.	Why R-factor is kept as 250, although the value ranges between 100 to 500?	In the Environmental Compensation policy, average value of the R-factor as 250 is recommended, keeping in view both its practicability as well as to make it significantly deterrent, which may be further revised in future.
3	L-factor	.	L-factor should be based on the population density of surroundings, instead of population of the nearby city/town. For critically polluted areas/ ecologically fragile areas LF should be considered as 2.	For nearby city, having population less than 1 million, the LF is 1. This implies that we care only for populated regions only. Industries located in critically polluted and ecologically fragile area should be closed down.	Population density for surrounding of industrial units will be complex because it will vary depending on area used in calculation of population density as industrial units are generally away from population. More weightage is given to the higher population exposure to the risk. In case the industry is located in the city of population less than one million than the LF Factor will be 1. Depending on the local environmental conditions, the restrictions on expansion and modernization of industries in critically polluted areas are imposed as per the prevailing policy of the Government of India. Similarly, industries in ecologically fragile areas are permitted after careful examination, as per prevailing policy of MoEFCC/SPCB, The Committee agreed that for notified ecologically fragile areas, LF may be considered as 2. However, LF for critically polluted areas may be explored in future.

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
4	5-factor	Classification of industries should be based on profit/turnover basis.	-	Presently industrial units are classified into small, medium and large category (MSME Act, 2006) based on the data of assets/infrastructure available with them. The data for profit/turnover of industrial units are not available with SPCBs/PCCs and 5-factor based on profit/turnover will complicate the procedure for calculation of EC. This may be considered in future when SPCBs/PCCs will have such type of data.
5	Level of non-compliance	Pollution Index does not measure the level of pollution. Further, averaging PI eliminates the variation in the nature/ impact of pollution that PI tries to capture. Further, the Red Category itself is too wide and some sort of sub-classification should be undertaken The rate of the penalty should increase with the period of violation. The penalty should increase exponentially in case of repeated violations. The objective should be that units should choose to shut down operations when violations cannot be brought under control in the specified time.	-	Pollution Index (PI) itself covers the potential of environmental pollution as its calculation considers variation in pollution load. The industrial sectors have been categorized into Red, Orange and Green, based on their Pollution Index in the range of 60 to 100, 41 to 59 and 21 to 40, respectively. As PI is not available for all the industrial sectors, calculating PI for rest of the sectors will delay the processing. Therefore, for calculating the Environmental Compensation average PI as 80, 50 and 30 may be used for Red, Orange and Green category of industries, respectively. To keep the formula simple for better implementation, the IV factor may not be considered as there are different environmental parameters such as environmental standards and for each standard calculation of level of violation and its weightage will be a tedious task, which may bring difficulty in implementation of EC concept. The Committee has agreed that in order to include deterrent effect for repeated violations, EC may be increased on exponential basis, i.e. by 2, 4 and 8 times on each similar violation. Further, if the violator continues its operations beyond 3 months then EC may be increased by 2, 4 and 8 times for 2 nd , 3 rd and 4 th quarter, respectively. Besides EC, industry may be prosecuted or closure directions may be issued, whenever required. EC is not a substitute for taking actions under EP Act, Water Act or Air Act. In fact, units found polluting should be closed/prosecuted as per the Acts. Scheme of infrastructure augmentation of Urban Local Bodies (ULBs) /capacity building of SPCBs/PCCs is already covered in the report Further, schemes such as incentives to regulators where no violations are observed and incentives to public for reporting violations may be considered separately.
6	Utilization of fund	Funds may be utilized for building monitoring and enforcement capacity of SPCBs and strengthening the pollution compliance especially in the MSME sector.	Incentives to regulators are where no violations are observed and incentives to public for reporting violations may be provided.	

S. No.	Item	Comments of CSE	Comments of IEG	Committee's Deliberations
7	GRAP	-	Size of the construction sites more than 20,000 sqm. area are considered for EC. Although, small sites cumulatively impact significantly. Illegal dumping of municipal solid waste regardless of the place should be penalized.	As per the EIA Notification, 2006, building construction projects more than 20,000 sqm. area are required to have environmental clearance, therefore, the same cut-off is maintained here. Issue of illegal dumping of municipal solid waste is being covered in separate report of EC.
8	Others: (a)	Severity of violations should be measured in terms of hours of violation because for some pollutants even a few hours of violation can have serious environmental and health consequences. This would require continuous monitoring of stacks, which is not the case presently for most units. Therefore, continuous monitoring should be implemented urgently, to begin with for all red and orange categories.	-	Currently, online continuous effluent/emission monitoring system (OCEMS) is installed in only in 17 categories of highly polluting industries and some other industrial sectors. Further, in current practice the compliance of industries is only verified by physical monitoring and compensation may be imposed based on the manual testing. The idea of measurement of violation on hourly basis may be considered in future, when OCEMS is widely installed and included in policy.
	(b)	CETP should be categorized under Red Category of industries. Some sub-classification should be undertaken under red categories of industries.	-	CETPs are already categorized under Red Category of Industries
	(c)	Based on the spirit behind the proposed charge, it should therefore be called an "environmental penalty" rather than "environmental compensation".	-	The power of imposing "Penalty" lies in the jurisdiction of the Hon'ble Courts and NGT only. The CPCB is empowered to levy environmental compensation by the Hon'ble NGT in its order dated 03.08.2018 (OA No.593/2017). Therefore, term "Environmental Penalty" is avoidable.

their performance should be recorded and considered favourably or otherwise for their career progression.

- xv. Similar exercise as (xiv) may be undertaken to identify officers responsible for failure in the past. Such exercise may be completed within three months from today.
 - xvi. Since failure of preventing the pollutants being discharged in water bodies (including lakes) and failure to implement solid and other waste management rules are too frequent and widespread, the CPCB must lay down specific guidelines to deal with the same, throughout India, including the scale of compensation to be recovered from different individuals/authorities, in addition to or as alternative to prosecution. The scale may have slabs, depending on extent of pollution caused, economic viability, etc. Deterrent effect for repeated wrongs may also be provided.
 - xvii. MoEF&CC may specify limit for phosphorus in soaps and detergents to prevent damage to the environment and public health.
27. The above amount in the present case has been determined having regard to the estimated cost of setting up of STPs, based on the data available, which has been assessed with the assistance of the learned Counsel for the parties.
 28. We have nominated Justice Santosh Hegde on information being provided during the hearing that he is agreeable to undertake the above job.
 29. Justice Hegde will be entitled to a token honorarium of Rs. 2.5 Lakh per month from the date he assumes the charge. Justice Hegde will be entitled to assistance of persons of his choice for which remuneration will be paid by the SPCB, Karnataka as may be determined by Justice Hegde.

Annexure-V

Item Nos. 1 to 11

Court No. 1

BEFORE THE NATIONAL GREEN TRIBUNAL
PRINCIPAL BENCH, NEW DELHI

Original Application No. 176/2015
(M.A. No. 1332/2015)

&

Original Application No. 59/2012
(M.A. No. 34/2016 & M.A. No. 190/2016)

&

Original Application No. 108/2013
(M.A. No. 489/2015)

&

Original Application No. 179/2013
(M.A. No. 866/2014 & M.A. NO. 644/2015)

&

Appeal No. 67/2015
(M.A. No. 652/2015)

And

Original Application No. 484/2015
(M.A. No. 155/2017, M.A. No. 567/2017
& M.A. No. 927/2017)

And

Original Application No. 327/2018
(M. A. No. 1282/2018)

And

Original Application No. 115/2017
(M.A. No. 442/2017)

And

Original Application No. 411 of 2018

And

Original Application No. 613/2017

And

Original Application No. 614/2017

Shailesh Singh

Versus

Respondent(s)

Hotel Holiday Regency, Moradabad & Ors.
With

Applicant(s)

Legal Aid, National Green Tribunal Bar Association

Applicant(s)

Versus

NCT of Delhi & Ors.
With

Respondent(s)

Raj Hans Bansal

Applicant(s)

Versus

Ministry of Water Resources & Ors.
With

Respondent(s)

Apex Chambers of Commerce and
Industries of N.C.T. of Delhi & Ors.

Applicant(s)

Versus

Govt. of NCT Delhi & Ors.
With

Respondent(s)

Vikrant Tongad

Applicant(s)

Versus

Union of India & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Hotel The Oberoi Amarvilas & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Panchsheel Buildtech Pvt. Ltd. & Ors. Respondent(s)

With
Shailesh Singh Applicant(s)

Versus

Central Ground Water Board & Ors. Respondent(s)

With
M/s A-One Mineral Water Industry Applicant(s)

Versus

Central Ground Water Authority & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

M/s Upper Ganges Sugar and Industries Ltd.
(Distillery Unit) & Ors. Respondent(s)

With
Mohd. Javed Asghar Applicant(s)

Versus

State of U.P. & Ors. Respondent(s)

Hearing concluded on: 18.12.2018

Order uploaded on: 03.01.2019

CORAM: HON'BLE MR. JUSTICE ADARSH KUMAR GOEL, CHAIRPERSON
HON'BLE MR. JUSTICE S.P. WANGDI, JUDICIAL MEMBER
HON'BLE MR. JUSTICE K. RAMAKRISHNAN, JUDICIAL MEMBER
HON'BLE DR. NAGIN NANDA, EXPERT MEMBER

For Applicant(s): Mr. Raj Pajwani, Senior Advocate and Mr. Rahul Choudhary, Advocate (In O.A. Nos. 59/2012 & 108/2013)
Ms. Preeti Singh, Mr. S. Porwal, Mr. Shivam Jaiswal, Advocates (In O.A. Nos. 176/2015, 484/2015, 327/2018 & 115/2017)
Mr. Amrendra Kumar Dubey, Advocate (O.A. No. 411/2018)

For Respondent (s): Ms. Sakshi Popli, Advocate for DJB (O.A. No. 59/2012)
Mr. Sumeet Pushkarna, Mr. Devanshu, Advocates with Mr. Sudhir Chauhan, E.E., Delhi Jal Board (O.A. No. 108/2013)
Mr. Ajay Jain, Advocate for GNCTD
Mr. Ardhendumauli Kumar Prasad, Mr. Shashank Saxena, Ms. Diksha Gera, Mr. Amritesh Raj, Advocates for CGWA
Mr. Pradeep Mishra, Mr. Daleep Dhyani, Advocates for UPPCB
Ms. Sakshi Popli, Advocate for NDMC
Mr. Amit Tiwari, Mr. Rohit Pratap Singh, Advocates for State of UP

appropriate mechanism can be introduced consistent with the needs of environment.

29. The MoEF&CC is directed to constitute an Expert Committee by including representatives from IIT Delhi, IIT Roorkee, IIM Ahmedabad, CPCB, NITI Ayog and any other concerned agency or department to examine the issue of appropriate policy for conservation of ground water with a robust institutional mechanism for surveillance and monitoring with a view to enhance access to ground water for drinking purposes in OCS areas by way of appropriate replenishment practices which can be properly accounted and measured for as well as to sustain the floodplains of rivers in terms of e-flows and other water bodies. The MoEF & CC and MoWR may finalize the issue of subject remain *inter-se* with regard to ground water reserve and its quality.

30. The Committee may be constituted in two weeks and report of the Committee may be furnished to the MoEF &CC and this Tribunal in two months by e-mail at ngt.filing@gmail.com.

31. The Committee may also indicate the projection of its impact study in light of projected data for the next 50 years (in phased manner with action plan for each decade). Thereafter, fresh guidelines be issued by the concerned Ministry and the report furnished to the Tribunal on or before 30.04.2019.

32. The CPCB may constitute a mechanism to deal with individual cases of violations of norms, as existed prior to Notification of 12.12.2018, to determine the environment compensation to be recovered or other coercive measures to be taken, including prosecution, for past illegal extraction of ground water, as per

law. All the matters relating to illegal extraction of ground water by individuals are disposed of with these directions.

33. The Expert Committee report, the new policy and challenge to orders of authorities, if any, will be considered on the next date.

The matter be put up for above consideration in the first week of May, 2019.

Adarsh Kumar Goel, CP

S.P. Wangdi, JM

K. Ramakrishnan, JM

Dr. Nagin Nanda, EM



January 03, 2019
Original Application No. 176/2015
(M.A. No. 1332/2015) and other connected matters
AK

CRITERIA TO CALCULATE WATER CONSUMPTION**Table 1: Discharge of 4" Dia and 1 HP Pump**

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	25	50	3
2	43	40	2.4
3	59	30	1.8
4	69	20	1.2
5	77	10	0.6

Table 2: Discharge of 4" Dia and 2 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	60	50	3
2	98	40	2.4
3	124	30	1.8
4	141	20	1.2
5	165	10	0.6

Table 3: Discharge of 6" Dia and 3 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	17	200	12
2	29	175	10.5
3	41	150	9
4	50	130	7.8
5	62	100	6

Table 4: Discharge of 6" Dia and 5 HP Pump

Sl. No.	Depth (Meter)	Discharge	
		LPM	m ³ /hr
1	26	225	13.5
2	50	200	12
3	70	175	10.5
4	86	150	9
5	92	140	8.4

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General Framework For Imposing Environmental Damage Compensation



CENTRAL POLLUTION CONTROL BOARD
MINISTRY OF ENVIRONMENT, FOREST AND CLIMATE CHANGE
Parivesh Bhawan, East Arjun Nagar, Delhi 110032, India
December 2022

PREFACE

Environmental Damage Compensation (EDC) is a tool guided by 'Polluter Pays' principle, wherein a cost is paid by the polluter responsible for polluting environment and causing damage to its components. It is applicable in both cases where the release of pollutants is sudden or gradual over a longer period, recoverable for the site where injuries to natural resources have occurred.

While, the EDC is calculated on case to case basis and various CPCB guidelines exists for specific cases & sectors for calculating damage cost, need was felt for a general framework for guiding the damage assessment and cost estimation process.

This document helps in identifying direct and indirect damages caused to environment due to anthropogenic activities and retroactive application of Environment Compensation (EC) charges. It also details a standard procedure for damage assessment including preliminary investigation, analysis of data, identification of EDC liabilities, assessment of direct & indirect liabilities, assessment of ecosystem damages, detailed investigation of damaged site, analysis of detailed data, determination of EDC scenario and cost, identify best achievable remediation and restoration methods, action plan imposing over-all EDC and monitoring of implementation of plan by regulatory bodies.

A standard format for preliminary investigation of damaged area is provided along with instructions. Two checklists of direct and indirect liabilities for 19 types of anthropogenic hazards are also provided. Indicative methods of damage quantification and EDC estimation have been compiled and placed at Appendix IV for easy reference.

This document was prepared in pursuant to the directions of Hon'ble National Green Tribunal via order dated April 27, 2019 in O.A. 606/2018. It is authored by Shri B. Vinod Babu, Divisional Head W.M.U., CPCB and co-authored by Smt. Garima Sharma, AS, CPCB with editing support from Shri Sameer Arora, Consultant (Engineering), CPCB.

Member Secretary
Central Pollution Control Board

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PRELIMINARY FRAMEWORK FOR IMPOSING ENVIRONMENTAL DAMAGE COMPENSATION

1.1 Introduction

Environmental damage means the adverse effects induced on environmental properties (or goods) due to anthropic activity. In this context, environmental goods may be natural resources such as air, soil, surface water, groundwater, flora and fauna, ecosystem, biodiversity and the services they provide to ecosystem or to humans. Some of the ecosystem services are purification, productivity, landscape, climate regulation, nutrient cycling, disturbance prevention and natural mitigation, etc.

Environmental Damage Compensation (EDC) is a cost to be paid by the polluter responsible for causing environmental damage by release of harmful substances or pollutants in excess of stipulated standards due to inadequate control equipment or negligence. Release of pollutants may be sudden or slow and gradual manner in excess of standards over a longer period.

Realising the need for the same, Hon'ble NGT vide its order dated April 24, 2019 in O.A. 606/2018, noted that it necessary to recover cost of environmental damages from identified polluters based on polluter pay principle by undertaking assessment of environmental damage. This concept is needful for effective enforcement of environmental laws.

EDC is also based on the precautionary principle that ensures operators to take appropriate action to prevent environmental damage from occurring. Under the "polluter pays" principle the responsible party will be required to restore environmental damage and also responsible for compensating consequent damages caused on receptors.

It is necessary to ensure that EDC maximize the welfare of receptor population, restoration of environment as well as maintain sustainable environment and eco systems, however at the same time, scientifically estimated EDC is necessary to justify costs imposed on polluter-pay-principle.

Monetary valuation of environmental damages is a complex process involving multidisciplinary juridical, technical and economic analysis is necessary. Following challenges may arise in assessing environmental damages:

- Establish existence of the damage
- Establish cause-effect link between the damage and the unauthorised or negligent activities;
- Quantify or determine extent of damage;
- Identification of suitable methodologies to valuate damages.

1.2 Environmental Damage Compensation

Environmental Damage Compensation (EDC) is a quantifiable and reasonably estimable future expenditure as on date for restoration of environmental damages caused due to anthropogenic release of pollutants in excess of permissible limits or unauthorised activity. Environmental damage compensation is apportioned to one or more factors relating to degradation of air quality, water resources, soil, groundwater, adverse effect on human health, loss of eco-system services, including damages caused to property, natural assets and productive assets. Thus, EDC includes cost of assessments, cost of restoration and compensation for direct and indirect damages caused to human, property, flora, fauna including ecosystem functions.

1.2.1 Direct Damages

Direct damages or general damages occur through direct interaction of polluting activity with an environmental, social, or economic component. For example, discharge of untreated sewage into a river may lead to a decline in water quality in terms of BOD, DO or rise in bacterial contamination.

1.2.2 Indirect Damages

Indirect or consequential impacts on environment often seen away from source and often occur in pathway of impact. Indirect impacts can also be secondary or even third level impacts. For, example, rainwater run-off over a dumpsite may contaminate a receiving water body with heavy metals or other toxins, which in turn lead to a secondary indirect impact on aquatic flora (phytoplankton) in that water body. This may effect fish population in impacted water body, thereafter, reduction in fish yield may affect income of farming is third level socio-economic impacts.

As discussed, Environmental damage compensation would require monetizing cumulative activities preliminary site investigation, detailed site assessment, restoration and also compensation for environmental and ecological losses arising from direct and indirect damages.

1.2.3 Applicability

Environmental compensation need to be imposed retroactively. Principle of strict liability shall be exercised on the polluter while implementing environment damage compensation. Strict liability is imposition of liability on the polluter without finding a fault such as exceedance of standards, negligence or ill intention.

In cases where two or more persons are liable in respect of damage, principle of joint and several liabilities may be imposed. Under joint and several liability, a State may pursue obligation of EDC

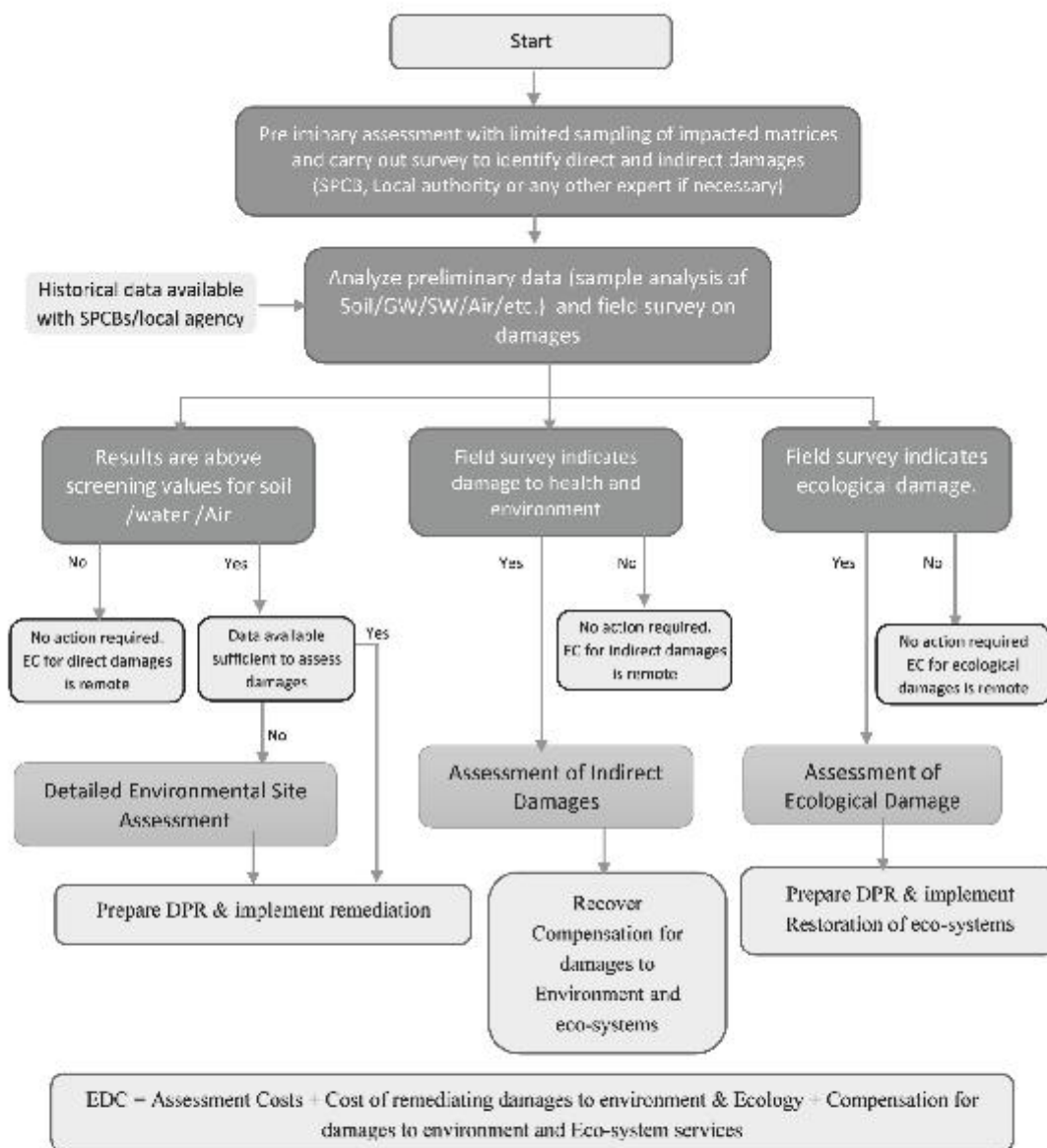
against any one party as if parties were jointly accountable and it becomes responsibility of the defendants to sort out their respective proportions of obligation and payment.

1.3 Scope of EDC & Standard Flow Model for estimating EDC

A standard procedure shall be followed for estimation of damages due to anthropogenic polluting activities. It includes following steps,

- i. Preliminary investigation
- ii. Analysis of preliminary data
- iii. Identification of EDC liabilities
- iv. Assessment of direct, indirect liabilities
- v. Assessment of eco-system damages
- vi. Detailed investigation of damaged site, if required
- vii. Analysis of detailed data
- viii. Determination of EDC scenario and cost
- ix. Identify best achievable remediation and restoration methods
- x. Directions/ action plan imposing over-all EDC
- xi. Monitoring of implementation of plan by regulatory bodies

The Standard Flow Model for estimating EDC is as presented below.



1.3.1 Preliminary investigation

Following scope of work identified for reconnaissance and preliminary investigation of damaged site;

- To conduct field visits, visual site inspections, review of existing documents, maps and literature and carry out the following activities.
- Current sources of contamination at site and process of release in the influence area.
- Collection of history/background information of the contaminated site
- Basic features of the site i.e. collection of available information on the site like site maps (topographical, geological), hydro-geological information, information from local authorities, information on the type of polluting-sources at site.
- Identification of previous and current land use pattern of the site
- Identification of parameters causing immediate threat to the ecology and environment.
- Discussion with local people and other informed people, district administration, municipal and regulatory authorities, NGOs, etc.
- Selection of the available observation wells (Bore Well) in the watershed covering the site, for monitoring water level and quality monitoring at appropriate locations, & inventory details like total depth of the well, water column; frequency of sampling (pre monsoon/ post monsoon)
- Description of area with respect to existing land use, potential areas of environmental/ecological risk, demographic profile, social economic and environmental conditions of the people in receptor areas, flora and fauna etc.
- Information of prevailing or commonly reported health issues in the area
- Collection of preliminary samples and analysis of soil, sub-soil, surface water, ground water for comprehensive analysis of major ions and heavy metals, organic constituents, pesticides and other relevant parameters related to the contaminated site as per national / international accredited testing procedures.

1.3.2 Analysis of preliminary data

- Based on preliminary survey and sampling, a detailed sampling protocol aimed at assessing the contamination level of the site and to establish the baseline environmental status of the project area shall be prepared. The protocol shall include identification of criteria pollutant (parameters) for analysis, sampling frequency (number of seasons), number of samples, etc. and shall be submitted for approval of concerned authorities.
- Identification of Benchmark /Background samples.
- Outlining the extent of contaminant plume or contaminated area based on field survey and preliminary findings.
- Establishing conceptual site plan/model showing link between source and receptor. It comprises three elements (i) Potential sources of contamination, (ii) Potential receptors that may be harmed and (iii) Potential pathways linking the two

1.3.3 Identification of direct and indirect EDC liabilities

This guidance document provides a broad framework for identifying damages, assessing damages and imposing compensation for environmental damage. Step-wise approach shall be adopted for activities such as preliminary assessment, identification of direct and indirect liabilities, detailed environmental and ecological studies, assessment of damages, calculation of compensation for direct and indirect liabilities.

- Following direct liabilities will be applicable for assessment and restoration:
 - Soil and sediment contamination
 - Groundwater contamination
 - Contamination surface bodies
 - Damages to eco-systems

These ecological impacts may constitute clearing/fragmentation/alteration/destruction of native vegetation, animal habitats, pollution of watercourses and wetlands, sediment, nutrient and pollutant run-off into adjacent vegetation and animal habitats, loss of hollows, nesting and feeding habitats for birds, etc. Some of the activities that may cause ecological damages are as given below:

- Sand mining

- Mining activity
 - Industrial discharge of wastewater
 - Dumping of hazardous wastes and chemicals
 - Deforestation
 - Release of air pollutants
- The direct liabilities with respect to Air pollution are,
- Compensation for release of air pollutants in excess of permitted quantities
 - Compensation for release of toxic gases from process
- Indirect damages are those damages which are not directly accountable to an action and may either be fixed or variable. A few important indirect damages are,
- Cost of compensating indirect damages
 - Social responsibility for supply of safe drinking water
 - Resettlement/Relocation
 - Loss of life
 - Permanent, temporary, total or partial disability or other injury or sickness
 - Loss of wages due to total or partial disability or permanent or temporary disability
 - Medical expenses incurred for treatment of injuries or sickness
 - Damages to private property
 - Expenses incurred by the Government or any local authority in providing relief, aid and rehabilitation to the affected persons
 - Loss to the Government or local authority arising out of, or connected with, the activity causing any damage
 - Local claims including cost of restoration on account of any harm or damage to environment including pollution of soil, air, water, land and eco-systems
 - Loss of business or employment or both

- Any other claim arising out of, or connected with environmental and ecological damages due to release of pollutants
- Long term monitoring costs (for options such as monitored natural attenuation)
- Claims on account of harm to milk and draught animals
- Claims on account of harm to aquatic fauna
- Claims for loss due reduced fishing yield in ponds, rivers or sea

Impacts to the environment can be caused through a variety of mechanisms. It is not the intent of this report to capture all possible contamination scenarios that may occur in a multitude of permutations and combinations that may impact the natural resources. However, this report addresses environmental impacts arising from prominent anthropogenic polluting activities which contaminate natural resources and impact receptors. A check-list of environmental damage scenarios and applicable compensation liabilities is placed at Appendix II & III.

1.3.4 Assessment of direct and indirect liabilities

Development of national framework on environmental damage assessment is a complex exercise requiring consultations with multi sectoral experts of environmental economics, remediation, cost estimates, etc. CPCB utilized expertise of Expert Group comprising experts on damage assessment, environmental economics, valuation, etc. A meeting of Expert Group was held on May 16, 2019 at Central Pollution Control Board to guide efforts for exploring development of national framework. It was suggested that a standard procedure for calculating best estimation of damages due to different scenarios of anthropogenic polluting activities need to be developed over time for quantification and estimation of environmental damages.

In case of environmental damages arising due to improper handling of hazardous wastes, guidelines on imposition of environmental liability published by CPCB may be referred. Indicative methods for assessment of environmental damage compensation for air pollution, river pollution, soil and groundwater is placed at Appendix IV. Specific studies would be necessary for assessing EDC depending on nature of damage. Cost for penal or deterrent charges and criminal damages have not addressed in this reference document while estimating EDC.

1.3.5 Assessment of Eco-system liabilities

Quantification of ecological damages is analytical measure of the extent, severity and duration of the damage in terms of alteration, which is an adverse variation with respect to the baseline condition of the natural resources and services; deterioration, which is a partial loss of the ability of the natural resource to provide an ecological or public service; partial destruction, which is the loss of one or more services; and total destruction, which is the loss of all the services. Thus, assessment of eco-system damage is complex and location specific. It is required to be done on case to case basis by collection, compilation and assessment of data on biological environment, ecosystem functions, communities, etc. in the damaged area. In view of time constraint, the same may be done using archive data available with local agencies & concerned institutions.

1.3.6 Detailed investigation of damaged site, if required

Detailed investigation is build up on findings of preliminary investigation, including extent & significance of direct and indirect damages. Detailed assessment should be carried out as per pre-determined sampling protocol approved by concerned authority. Scope of detailed assessment in case of contaminated areas is given below;

- Clearly delineate the boundaries, longitudinal and cross section of the contaminated site through topographic and other engineering surveys and prepare a base map of the site.
- Water, soil, sediment, and air quality assessment - analysis of criteria pollutants
- Collect data on geological, hydrogeological and hydrological features of the contaminated site - if required necessary studies shall be carried out.
- Development of groundwater flow, surface water flow and mass transport models.
- Estimate the quantity of contaminants and their concentrations including secondary pollutants.
- Socio - economic and environmental assessment of the contaminated area.
- Assess the potential environmental/ecological/health impacts on soil, ground water, surface water bodies, population, flora and fauna
- Pathways of contaminant transport, fate of the contaminant and exposure.
- Assessment of toxicity, bioavailability, biodegradability and mobility of contaminants.

- Identification of significant receptors and establishing trigger values.
- Use suitable quantitative or qualitative risk assessment model.

This report does not prescribe detailed methodology for assessing environmental damages. However, an indicative checklist of possible types of damages and parameters indicating indirect impacts on environment is given at Appendix II & III.

1.3.7 Analysis of detailed data

Analysis of data from detailed investigation data will determine the applicable damages for environmental compensation, which should be estimated as per specified methodology, that may be evolved on case to case basis. Some of the indicative methods for assessment of environmental damage compensation for air pollution, river pollution, soil and groundwater are given at Appendix IV.

1.3.8 Determination of EDC scenario and cost

As discussed earlier, environmental damage compensation is cumulative of one or more factors relating to environmental degradation of air quality, water resources, soil, groundwater, adverse effect on human health, loss of eco-system services, including damages caused to property, natural assets and productive assets. Thus, EDC includes cost of assessments, cost of restoration and compensation for direct and indirect damages caused to human, property, flora, fauna including ecosystem functions etc., identified during detailed assessment study.

Environmental Damage Compensation comprises of (i) assessment obligation, (ii) remediation obligation (iii) restoration obligation (iv) compensation to affected third party (v) obligation to compensate damage to natural resources. Thus environmental damage compensation can be calculated as below:

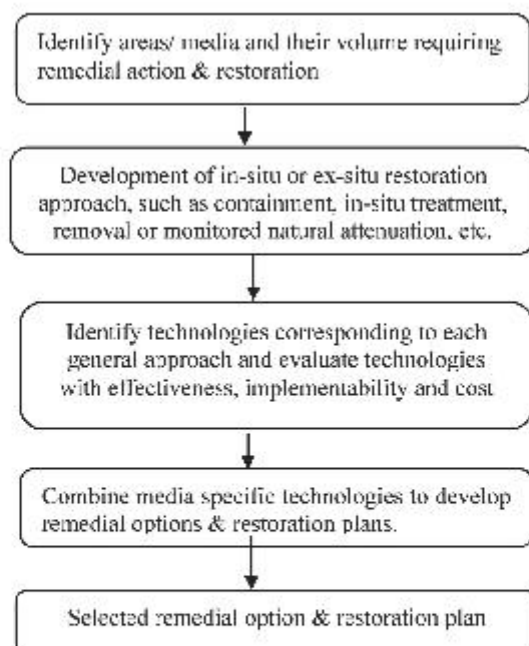
EDC = Assessment Costs + Cost of remediating damages to environment & ecology + Compensation for damages to environment and eco-system services

The concerned regulatory agency (or SPCBs/PCCs) may approve applicable EDC scenario. The key parameters that will ultimately dictate the level and costs of remediation activities are degree of ecological damage, number of impacted receptors, impacted media volumes, volume of indirect damage liabilities,

pollutants (constituents) of concern, number of contaminants, impact matrix, current and intended future land use, migration of contamination, etc.

1.3.9 Identify best achievable remediation and restoration methods & its cost

Having completed the preliminary and detailed site assessment as above, the polluter may be liable to undertake remediation and restoration activity, as applicable. A remediation plan is to be prepared specifying most applicable remedial technology to bring the site-specific contamination levels down to no risk or an accepted risk level (based on environment/ human health scenario) and estimated costs for remediation. Upon review of the same, the concerned agency (or SPCB/PCC) may specify remediation objective and site specific target levels for restoration for specific constituents of concerns along with intermediate target levels vis-à-vis time schedule so as to monitor the progress of remediation. Evaluation and fixation of site specific target levels for restoration of environmental and ecological damages may be specified by concerned SPCB/PCC on their own or by constituting an Expert Committee thereof. A restoration plan of the site may be evaluated by concerned SPCB/PCC or Expert Committee and target levels fixed for intermediate monitoring. An indicative approach for arriving at an appropriate remediation option and restoration plan is presented in the flow sheet below,



Expert Committee may also finalize applicable compensation liabilities due to indirect damages based on detailed investigation studies.

Once the plan with site specific target levels is approved by the agency (or SPCBs/PCCs), responsible party shall undertake site restoration accordingly under supervision of agency or any third party appointed for the same. During such period, few sampling and analysis shall also be carried out by the SPCB/PCC for validation.

1.3.10 Directions/ action plan imposing over-all EDC

Upon receipt of the assessment reports, which shall comprise of damage assessment, remediation objective and restoration plans along with the cost estimation and time schedule, the concerned agency (SPCB/PCC) may firm up the remediation objective and duly approve the plan for implementation by specifying site specific target levels. Directions may be issued to responsible party(ies), as necessary.

1.3.11 Monitoring of implementation of plan by regulatory bodies

The approved restoration plan and recovery of environmental compensation for damages caused to environmental properties shall be executed by the responsible party(ies), which may be monitored by SPCB/PCC as per the time schedules and phase wise remedial targets thereof as declared in the assessment report so as to meet the said remediation objective/standard. During such monitoring, few sampling and analysis thereof shall also be carried out by the SPCB/PCC for validation.

APPENDIX I

FORM - I

FORMAT FOR PRELIMINARY INVESTIGATION OF DAMAGED AREA

1.	Date and time of inspection	
2.	Location of damaged area	
3.	Coordinates of damaged area	
4.	Nature of damage	
5.	Possible cause of damage	
6.	Single source contamination or multi source contamination	
7.	Estimated date or duration of activity resulting in damage	
8.	Impacted receptors (tick whichever applicable)	<input type="checkbox"/> Air <input type="checkbox"/> Surface water <input type="checkbox"/> Drinking water <input type="checkbox"/> Ground water <input type="checkbox"/> Soil <input type="checkbox"/> Sediment <input type="checkbox"/> Flora <input type="checkbox"/> Fauna

		<ul style="list-style-type: none"> - Cattle - Crops/ Agriculture land/ Orchard - Infrastructure/property - Others.....
9.	Pollutants suspected to be discharged	
10.	Pollutants of most concern	
11.	Estimated quantification of damage media (in terms of area, volume, numbers, percentage, as applicable and possible)	
12.	Land use (industrial, commercial, agricultural, residential, combinations thereof, etc.) Specify if needed.	Historic Current Future
13.	Site situation (climatic conditions, hydrology, groundwater flow, surface waters, underground structures, etc. in damaged area)	
14.	Type of geology (sand, clay silt, weathered rocks, fracture rocks, competent rocks)	
15.	Depth to ground water (m) (if applicable)	
16.	Offsite migration of pollutant possible, specify	Yes / No
17.	Location of damaged area with respect to nearby wetland or eco-sensitive areas (if any)	

18.	Location of damaged area with respect to sensitive receptors that could possibly require remedial actions such as, potable water supply, surface water bodies, residential area, sensitive ecosystem, etc.	
19.	Any immediate measure taken to control damage, specify	Yes / No
20.	Any other observation requiring mention,	
21.	Documents to be attached (if available) <ul style="list-style-type: none"> ▪ Relevant permits, consent, license, etc. (if applicable) ▪ Site layout map ▪ Photographs ▪ Videos 	

Signature

Name & designation of team members

Date & Place

INSTRUCTIONS FOR FILLING FORM - 1

- This form serves as a preliminary factsheet to gather general information on damaged site
- The inspecting team shall perform dry inspection including observation of damaged site, neighborhood & operations/ activities in the area, interviewing stakeholders/site/receptors representatives, collecting records & reports available, taking photographs or making videos, etc.
- Preliminary inspection can be a rapid walk-through inspection or slightly more elaborated, if required.
- While informing 'nature of damage' and 'possible cause of damage', an estimate may be made on most possible scenarios that may have occurred resulting in environmental damage to the site. In case, team fails to make an estimate, a list of probable scenarios may be prepared.

- 'Pollutants suspected to be discharged', it is required to mention all the pollutants suspected to have been discharged during the incident. However, with respect to information under 'Pollutants of most concern', it is to remember that it is the function of nature of pollutant, its impact of human & environment, toxicity and concentration at damaged site. For example, it may include but not limited to a pollutant which is carcinogenic or hazardous or radioactive. It may include toxic pollutants which are pollutants or combinations of pollutants, including disease-causing agents, which after discharge and upon exposure, ingestion, inhalation or assimilation into any organism, either directly from the environment or indirectly by ingestion through food chains, will cause death, disease, behavioral abnormalities, cancer, genetic mutations, physiological malfunctions, (including malfunctions in reproduction) or physical deformations, in such organisms or their offspring.
- 'Estimated quantification of damage media', in case air quality is affected, it may be reported in terms of area and population under direct impact and physical observations on air quality.

APPENDIX II

CHECKLISTS OF DIRECTLY IMPACTED ENVIRONMENTAL COMPONENTS

The most possible scenarios that may occur due to anthropogenic activities resulting in damage to environment and applicable compensation scenarios are as given in Tables below.

Type of damage	Directly impacted environmental properties (tick the appropriate box)							
	Ambient air	Ground Water	Surface Water	Soil	Sediment	Ecology		
Effluent discharge from an industry exceeding limits/ untreated or inadequate pollution control device	✓	✓	✓	✓	✓	✓		
Emission from an industry or incinerator; absent or inadequate pollution control device	✓			✓	✓	✓		
Un-scientific dumping of municipal solid waste	✓	✓	✓	✓		✓		
Untreated sewage in water bodies		✓	✓		✓	✓		
Improper disposal of C&D Waste	✓							
Leakage or failure of sanitary and septic landfills		✓		✓				
Un-scientific recycling of E-Waste	✓	✓	✓	✓	✓			

Type of damage	Directly impacted environmental properties (tick the appropriate box)						
	Ambient air	Ground Water	Surface Water	Soil	Sediment	Ecology	
Improper disposal of bio-medical waste	✓					✓	
Biomass burning	✓			✓			
Vehicular emissions exceeding limit	✓						
Diesel generator sets exceeding limit	✓						
Road dust & soil dust	✓						
Illegal Hazardous waste dumping by industry		✓	✓	✓	✓	✓	
Chemical spills or leakages	✓ (Gases, VOCs & Amest)	✓	✓	✓	✓	✓	
CETP Failing to meet standards (case to case basis)			✓		✓	✓	
Fire, explosions, Reactions of hazardous substances/wastes (case to case basis)	✓		✓	✓		✓	
Marine spills			✓	✓ Reach	✓	✓	
Mining Activity	✓	✓	✓	✓	✓	✓	

APPENDIX III

CHECKLIST – APPLICABLE COMPENSATIONS FOR INDIRECT IMPACTS

Type of Environmental damage	Parameters indicating indirect liabilities for compensation												
	Supply Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Reaction/ent/ relocation/ Relief	Health	Injury (sickness)	Loss of life	Loss of recreation	Reduced yield fishing / agriculture	Loss of earnings	Medical expenses	Other claims indirect losses
Un-acceptable Effluent discharge from an industry	✓		✓	✓		✓	✓	✓	✓	✓	✓	✓	✓
Un-acceptable Emission from industry or incinerator	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Un-scientific dumping of municipal solid waste	✓	✓	✓		✓	✓	✓	✓	✓	✓			Monitoring etc.
Untreated sewage in water bodies	✓	✓		✓		✓			✓	✓			

Parameters indicating indirect liabilities for compensation

Type of Environmental damage	Supply Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Resettlement/relocation/Relief	Health	Injury/sickness	Loss of life	Loss of recreation	Reduced yield/fishing/agriculture	Loss of earnings	Medical expenses	Other claims/indirect losses
Improper disposal of C&D Waste		√	√	√		√							Noise
Leakage or failure of sanitary and secured Landfills	√	√		√	√	√	√	√	√	√			Visual nuisance, Odour
Unscientific recycling of E-Waste	√	√		√		√	√	√		√			
Improper disposal of bio-medical waste	√	√		√		√	√	√		√			
Biomass burning		√				√	√						√
Diesel generator sets exceeding limit		√		√		√	√						√
Road dust & soil dust		√	√			√				√			

Parameters indicating indirect liabilities for compensation

Type of Environmental damage	Supply (Drinking water	Harm to Flora & fauna, animals	Property damage	Loss of ecological services	Resettlement/relocation/Relief	Health	Injury/sickness	Loss of life	Loss of recreation	Reduced yield/fishing/agriculture	Loss of earnings	Medical expenses	Other claims/indirect losses
Illegal Hazardous waste dumping by industry	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	
Chemical spills or leakages	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
CETP – Failing to meet standards (case to case basis)		✓				✓	✓		✓	✓	✓	✓	✓
Fire, explosions, Reactions of hazardous substances/wastes (case to case basis)		✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓	✓
Marine spills		✓	✓	✓		✓	✓		✓	✓	✓	✓	✓
Mining Activity	✓	✓	✓		✓	✓	✓	✓	✓	✓	✓	✓	✓
Deforestation	✓	✓		✓	✓	✓			✓	✓	✓		✓

APPENDIX IV

INDICATIVE METHODS OF DAMAGE QUANTIFICATION & EDC ESTIMATION METHODS

1. AMBIENT AIR

1.1 Applicability

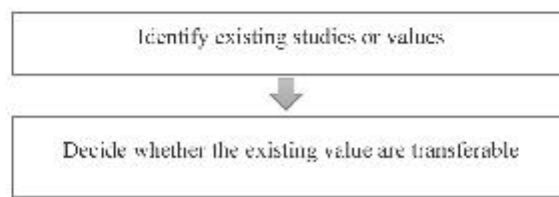
- Discharge of air pollutants from ducted and/or non-ducted emissions above prescribed limits or general standards
- Deposition of toxic particulates on land from localized air polluting source (lead, mercury, cadmium, etc.)
- Formation of complex secondary pollutants due to nucleation, condensation and other chemical reactions of primary pollutants discharged from a polluting activity

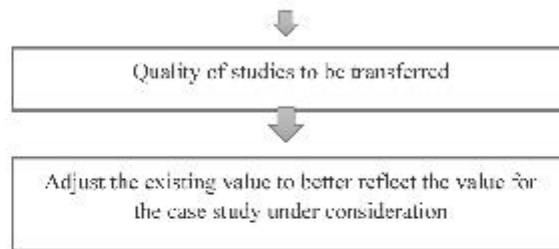
1.2 Quantification

The monitoring & analysis of applicable parameters (as per prescribed norms) upwind, mid site and downwind may be conducted as per established methods of measurement. Dispersion model such as AERMOD, CALPUFF, CALINE, etc. can be used to determine the change in concentration over the specific area. For estimating affected population, ArcGIS can be used or else can be done manually using population details available in public domain for damaged site and downwind area.

1.3 Estimating cost due to mortality & morbidity using direct cost transfer method

This method is based on the method of transferring available information from already completed studies in another location or context. It is economical and less time consuming than other available method for economic assessment. It can be used as a screening process to decide whether original valuation study would be required or not. Steps for valuation through this method are as presented below.





For ease of understanding, a case study by Muller & Mendelsohn, 2007 is used for estimating damage cost due to mortality and morbidity (Chronic bronchitis, Cardiac issues etc) due to air pollution in an area using direct cost transfer method. Assuming that the conditions at the referred site are similar in total or portion to damaged site under study, we utilize cost estimates of referred study to deduce cost per tonne of pollutant emitted reworked to Indian context by considering exchange rates and inflation.

$$\text{Damage cost on Health (Rs/tonnes)} = \text{Damage cost per tonne (USD, 2011)} \times \text{Exchange rates} \times \text{inflation}$$

It is elucidated as below,

Damage cost due to mortality and morbidity per tonne of emitted pollutants				
Sl. No	Pollutant	Damage cost per tonne (USD,2011)*	Damage cost per tonne (INR)**	Damage cost per tonne (2019)***
Mortality				
1	NOx	319.82	22,084	36,062.15
2	VOC	143.79	9,929	16,213.6
Morbidity				
1	NOx	5.07	350	571.53
2	VOC	2.24	155	253.11

*Findings of referred study

**Exchange rate applied

***Inflation rate applied

1.4 Estimating cost of life & health through value of statistical life and disability adjusted life year

Value of statistical life (VSL) is the amount people are willing to pay to reduce risk so that on average one less person is expected to die from the risk. Alternatively, it can be thought of as how much people are willing to pay for safety. VSL estimates are based on studies of the wage compensation for occupational hazards or studies that elicit people's willingness to pay for mortality risk reduction directly. On the other hand disability-adjusted life year (DALY) is a measure of overall disease burden, expressed as the number of years lost due to ill-health, disability or early death. Both of these values are powerful indicators for understanding impacts of air pollution on affected population. There are numerous studies done for calculating VSL. With regard to DALY, values are published in WHO publication "Global Burden of Disease".

The mortality cost is calculated using following equation,

$$Tc (\text{Mortality}) = Pa \times VSL \times (1+i)^n$$

Where,

Tc = Total mortality cost

Pa = Affected Population (calculated as below)

VSL = Value of statistical life (Using data from existing literature)

i = inflation rate

n = number of years

The morbidity cost is calculated using following equation,

$$Tc (\text{Morbidity}) = Pa \times DALY \times Ai \times (1+i)^n$$

Where,

Tc = Total morbidity cost

Pa = Affected population (calculated as below)

DALY= Disability Adjusted Life Years (Using data from WHO database)

Ai = Annual Income (Using data from latest National / State economic survey reports)

i = inflation rate;

n = number of years

The value for Pa is calculated using equation below.

$$Pa = AF \times Bi \times Pe$$

Where,

Pa= Affected Population

Pe, Exposed Population = (Total population * ambient concentration of pollutant / relative risk)

Bi = Baseline Incidence*

AF, Attribution Factor** = ((Relative Risk- 1) / Relative risk)

*It is expected level of disease that is usually present in a community. Baseline Incidence per 100,000 population is based on threshold limit given in WHO guidelines.

**Attributable risk is the rate (proportion) of a disease or other outcome in exposed individuals that can be attributed to the exposure. Further, relative risk is the ratio of the risk of occurrence of a disease among exposed people to that among the unexposed. WHO guidelines provide value of relative risks for various air pollutants and relevant diseases.

1.5 Estimating cost of impacts on biodiversity, crops & property

Direct cost transfer method is most suitable and less time consuming method for estimating damage cost with respect to crops, flora fauna, orchids, cattle, property, etc. The results from referred study are transferred to the site under assessment and values are adjusted considering exchange rates and inflation. It is presented below for a study on effects on flora due to NOx & VOC conducted by Muller & Meudelssohn, 2007.

Damage cost due to effect on flora due to pollutants				
Sl. No	Pollutant	Damage cost per tonne (USD,2011)	Damage cost per tonne (INR)	Damage cost per tonne(2019)
1	NOx	28.67	1980	3,233.25
2	VOC	14.96	1033	1,686.84

2. SURFACE WATER

2.1 Applicability

- Discharge of untreated or partially treated effluent into nearby streams or nalla ultimately discharging into larger surface water bodies
- Runoff from waste dumps entering into surface water bodies
- Variety of exposure pathways to receptor including but not limited to dermal contact with polluted water, ingestion by human, ingestion by livestock & its potential bioaccumulation in foodchain, ingestion by aquatic species
- Pollutants include organic, inorganic constituents, pathogens, nutrients, suspended solids, radioactive pollutants, oil & grease, thermal pollution, etc.
- Damage to human health, water supply suspension, fishery, recreational function, biological diversity, environmental property and indirect damages

2.2 Quantification of discharge of conservative substances into rivers

This method can be applied to calculate concentration of conservative substance such as, total dissolved solids, chlorides and certain metals which remain conserved i.e. there is no losses due to chemical and biological degradation and its concentration remains unchanged until the encroachment of next tributary. If the source of discharge is a point source (that enter from a fixed discharge point such as effluent pipe or tributary stream), downstream concentration of pollutant can be estimated by using mass balance principle at the point of discharge. Assuming that the river is homogeneous with respect to water quality parameter across its depth and height. Also there is no mixing of one parcel with another due to dispersion and velocity gradient. The order of magnitude of the distance from a single point source to the zone of complete mixing is obtained from following equation (Muller & Thomann)

$$L_m = 2.6 H \frac{b^2}{U} \quad (\text{For side bank discharge})$$

$$L_m = 1.3 U \frac{b^2}{H} \quad (\text{For midstream discharge})$$

Where,

L_m = distance from the source to the zone where discharge has been well mixed in ft.

U = average stream velocity in fps

B= average stream width in ft

H average stream depth in ft

By assuming complete mix condition, the principal statement for mass balance at outfall will be
mass rate of substance upstream + mass rate added by outfall = mass rate of substance immediately
downstream from outfall.

$$Q_u S_u + Q_e S_e = QS$$
$$S = \frac{Q_u S_u + Q_e S_e}{Q}$$

Where,

Q_u, S_u = Upstream flow and upstream concentration respectively

Q_e, S_e = Outfall flow and concentration respectively

Q, S = Downstream flow and downstream concentration respectively

Assuming upstream concentration of substance as zero ($S_u = 0$), then downstream concentration can be
calculated using equation given below,

$$S = \left(\frac{Q_e}{Q}\right) \times S_e$$

2.3 Quantification of discharge of non-conservative substances in river

Non conservative substances decay with time due to chemical reaction, bacterial degradation, radioactive
decay, or settling of particles. Thus, assuming that the decay of substance is according to a first order
reaction, i.e. rate of loss of substance is proportional to concentration at any time.

At boundary condition i.e. $S = S_0$ at $x = 0$ where S_0 is calculated from equation above and by assuming
uniform cross-sectional area, the concentration of non-conservative pollutant can be determined using
equation below,

$$S = S_0 e^{\left(\frac{-Kx}{u}\right)}$$

Where K is the decay rate, since $x/u = t$ (time to travel a distance x at velocity u)

2.4 Quantification using modelling approach

USEtox model can be used for calculation of characterization factor of toxic pollutant. This model offers more than 1250 substances and reflect more updated knowledge and data on effect factors. This model was specifically designed to determine the fate, exposure and effect of toxic substances with the ability to consider spatial differences with the country specific parameters. The characterization factor in the USEtox model includes a Fate Factor (FF), Exposure Factor (XF) and an Effect Factor (EF).

2.5 Cost estimation to human health damage

Evaluation of economic losses related to human life and health includes sum of two components (i) evaluation of cost of fatality (ii) evaluation of cost of affected persons.

$$L_{HH} = V_d N_d + \sum_{k=1}^3 V_{k,p} N_{k,p}$$

Where,

L_{HH} = Total cost to human health damage

V_d = Economic loss of one fatality

N_d = Number of fatalities

$V_{k,p}$ = Economic valuation of affected person in the category k

k= 1 slightly affected, k= 2 severely affected, k= 3 very severely affected

$N_{k,p}$ = Number of person affected

Evaluation of cost of one fatality

According to “the year of potential life lost” proposed by U.S. Centres for diseases control and prevention in 1982, life is valued in proportion to person’s potential economic production. Cost of one fatality also includes living cost of dependents. Thus cost of one fatality depend on age of victim, his income, number of dependent on him. The life expectancy of healthy human is assumed to be 80. Cost of one fatal victim is presented in table below,

Cost of one fatal victim				
('a' = age of victim, 'ae' = age of dependant elder, 'ay' = age of dependent child)				
		a < 60	60 < a < 75	a ≥ 75
Victim's own loss in age 'a'		Income × 20	Income × (80 - a)	Income × 5
Cost of dependent's living needs	Living expenses of one elder of age 'ae'	60 < ae < 75	ae ≥ 75	
		Income × (80 - ae)	Income × 5	
	Living expenses of one child of age 'ay'	Income × (18 - ay)		

Evaluation of cost of affected person

Evaluation of affected people is the function of their age and severity of affect. It is classified into three categories slightly affected, severely affected and very severely affected using coefficient of 0.4, 0.7 and 1 respectively. Duration of sick leaves and medical fees associated with the cure of affected people is also taken into consideration while evaluating economic valuation of affected people.

Evaluating cost of one affected victim			
Detail of loss estimation	Slight	Severe	Very severe
Affected people own loss and living cost of the dependant	Cost in homologous death × 0.4	Cost in homologous death × 0.7	Cost in homologous death × 1
Loss of sick leaves	Average daily wages × dh × 3		
Medical Fees	Average hospitalization expenses		

2.6 Estimating cost of damage to fisheries

Surface water pollution directly affects the fish yield, to recover the same certain time period is required. Assuming that fishing is forbidden before recovery of fish yield, the economic loss of damage to fishery can be evaluated using the following equation,

$$L_f = AI_f \times rt$$

Where,

L_f = economic loss due to damage to fishery

AI_f = annual gross income from fisheries in polluted water

rt = the recovery time of aquatic product (for estimating same AQUATOX model, by USEPA can be used)

Estimating cost of damage to recreational function

Surface water pollution affects the economic function of recreation activities such as swimming, angling, boating etc. To evaluate the cost of damage to recreation functional, following equations can be used. The data required on number of people swimming, boating, angling in the concerned water body per day can be obtained from local agencies or socio-economic studies conducted in the area.

$L_R = L_{SM} - L_{BT} - L_{AG} + L_{LM}$	<p>L_R : the loss of damage to recreation</p> <p>L_{SM} : the loss of swimming</p> <p>L_{BT} : the loss of boating</p> <p>L_{AG} : the loss of angling</p> <p>L_{LM} : loss of leisure means</p>
$L_{SM} = P_{SM} \times N_{SM} \times d$ $L_{BT} = P_{BT} \times N_{BT} \times d$	<p>P_{SM} : the price of replacement of swimming per person (rs/cap/ day)</p> <p>N_{SM} : the number of people swimming in the water per day (cap/ day)</p> <p>d : duration of the pollution episode (day)</p> <p>P_{BT} : the price for replacement for boating (rs/cap/ day)</p> <p>N_{BT} : the number of people boating in water per day</p> <p>d : duration of pollution episode (d)</p>
$L_{AG} = P_{AG} \times N_{AG} \times d$	<p>P_{AG} : the price for angling for boating (rs/cap/ day)</p> <p>N_{AG} : the number of people angling in water per day</p> <p>d : duration of pollution episode (d)</p>

2.7 Estimating cost of damage to environmental property losses

Pollution released in water bodies deteriorate the water quality and decrease the value of surface water. Pollutant may also deposit in sediments and percolate in nearby sources of groundwater. Pollution clearance cost analysis is applied to evaluate the cost associated with damage to environmental property due to water pollution using following equations,

$L_{EP} = C_{SW} + C_{GW} - C_{SO}$	L_{EP} = loss of environmental property (rs) C_{SW} = cost of pollutant removal from surface water C_{SO} = cost of pollutant removal from sediment C_{GW} = cost of pollutant removal form ground water
$C_{SW} = P_{SW} \times V_{SW}$	P_{SW} = price of removing pollutant from surface water (rs/m ³) V_{SW} = the volume of polluted surface water (m ³)
$C_{GW} = P_{GW} \times V_{GW}$	P_{GW} = price of removing pollutant from ground water (rs/m ³) V_{GW} = the volume of polluted ground water (m ³)
$C_{SO} = P_{SO} \times A_{SO}$	P_{SO} = price of sediment remediation (rs/m ²) A_{SO} = the area of polluted sediment (m ²)

3. GROUND WATER

3.1 Applicability

- Leaching of contaminants from wastes dumped onto open parcels of land
- Leaching of chemicals from storage tanks or leaking underground storage tanks/ fuel tanks/ septic tanks
- Leaching of contaminants from landfills that are leaking below ground
- Reverse injection of effluent into deep injection wells
- Leaching of contaminants from underground leaking pipelines carrying liquid chemicals

- Contaminated aquifers provide a variety of exposure pathways to various receptors, including but not limited to, most importantly Humans, Livestock, including cattle, poultry, flora, fauna etc. These pathways include, but are not limited to dermal contact with contaminated groundwater, ingestion of contaminated groundwater and ingestion of crops that are irrigated with contaminated groundwater.

3.2 Quantification of damage to groundwater

The pollutant which enter subsurface zone creates a contamination plume within the aquifer. Thus, small amount of certain pollutant can contaminate large areas. Flow through groundwater is govern by two physical process that are advection and hydrodynamic dispersion. Advection is the component of solute movement attributed to transport by flowing groundwater. The rate of transport is equals to average linear groundwater velocity, v^* where $v^* = v/n$, v being the specific discharge and n the porosity.

Further, solute transport equation is used to represent the movement of flux of solute mass through a control volume. The equation states that the sum of all mass, which creates solute with the control volume, must be equal to a change in the concentration of solute with the control volume.

$$\frac{\partial C}{\partial t} = \left[\frac{\partial}{\partial x} \left(D_x \frac{\partial C}{\partial x} \right) + \frac{\partial}{\partial y} \left(D_y \frac{\partial C}{\partial y} \right) + \frac{\partial}{\partial z} \left(D_z \frac{\partial C}{\partial z} \right) \right] - \left[\frac{\partial}{\partial x} (V_x C) + \frac{\partial}{\partial y} (V_y C) + \frac{\partial}{\partial z} (V_z C) \right]$$

Where,

V_x, V_y, V_z = Seepage velocities in x,y,z directions, m/s

D_x, D_y, D_z = Dispersion coefficient, m^2/sec

C = Solute concentration, mg/m^3

T = Time, (s)

Visual MODFLOW can also be used to predict the ground water flow with the contaminate transport. With the use of geological and hydraulic data the potential area of pollutant transport and its concentration can be simulated with the help of MODFLOW and MT3D. Using this model the concentration of pollutant at the user end can be determined.

3.3 Cost estimation to damages

Methods for estimating cost to human health and cost of damage to environmental property described under surface water may be transferred for ground water damage cost estimation. However, while calculating EDC for groundwater pollution ecological economic assessment of groundwater is essential. This is elucidated with an example on removal of groundwater (GW) deposit due to mining activity in an area.

Relevant parameters are,

- Monetary value co-efficient of the damage caused by destruction & removal of ground water (*K deposit*)
- Static reserve's assessment co-efficient of the ground water (*K static reserve*)
- Monetary value co-efficient of damage caused by the water removed (*K water infiltration*)
- Basic price of ground water (Rs./ m³)
- Volume of groundwater that is being removed (m³)
- Water return coefficient of groundwater

Total cost of GW removed = Basic price of GW X Water return coefficient of GW X Volume of GW being removed (*K deposit + K static reserve + K water infiltration*)

4. SOIL

4.1 Applicability

- Illegal dumping of waste (hazardous or nonhazardous) on open parcels of land
- Discharge of untreated or inadequately treated effluent onto open parcels of land
- Boundary breaches wherein wastes might either get spilled onto open parcels of adjoining land, and/ or sub grade breaches where wastes and/ or leachate seeps into the subsoil and potentially ultimately into the aquifer
- Spills of chemicals/ wastes during transportation, leakages from trucks, tanks, pipelines etc.
- Impacted soils can lead to indirect impacts including rendering the land as not usable for agricultural purposes, serving as a continuous source of contamination to groundwater, serve as a direct exposure pathway to humans who may come into contact with the contaminated soil media.

- Soils that are contaminated provide a variety of exposure pathways to various receptors including but not limited to, most importantly humans, livestock, including cattle, poultry, etc. These pathways include, but are not limited to dermal contact with contaminated soils, incidental ingestion of contaminated soils, ingestion of crops that are grown on contaminated soils, inhalation of vapors from wastes that are dumped on soils

In India, there are no comprehensive soil quality regulations and standards to ascertain the seriousness and quantification of contamination. however, internationally adopted standards can be applied selectively for setting screening and response levels for contaminated soils.

Principles of Environmental Jurisprudence



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Environmental jurisprudence refers to the evolving body of legal principles and judicial interpretations aimed at protecting the environment and promoting sustainable development. It is grounded in the recognition that the environment is not merely a backdrop for human activity, but a vital component of our collective well-being and survival. This branch of law has developed dynamically over the past few decades, particularly through the proactive role of the judiciary in addressing ecological concerns. At its core, environmental jurisprudence seeks to balance developmental needs with ecological sustainability, ensuring that present actions do not compromise the rights and needs of future generations. It encompasses constitutional mandates, statutory frameworks, international obligations, and judicial doctrines that have emerged from landmark decisions by courts in India and around the world.

In this background a thought-provoking question is “Who owns the Earth and its natural resources?” This question set the tone for a deeper discussion on the legal and ethical responsibilities associated with environmental stewardship. The answer emphasized that no single person, organization, or private entity can claim absolute ownership over the Earth or its natural resources. Instead, these resources are collectively held and are meant to be managed and utilized by the State or Nation for the benefit and welfare of the people.

Natural resources such as beaches, forests, rivers, and water bodies are part of the common heritage of mankind. They are intended for the unrestricted, undisturbed, and equitable enjoyment of the general public, and cannot be appropriated for exclusive use. While the State may possess administrative control over these resources, it does not enjoy the status of an owner in the traditional sense. Rather, it acts as a trustee, bound by the Public Trust Doctrine to protect and preserve these resources for present and future generations. There are significant judicial decisions

related to the allocation and exploitation of natural resources, particularly in the context of mining and energy projects. *Common Cause v. Union of India*, dealt with the issue of illegal mining operations across various states. The Supreme Court, in this case, emphasized that natural resources are national assets, and their exploitation must be done in accordance with the law and in the public interest. The Court held that mining activities carried out without proper environmental clearances or in violation of statutory procedures amounted to illegal mining, and the parties involved were liable to compensate the State for the loss caused.

Another case on this point is related to Reliance Power, a subsidiary of Reliance Infrastructure Ltd., which was awarded the Sasan Ultra Mega Power Project (UMPP) in Madhya Pradesh. As part of the project, three captive coal blocks were allocated exclusively for use in the Sasan project. However, Reliance Power subsequently sought permission to use the surplus coal from these blocks for its Chitrangi Power Project, a separate commercial venture.

This move sparked widespread criticism, and in September 2012, a Public Interest Litigation (PIL) was filed before the Supreme Court, challenging the legality and fairness of the coal block allocations. The matter gained further attention following a report by the Comptroller and Auditor General (CAG) of India, which estimated that Reliance Power had derived an undue benefit of ₹29,033 crore due to the diversion of coal from the Sasan UMPP to the Chitrangi project. The report and the PIL raised serious concerns about transparency, fairness, and public interest in the allocation and use of natural resources. These cases collectively underline the importance of judicial oversight in resource management, reinforcing that natural resources must be allocated and used in a manner that aligns with the principles of equity, accountability, and sustainability.

The Public Trust Doctrine is a legal principle which posits that certain natural resources like air, sea, water, and forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The State holds these resources in trust for the public and is under a duty to protect and preserve them for the enjoyment of the general public.

This doctrine ensures that the State acts as a trustee of all natural resources, and cannot abdicate its responsibility to protect the environment. The concept of 'trust' and how it is central to the Public Trust Doctrine in the legal terms is explained as, "a trust is an arrangement in which one party holds property for the benefit of another". Applying this to environmental law, the State is regarded as a trustee, and natural resources are the trust property. The beneficiaries of this trust are the public at large. Thus, the government has a fiduciary duty to protect, preserve, and manage these resources in a manner that serves the collective interest of present and future generations.

To illustrate this doctrine in practice, it is worth to discuss a few landmark cases concerning the protection of natural resources. One of the key cases highlighted are *M.C. Mehta v. Kamal Nath*

(1997). In this case, the Supreme Court of India invoked the Public Trust Doctrine to prevent the misuse of forest land and the alteration of the course of the Beas River by a private motel, backed by a former Union Minister. The Court held that natural resources cannot be converted into private ownership and that the State has no right to transfer or lease such resources in a way that adversely affects public interest.

This case set an important precedent, affirming that natural resources are not commodities to be exploited for personal or commercial gain, but public assets that must be conserved for the greater good of society.

To address expansion of public trust doctrine in the numerous areas, a crucial legal and environmental question raised before the court in the context of natural resource governance: Who owns underground water?¹ The discussion focused on whether underground water should be considered a public trust resource, just like rivers, forests, and air.

This issue arises from the unregulated and excessive extraction of groundwater by private individuals, industries, and commercial entities. The key question was whether ownership of land automatically grants ownership of the water beneath it. Court explained that while traditional common law principles may support such a notion, modern environmental jurisprudence and constitutional mandates challenge this assumption, emphasizing that groundwater is a shared resource essential to life and public welfare. In this context, court referred to the Public Trust Doctrine, propounding that underground water must be treated as a resource held in trust by the State for the benefit of the public. Therefore, it cannot be subject to unrestricted private appropriation or exploitation.²

For this relevant provisions of the Mines and Minerals (Development and Regulation) Act, 1957 (MMDR Act) can be referred.³ While the Act primarily governs the regulation and development of minerals, it reflects the principle that subterranean resources are not the private property of landowners but are subject to regulation by the State in the interest of the public. Although the MMDR Act does not directly regulate groundwater, it reinforces the idea that natural resources beneath the earth's surface fall under the State's regulatory domain.

The discussion emphasizes the need for a coherent legal framework to govern the extraction and use of groundwater in line with constitutional principles, environmental sustainability, and equitable access.

¹ <https://nujlawreview.org/wp-content/uploads/2017/01/2016-9-1-2-Paromita-Goswami-Public-Trust-Doctrine-Implications-for-Democratisation-of-Water-Governance.pdf>

² https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4938524

³ https://mahakhanij.maharashtra.gov.in/GR/General_Maharashtra_Minor_Mineral_Extraction-Rules_2013.pdf

Polluter Pays principle mandates that those who pollute the environment must bear the cost of managing it to prevent damage to human health or the environment. It includes not only the cost of clean-up but also compensation for victims and environmental restoration. Indian Context: The principle was firmly upheld in *Indian Council for Enviro-Legal Action v. Union of India* (1996), making polluters financially liable for environmental harm. Precautionary principle implies that where there is a threat of serious or irreversible environmental damage, lack of scientific certainty should not be a reason to postpone measures to prevent environmental degradation. It promotes preventive action in the face of uncertainty.⁴ In India, pollution produces complex environmental issues involving scientific uncertainty and imprecise health risks. These pollution matters are influenced by incomplete information, inconclusive evidence, ambiguous values and public controversy. The specialised environmental tribunal, NGT is a creation of a statute; its jurisdiction, power and procedures are construed and applied according to the language of the National Green Tribunal Act 2010. The NGT interprets and applies the precautionary principle as mandated by s. 20 of the National Green Tribunal Act 2010.⁵ In the Indian Context it is recognized as part of Article 21 by the Supreme Court in *Vellore Citizens Welfare Forum v. Union of India* (1996), it places the onus on the developer or industrialist to prove that their activity is environmentally benign.

In Taj Trapezium Case, AIR 2002 SC 3696, the Supreme Court was dealing with the problem of protecting the 'Taj Mahal' from the pollution of nearby industries.

The Court applied the 'Precautionary Principle' as explained by it in Vellore case and observed – The environmental measures must anticipate, prevent and attack the causes of environmental degradation.

The 'onus of proof' is on an industry to show that its operation with the aid of coke/coal is environmentally benign. It is rather, proved beyond doubt that the emissions generated by the use of coke/coal by the industries in Taj Trapezium are the main polluters of the ambient air.⁶

The court ordered the industries to change over to the natural gas as an industrial-fuel or stop functioning with the aid of coke/coal in the Taj trapezium and relocate themselves as per the directions of the Court. The amount of damages in cases of environmental wrongs tends to be high⁷ due to several compelling legal, economic, and ethical reasons. Environmental harm often leads

⁴ <https://journals.sagepub.com/doi/10.1177/1461452919890283>

⁵ The National Green Tribunal (NGT) is empowered to decide cases relating to environmental protection and the conservation of forests and other natural resources (including the enforcement of any legal right relating to the environment) and to give relief and compensation for damages to persons and property. Section 20 states 'The Tribunal shall, while passing any order or decision or award, apply the principles of sustainable development, the precautionary principle and the polluter pays principle'

⁶ <https://cms-lawnow.com/en/ealerts/1999/11/environment-law-in-india-an-overview>

⁷ <https://reason.org/wp-content/uploads/files/76a01f43ff7eec045e97b61c0f23caf5.pdf>

to irreversible damage like destruction of ecosystems, extinction of species, or contamination of natural resources. Courts recognize that such damage can't be easily undone, so higher compensation serves both as restitution and deterrence.⁸ Article 21 of the Constitution of India states: 'no person shall be deprived of his life or personal liberty except according to procedure established by law'. Article 48A obligates the state to 'protect and improve the environment and to safeguard the forests and wildlife of the country'. Article 51A(g) places a duty on 'every citizen of India to protect and improve the natural environment including forests, lakes, rivers and wild life and to have compassion for living creatures'. See *M C Mehta v Union of India* (2004)12 SCC 118; *Research Foundation for Science v Union of India* (2005) 13 SCC 186; *Karnataka Industrial Area Development Board v C Kenchappa* (2006) 6 SCC 371; *AP Pollution Control Board I v Professor MV Nayadu* (1999) 2 SCC 718; *AP Pollution Control Board II v Prof MV Nayadu* (2001) 2 SCC 62; *TN Godavarman Thirumalpad v Union of India* (2002) 10 SCC 606; *Tirupur Dyeing Factory Association v Noyal River Ayacutdars Protection* (2009) 9 SCC 737; *MC Mehta v Union of India* (2009) 6SCC 142; *In re Delhi Transport Department* (1998) 9 SCC 250⁹

Sustainable development refers to development that meets the needs of the present without compromising the ability of future generations to meet their own needs. It strikes a balance between environmental protection and economic growth. In the Indian Context it has been incorporated into environmental governance, where courts have insisted that developmental activities must not lead to ecological destruction. The concept Intra-generational Equity emphasizes fair and equitable access to natural resources and environmental benefits among people of the same generation. It focuses on addressing disparities between rich and poor, urban and rural, developed and developing sections of society. It ensures that development does not disproportionately burden marginalized communities and promotes social justice in environmental policy-making.

The Sustainable Development Goals (SDGs) are a set of 17 global goals adopted by all United Nations Member States in 2015 as part of the 2030 Agenda for Sustainable Development. These goals provide a shared blueprint for peace and prosperity for people and the planet. Sustainability goals ensure that the environmental assessments are well-based according to social objectives and are simple to follow. EIA is not just a tool for compliance but it also helps in achieving sustainability in all social, environmental, and economic aspects.

By applying principles like the Polluter Pays Principle, the Precautionary Principle, and the Public Trust Doctrine, the judiciary ensures that environmental offenders are held strictly accountable. The substantial quantum of damages serves not only to rectify the wrong but also to reinforce the message that environmental protection is a constitutional, moral, and societal imperative. In a

⁸ <https://docs.manupatra.in/newline/articles/Upload/1B0960FF-9DFE-4A43-917D-065ED5E6EE03.pdf>

⁹ The role of the Supreme Court of India in recognising the precautionary principle as an essential feature of sustainable development and a part of customary international law promoted its derivative application from constitutional mandates namely Articles 21, 48A and 51A(g).

world facing climate change, biodiversity loss, and resource depletion, such judicial responses are both timely and essential. They not only uphold the rule of law but also secure the right to life and a healthy environment for current and future generations.



Changing Landscape of Environmental

Jurisprudence :- Jan Vishwas (Amendment) Act, 2023



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[Transition from Punitive to Trust Based Regime]

Objectives and expected outcome

1. To understand the changing landscape of environmental jurisprudence by introduction of the regime of decriminalization of compliance provisions.
2. To understand the regime of Penalty provisions replacing the earlier existing regime of punishment in the form of imprisonment and fine.
3. To understand the changing institutional mechanism and the regulators that would be functional under the regime of penalties.
4. To plan the way forward in terms of capacity building for efficient handling of penalty cases.

• **Introduction :-**

Environmental Jurisprudence in India has always been a subject matter of periodic transformations either by the legislators, executives and significantly the Judiciary. It is thus incumbent on all those dealing with environmental issues, irrespective of their capacities and disciplines to be aware and abreast with all the transformations.

The exercise of understanding the transformation and its real time working is often grappled with challenge of understanding the academic or substantive flavor of the change, the procedural changes and the instrumentalities of implementation i.e. to be more precise legislative enactment and the delegated legislations as well. This is more important because legislations work on the ground through delegated mechanisms only. The better we understand, more effective our adaptability and compliance will be.

To be more focused in this discussion, we would explore one such transformation that is going to unleash in the coming time in the form of the regime of penalties under the environmental

legislations for alleged violations and contraventions introduced by The Jan Vishwas (Amendment of Provisions) Act, 2023

- **The Jan Vishwas (Amendment of Provisions) Act, 2023**

The Jan Vishwas (Amendment of Provisions) Act, 2023, aims to simplify regulations and create a more business-friendly environment by decriminalizing certain offenses, rationalizing penalties, and streamlining procedures. It amends 42 Acts, reducing the burden on businesses and individuals, and is expected to boost ease of doing business and trust-based governance.

The Jan Vishwas (Amendment of Provisions) Act, 2023, decriminalizes 183 provisions across 42 central laws, aiming to ease business and living by replacing criminal penalties with civil penalties and administrative actions for minor offenses.

The primary goals of the Jan Vishwas Act are:

Decriminalization: Converting several criminal offenses into civil offenses to reduce the burden on the criminal justice system.

Rationalization of Penalties: Modifying penalties for various offenses to ensure they align with the severity of the crime.

Simplification of Procedures: Streamlining administrative processes to minimize bureaucratic hurdles.

- **Impact of The Jan Vishwas (Amendment of Provisions) Act, 2023 on Indian Environmental Law :-**

The Act has amended the following legislations relating to environment protection in India namely

- i. The Environment Protection Act, 1986
- ii. The Air (Prevention and Control of Pollution) Act, 1981
- iii. The Public Liability Insurance Act, 1991
- iv. The Indian Forest Act, 1927

The regime of Punishment in the form of imprisonment and/or fine has been replaced with Regime of Penalties. The non-compliances under the acts will now be dealt with imposition of penalties.

The following table exhibits a general overview of the regime of penalties introduced by the Jan Vishwas Act, 2023

	OFFENCE	EPA	AIR ACT	WATER ACT
1	Primary offence against the Act. Eg: Discharge in excess of standards, contravening directions of Board	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh
2	Continuation of offence	Additional 10 Thousand /day	Additional 10 Thousand /day	Additional 10 Thousand /day
3	Intervening/Disrupting the work of the Board. Eg: Failure to share information, refusing entry, hiding information	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh
4	Residuary Penalty	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh	10 Thousand to 15 Lakh
5	Appeal against the Order of imposition of Penalty to NGT	10% of the penalty to be deposited	10% of the penalty to be deposited	10% of the penalty to be deposited
6	Failure to pay the penalty within 90 days	Imprisonment + fine equal to double the Penalty	Imprisonment + fine equal to double the Penalty	Imprisonment + fine equal to double the Penalty
7	Accountability of the Government Department	One month of his basic salary	One month of his basic salary	One month of his basic salary

• **Adjudicating officers :-**

The penalties are to be decided by adjudicating officer appointed by the Central Government on this behalf. These officers would function as a quasi-judicial authority and adjudicate the penalties under the aforementioned acts.

The adjudicating officer may take into consideration the following factors for deciding the quantum of penalty :

a. Place of operation of project

b. Size of the Project- large/medium/small

c. Category of industry

d. Type of contravention/violation such as:

i. Working without Environment Clearances

ii. Non-compliance of Environmental safeguards and emission standards

- iii. Non-compliance of any directions issued under the Act*
- iv. Violation of conditions of Environment Clearances*
- v. Any other contraventions/violations/non-compliances of ordered/directions*
- e. Quantum of deviation/ contravention from the standard*
- f. Health impacts/loss likely to be caused*
- g. Undue gain/benefit derived out of contravention or non-compliance*
- h. The amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the contravention or non-compliance;*
- i. The repetitive nature of the contravention or non-compliance*
- j. Any other factor as may be considered by the Adjudicating Officer to be relevant for the protection of environment.*

The important thing to remember is that the penalty/additional penalty as imposed by the Adjudicating Officer under these legislations shall be in addition to the liability to pay relief or compensation under the National Green Tribunal Act, 2010. ***Penalties are for contravention and violation. The liability for damage to environment and victims is additional.***

Another important point to be noted is that the orders passed by the adjudicating officers are appealable under the National Green Tribunal Act, 2010 with the only rider that 10% of the amount of the penalty ascertained by the AO needs to be deposited as a precondition to prefer an appeal.

The action against the alleged violations/contraventions shall be initiated by ***“presenting officers”*** that may be designated/appointed by the Government through gazette notification. The Adjudicating Officers, the Presenting Officers and the regime of penalties under the new regime of regulation and control is set to stir/potentially impact the existing relationship between the regulators and industries.

The government has started taking steps by amending the Environment Protection Act, 1986 and the rules thereunder, the Air Act and the rules thereunder and the Water Act and the rules thereunder laying down the procedural set up for implementation and execution of the penalty regime. I believe that very soon industries will start receiving the notices from the AO and the adjudicatory proceedings for contraventions would be commencing.

How these proceedings are going to shape up cannot be predicted right now. How effectively the adjudicating officer will function as a quasi-judicial authority and how rationale would be the process of penalty adjudication would be interesting to observe. Right now it seems to be a double edged sword.

- **The way forward**

The regime of penalties nonetheless has a message for industries.

1. It is a compliance based regime. We are required to be alert and prepared in terms of understanding the compliances in its holistic manner i.e. under the entire gamut of environmental and other regulations and ensure that compliances are secured.
2. Study and analyze the impact of penalty regime on ensuring compliances.
3. Remain vigilant about compliance and its feasibility. Always explore the option of representation and challenge in cases where the compliances are non-feasible in terms of time, resources and expertise.
4. Capacity building and training of the legal team, compliance team and environment management team and ensuring their collaboration and coordination.





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All the article published in this book are the results of the research done by the named executive. The views express herein are that of the researchers and may not be construed as the view of Legal Department as a whole nor of WCL/CIL.





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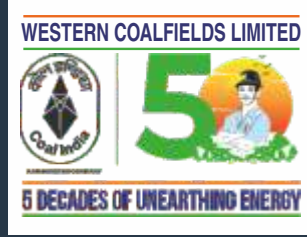
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