

# ENVIRONMENTAL LAWS: RULING POLITICIANS VS CITIZENS

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## ABSTRACT

*The three environment laws on water, air and environment empower the ruling politician and not the citizen. This must be examined in the context of the Constitution giving the ruling politician control over the country's resources and production or its political economy. The consumer whose demand triggers the production cycle which produces the waste that harms the environment, is nowhere mentioned in the environment laws. Accordingly, the consumer is the silent victim without a pollution index, an oxygen index, a traditional product index and a health index of all that he buys for consumption to trigger the supply through production. The legislative design of the environment and production laws denies the existence of the consumer despite the Supreme Court having declared that s/he has a fundamental right to know, a clean environment and health. The ruling politician has to be made legally responsible for the enforcement of these fundamental rights in the constituencies from which he has been voted to become a ruling politician controlling the national resources, the production and the pollution there from and the environment laws giving him/her vast exemption powers negating the environmental laws, while using Art.253 to enact these laws and thereby control the process and the waste in agriculture, industry and services in each constituency. As a first step the environmental and consumer laws need to be amended to establish the ruling politician's link to pollution in each constituency where production- pollution is*

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*located. This needs interpretative thought leadership from the Supreme Court, in terms of the already pronounced judgments on constitutionalism, to usher citizen centric governance of India's water, air, soil or the environment. The country's health and economy necessitate this.*

**Keywords:** ruling politician, constituencies, environmental accountability, production, consumption, pollution, oxygen, traditional product and health indices.

## 1. INTRODUCTION

The need of consumers creates the demand for goods and services. This demand is met by producers supplying goods and services in the three sectors of agriculture, industry and services by using land/soil, water and air. The common by product of this consumption production economic cycle is waste. If this cycle is nature friendly, then the waste is manageable. However, if the cycle takes from nature and works against it, then there is waste and pollution which becomes a health and management problem. The demand for comfort and convenience based on machines and chemicals impels per unit of time efficiency in consumption and production. There is a corresponding efficiency in the production of waste or pollution by producers and consumers, but not in the use and disposal of waste. The circular economy, an ingrained tradition of the Indian household, is not a part of any legislation which mandates the circular use of waste or incentivises such use. Environment laws have been enacted as if there is no indigenous production --- consumption thought, like the Panchabhuta (five elements of nature) or the Panchgavya (milk, curd, ghee, urine and dung).<sup>1</sup>

## 2. CENTRE'S RULING POLITICIANS TAKE OVER

As nations became aware of the consequences of such waste on the primary source called nature and on the health of their people, international conferences and agreements<sup>2</sup> emerged and have so far ended on who is to

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1. The Indian knowledge system about environment, lifestyle and medicine, is missing from environment law and health education. Hence the tulsi plant, the peepul and neem trees, camphor and pran or breath vidya have no place in law dealing with a vast web of waste rules under Environment Protection Act, 1986.
  2. Stockholm Declaration at the UN Conference on Environment 1972, Brundtland Commission Report of the World Commission on Environment 1987 titled as "Our Common Future."

pay how much<sup>3</sup> for the reduction and management of pollution and waste. This resulted in the ruling politicians of the Central Government (Union of India) taking over<sup>4</sup> law making on all the aspects of environment, in the name of implementing decisions of the international conferences, to enact three laws in Parliament for the prevention and control of pollution: Water Act, 1974. Air Act 1981 and the Environment Protection Act, 1986. The Water and Air Acts have common Central Govt. and State Govt Boards for the prevention and control of pollution.<sup>5</sup>

The tragedy is that the Acts empower ruling politicians of a State Government, to deal with pollution by completely excluding the citizen whose health is directly affected by the polluted water and air. There is no provision in these enacted pollution control laws for informing the citizens of the industries in or around their areas of living or working from where pollution is possible, what is it that they manufacture, the pollutants from such manufacture and the effect of these pollutants on their health. The collection, dissemination of information relating to water and air pollution, its prevention, abatement and control is a mandatory function of the State Board under S. 17 (c) of the Water & Air Acts. But organising through mass media a comprehensive programme regarding pollution is a discretionary function of the ruling politicians nominated Central Board u/S. 16(e), as is the planning and execution of a national programme for prevention, control and abatement of pollution is a discretionary function, under S. 3(2)(ii) of the Environment Protection Act.

No responsibility for pollution or for health lies on the ruling politicians, whose citizens have elected them to the Lok Sabha to represent them. The tragedy is that they are not accountable even for the enforcement of Supreme Court judgments on the fundamental right to health<sup>6</sup> and a hygienic environment of breathable air and drinkable water. Instead, the ruling politicians have designed and enacted the aforesaid laws as pollution centric instead of environment centric with no provision for publicly announcing the susceptible areas vulnerable to pollution and while the data on this is collectible by State Board surveys and inspections and analysis of samples of water and air.<sup>7</sup>

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3. Kyoto Protocol 1997 and Paris Treaty 2016.

4. art 253.

5. Air Act 1981, s 4.

6. *State of Punjab v Mohinder Singh Chawla* (1997) 2 SCC 83 : AIR 1997 SC 1225, *Municipal Council Ratlam v. Vardichan*, (1980) 4 SCC 162.

7. Water Act 1974, ss 20 and 21, Air Act 1981, s 26.

### 3. RULING POLITICIANS CONTROL POLLUTION

Agriculture, industries, services and consumers in a State use the land, water and air of that State. For controlling pollution, the Water, Air and Environment Acts provide for the establishment by each State Government, of State Pollution Control Boards. The sixteen members, including the Chairman of the Board, are to be “nominated”, not “appointed”, for exercising the powers and performing the functions assigned to the Board by the Water and Air Acts. The Board members are eligible for renomination<sup>8</sup> at the end of their three-year term. Hence the State’s ruling politicians control the continuance of the members on the Board. Only the member Secretary in charge for rendering administrative help to such appointed members is appointed by the State Govt. for full time.<sup>9</sup> The ruling politicians in the State Government can appoint the Chairman, full or part time. The salaries, allowances and duties of the sixteen members and the funding of the Board, are entirely in the hands of the State government or its ruling politicians. The Board has only such duties and functions under the Acts as are notified for them by the State government. Any member of the Board can be removed by the State Government after issuing a show cause.

Such a Board can constitute Committees, temporarily associate persons, appoint consulting engineers It can appoint such officers and employees as it considers necessary for performing its functions efficiently according to regulations framed by it, but approved by the ruling politicians of the State.<sup>10</sup> There is no provision for assessing efficient performance of the Board in discharging its mandatory functions for prevention, abatement and control of pollution in the State. This has to be so because the State Government, in consultation with or on the recommendation of the State Board, can exempt a person:

- (i) from knowingly impeding the flow of water in a river, water course, inland water, subterranean waters or sea or tidal waves and
- (ii) knowingly permit pollution of these waters.<sup>11</sup>

Further the mandatory functions of the State Board apply only if the State Government designates areas in the State as water or air pollution control

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8. Water Act 1974, s 5.

9. s 12.

10. ss 5, 9 and 10.

11. s 24(3).

areas.<sup>12</sup> The constitutionality of these exemption provisions is doubtful as these render meaningless the fundamental right to a clean environment, to health and a life of dignity.<sup>13</sup> Yet the State Board has the power to shut down electricity and water supply or any other service to any industry or even order the closure of the industry or its operation or process.<sup>14</sup> The control of the State's ruling politicians over the State Boards is complete as the State Government can supersede the Board in the "public interest".<sup>15</sup>

Hence ruling politicians of the State Government have complete control of the State Board. It is such a Board that is empowered to contract, hold and dispose property and sue or be sued. Setting up of the laboratories<sup>16</sup> is critical for its mandatory functions of inspection of production units, their effluent/emission treatment plants for giving its consent to the operation of the units and testing compliance with pollution standards. But the setting up of laboratories is only a discretionary function of the Board.<sup>17</sup>

#### 4. RULING POLITICIANS: CENTRE VS STATE

In keeping with the use of Art. 253 by the Central Government in enacting the three environmental laws, the State Boards are bound by the directions of the ruling politicians at the Centre. Further any inconsistency in directions by the State Boards and the Central Board the matter must be referred to the Central Govt for its decision.<sup>18</sup> The problem is that the Central Board<sup>19</sup> also consists only of a Chairman and 15 members nominated by the ruling politicians at the Centre and eligible for renomination after three years of service at the Central Pollution Control Board.<sup>20</sup> A worse problem is that none of the nine functions of the Board<sup>21</sup> are mandatory, including the three functions critical for any pollution control collect data on pollution, measures/manuals for the effective prevention and control of pollution treatment and disposal, classification of waters of each State and organising mass education programmes on pollution.<sup>22</sup> The ruling politicians can give

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12. s 19(1).

13. *Francis Carolie Mullin v State (UT of Delhi)* (1981) 1 SCC 608.

14. s 33-A.

15. Water Act 1974, s 62.

16. s 53.

17. Water Act 1974, s 17(2).

18. Proviso to s 18(1).

19. Water Act 1974, s 3.

20. Water Act 1974, s 4.

21. Water Act 1974, s 17.

22. s 17(e) to (g).

binding directions to the Central Board<sup>23</sup> which power becomes crucial in laying standards of pollution<sup>24</sup> and in shutting down an industry or its electricity, water or any other service,<sup>25</sup> the creation of pollution control areas in a State or exempting such areas from the pollution standards.<sup>26</sup> The Central Board is bound by the directions of the ruling politicians at the Centre.<sup>27</sup> The ruling politicians at the Centre can supersede the Central Board<sup>28</sup> just as the ruling politicians of a State can supersede the State Board “in the public interest” or for “persistent default in performance of functions.” The Boards are under the judgment of ruling politicians of the Centre and States without any legal accountability for the ruling politicians for the prevention, abatement and treatment of pollution. The environmental law Acts enacted by Parliament at the Centre’s behest make a perfect setting for serious federal disputes for a resolution by the Supreme Court, especially where the ruling political parties at the Centre and in a State are different. These laws also create a major pollution regulation arbitrage power in the location and management of industries given that State Boards have a mandatory function to advise the ruling politicians of the State on the location of any industry which is likely to pollute<sup>29</sup> and the power to make, vary or revoke any order for the prevention, control or abatement of pollution.<sup>30</sup> In this context the constitutional question raised by Arts 256, 258A read with Art 365 is whether a State can be subjected to President’s rule on the ground of failure of the Constitution in a State because the State has not complied with the directions given by the ruling politicians at the Centre, through the Central Board, under the environmental laws enacted by Parliament, given that the Centre can supersede even its own Board. The question therefore is why ruling politicians are so legally supreme and hold the country’s health and pollution in their control.

## 5. RULING POLITICIANS CONTROL PRODUCTION PROCESS

The Constitution of India entrusts the country’s resources<sup>31</sup> to ruling politicians. These politicians govern the country by a collective use of legislative and executive powers in: Arts. 107, 109, 31-C, 74-75, 245-250,

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23. s 18(1)(a).

24. ss 18(1)(g)(k).

25. s 33-A.

26. s 19.

27. s 18(1)(a).

28. s 60.

29. s 17(1)(n).

30. s 17(1)(l).

31. sch 7 Lists I-III.

253, 364, 73, 77 (1 & (3), 256, 237, 339(2), 298, 299, 19(6)(i),(ii), 265 & 274, 244 (1) & Vth 305, 301—304, 307, 365, 366(6), 279-A, 366(20), 366(12) & (12-A), 246-A, 247, 248, 292, 285-287, 288, 300, 282—284, 300-A, 31A, 31B. With this armada of constitutional powers, the country, its States and the States' panchayats/rural areas and municipalities/urban areas, are governed through the constitutional institutions of governance ----- the Central Government<sup>32</sup> and Parliament, State Government and Legislative Assemblies, municipalities and panchayats. Ruling politicians become governing or ruling politicians of the human, natural and other resources, on the basis of the majority obtained in one person one vote<sup>33</sup> elections, in defined territorial constituencies, and the continuance of this majority in Parliament, Assemblies, municipalities and panchayats.

## 6. POLLUTION CENTRIC ACTS

The governance or ruling over resources is done by using this majority to design, enact and implement the laws on the resources/subjects, assigned by the Constitution to each of these institutions of governance.<sup>34</sup> The entrustment becomes subject to the procedures in these laws to be executed by the Central and State administrative services<sup>35</sup> prescribed by the Constitution as All India and State services. The ruling politicians have used this legislative power to design pollution centric instead of environment centric laws which tell how far the free air has been polluted and not how much of it has been used. An informal political economy of management of rules on waste is implicitly formed as higher the cost of equipment, manpower and energy for abiding by the rules, higher is the saving by not complying. In the profits to pollution ratio, concerning the monetary success of a production, distribution and sale unit, what is preserved is profit instead of the environment.

## 7. ENVIRONMENTALLY FREE

Hence it is through this rule of law network that the ruling politicians govern the capturing and use of these entrusted resources for the production of goods and services demanded by consumers at various stages in the agriculture, industry and services sectors. The ruling politician through these laws governs the establishment and running of the production, distribution and sale economy through formal and informal contracts

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32. Union of India.

33. Adult suffrage.

34. Lists I, II, III of the sch 7. Constitution of India, Parts IX, IX-A, IX-B, X & XI.

35. Constitution of India, Part XIV.

entered into between individuals, producers, sellers and consumers as proprietors/persons, association of persons, partnerships, cooperatives, companies.

The money required and generated by this political economy of ruling politicians and their administrators is provided by ruling politicians through laws enacted, amended and implemented by them as laws of contracts, transfer of property, money lending, banking, export import, foreign exchange, bullion, shares, debentures, government lending and borrowing through grants, schemes, treasury bonds, commercial paper, dividends, risks- insurance saving schemes, direct and indirect taxes. The ruling politician finances his government and himself, the institutions of governance and what he governs, through the governing power given to him by these laws.

None of these wealth process laws mandate linkage to the environment, of production, distribution, sale and financing of products. No national or State level counting is done of the social cost to the environment. Since that which is not counted does not exist, economic planning simply ignores this social cost. Accordingly, the smart producer, distributor and seller is one who can manage to escape all the expense that rules on waste require, as at the individual enterprise level money need not be spent on waste, unless something valuable can be recovered from the waste. Pollution centric laws end up polluting the socio-economic polity.

## **8. ACCOUNTABILITY: PRODUCT POLLUTION INDEX**

The Constitution gives complete legal control to the ruling politician over the entire production to pollution chain. But it does not make him responsible for the health effects of this control by ensuring relevant information to the consumer-voters in their respective territorial legally defined constituencies,<sup>36</sup> from which they have been elected to become ruling politicians. The minimal information to the consumer voters in these constituencies which the ruling politician should be required to provide is that of the air and water pollution control areas,<sup>37</sup> the production units therein, the water, air and land consumed by these units in the production of the specified products. Most of this information is available to the ruling politicians under the compliance procedures for the location,<sup>38</sup> licensing

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36. art 81(2)(b).

37. Water Act 1974 & Air Act 1981, s 19.

38. Air Act 1981, s 17(h) and Water Act 1974, s 17(n).

for industry product<sup>39</sup> and consent<sup>40</sup> to operate under the aforementioned laws. The Central Pollution Control Board has a discretionary function<sup>41</sup> and the State Pollution Control Board has a mandatory function<sup>42</sup> to inform citizens about pollution. But the ruling politicians are not made responsible for ensuring the enforcement of these provisions in their respective constituencies. A beginning could be made by requiring the industries in an air and water pollution control area to put out for public consumption a product ingredient- pollution index. The ruling politician must ensure the declaration of air pollution and water pollution control areas, both for industries located on the advice of the State boards and illegally located industries. This links the ruling politician to the voters in his constituency from which he has been elected.

But smart business management is to nix the notifying of air/water pollution control areas.<sup>43</sup> The Water and Air Acts do not link the mandatory function of a State Pollution Control Board to advise on location of industries likely to pollute, with the discretionary power, conferred by the ruling politicians at the Centre on State ruling politicians, to notify air pollution control areas. No declaration of pollution control areas means freedom to pollute or eat up as much natural oxygen as needed. This turns into a dead letter, S.166(2) of the Companies Act 2013, requiring directors to act for protecting the environment and S.15 concerning conservation of national resources under the Industries (Development & Regulation) Act, 1951. The Micro, Small and Medium Enterprises Development Act, 2024 has no linkage to the Water and Air Acts, though these enterprises are the backbone of the country's economy.<sup>44</sup>

Similarly, there are no linkages to the general needs of clothing, footwear, medicine, appliances and electronic or digital equipment.<sup>45</sup>

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39. The Industries (Development & Regulation) Act 1951.

40. Air Act 1981, s 21 and Water Act 1974, s 25.

41. Water Act 1974, s 16(e).

42. Water Act 1974, s 17(c).

43. The Uttar Pradesh Government notified the whole State as an air pollution control area, only after the author as amicus produced before the Supreme Court the notification declaring only the area around the Taj Mahal as such an area.

44. As of 31 July 2024 there were 4.78 crore MSMEs, which includes 19.4 million micro enterprises.

45. Textiles Committee Act 1963, Drugs & Cosmetics Act 1940, Household Electrical Appliances, Quality Control, Order 198 under Essential Commodities Act, Factories Act 1948 and Bureau of Indian Standards Act 2016.

## 9. HEALTH INDEX

The ruling politician in a constituency can continue to benefit from the voters of his constituency only if they are healthy enough to perform their economic or revenue generating functions. Given the production to pollution legal control of the ruling politician, the enforcement of the pollution control laws has to be measured in terms of the health index of the citizens in each water and air pollution control area. The inherent part of this would be the ruling politician's responsibility to have a map prepared of the traditional products in his/her constituencies fulfilling the same need as the industrial product and comparing the product pollution index as also the health index of the traditional against the industrial. This creates a level playing field between the traditional and the industrial to result in the enforcement of Art.29 of the Constitution. In its absence a pollution arbitrage is created to the detriment of the citizen.

The health index needs an Oxygen consumption index for products, as without Oxygen no production, no consumption and no health are possible. Without oxygen air, water and land are dead elements. The energy required for the consumption-production-distribution-sale economy can be produced only if there is Oxygen. The consumer voter in each constituency of a ruling politician has a fundamental right to be informed of that which significantly affects health the bedrock of the economy and a fundamental right declared by the Supreme Court. Without this oxygen rating

In short, there is a need to build a rule of law architecture of responsible governance by ruling politicians on the basis of the laws enacted by these politicians and the citizens' rights already declared by the Supreme Court of a clean environment. The production and pollution control laws have empowered the ruling politicians. That has to be balanced by empowering the citizen voter.

## 10. REWARDING CYCLE OF POLLUTION

Consumption or the demand for goods and services triggers their supply through production. Neither consumption nor production are possible without use of soil, water and air. Both production and consumption pollute the soil, water and air in all the three sectors of agriculture, industry and services. Humans worry about pollution only because it threatens their health and existence. Legally undefined development through machine and chemical based processing of nature and man-made materials therefrom, annihilates time and distance. Such development makes for

pollution without borders. It results in pollution politics both national and international in which the question as to who is responsible for the pollution which undermines health comes up only when the monetary issue of who is to pay how much for the measurable and quantified untreated waste thrown out to save the producer or the consumer, costs of prevention and treatment. Pollution information, in advance and later, is a key casualty.<sup>46</sup> The net result is to create more and more demand for doctors, para medicals, medical equipment, medicines and insurance. A rewarding cycle is set up for those who pollute as producers and consumers with nothing for victims except to the extent that ruling politicians may care in their own interest of votes conservation and/or international image. The result: deep and grievous pollution inequality. The Supreme Court's declarations of fundamental rights to clean environment, health, medicines and a life of dignity remain abstract paper. The question is why is this so? The pollution economy so set up, rewards the producer and the ruling politician and creates health cum medicare cum risk insurance jobs. It rewards the large consumer waste disposer similarly and creates a whole class of a new profession: consumption influencers on all kinds of media.

### 11. RULING POLITICIAN'S CONTROL

The legal answer is that the Constitution and the laws thereunder give complete control over the production to pollution process and economy to the ruling politician with no accountability whatsoever to the citizens in the territorial constituency/ies from which they have been elected on the votes of these citizens, to the constitutional institutions of panchayats, municipalities, State assemblies and Parliament.

### 12. ART. 253 & THE RULING POLITICIAN

This applies especially to those elected to the Lok Sabha and then vaulted to cabinet Ministers, vice president and president. This is so because as such position holders in the national government and in Parliament, after participating in international conferences on environment, have used Art. 253 of the Constitution to make Central laws for the whole of India for the entire economy of industry, agriculture and services, to implement the decisions of these international conferences/agreements. This has been done regardless of whether the subjects legally sought to be controlled from the Centre in the name of pollution control have been allotted by the

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46. *M C Mehta v Union of India* (1987) 1 SCC 395 (*Shriram Oleum Gas Leak case*) and *Union Carbide Corp'n v Union of India* (1991) 4 SCC 584 : AIR 1992 SC 248.

Constitution, exclusively to the State Government politicians. Accordingly, three key laws have been enacted by the ruling politicians of the Central Government or the Union of India: The Water (Prevention & Control of Pollution) Act, 1974, the Air (Prevention & Control of Pollution) Act, 1981 and the Environment Protection Act, 1986.

### 13. BASIC MESSAGE

The basic legal message of these Acts to producers and consumers is that both producers and consumers can pollute as much as they want, since it helps the economy and government revenue to grow. If the pollution beyond the prescribed limits becomes an issue then the ruling politicians legally control the production chain under the Constitution and the implementation of the Water, Air and Environment Protection Acts. The Constitution of India entrusts the country's resources<sup>47</sup> to ruling politicians. These politicians govern by legislative and executive powers,<sup>48</sup> the country (its States and the States' panchayats/rural areas and municipalities/urban areas, through the constitutional institutions of governance the Central Government (Union of India) and Parliament, State Government and Legislative Assemblies, municipalities and panchayats. They become governing or ruling politicians of the human, natural and other resources, on the basis of the majority obtained in one person one vote (adult suffrage) elections in defined territorial constituencies and the continuance of this majority in Parliament, Assemblies, municipalities and panchayats.

### 14. RULE OF LAW NETWORK

The governance or ruling over resources is done by using this majority to design, enact and implement the laws on the resources/subjects, assigned by the Constitution to each of these institutions of governance. The entrustment becomes subject to the procedures in these laws to be executed by the Central and State administrative services prescribed by the Constitution as All India and State services.<sup>49</sup>

Hence it is through this rule of law network that the ruling politicians govern the capturing and use of these entrusted resources for the production

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47. sch 7 Lists I-III.

48. arts 107, 109, 31-C, 74-75, 245-250, 253, 364, 73, 77 (1) & (3), 256, 237, 339(2), 298, 299, 19(6)(i), (ii), 265 & 274, 244(1) & Vth 305, 301-304, 307, 365, 366(6), 279-A, 366(20), 366(12) & (12-A), 246-A, 247, 248, 292, 285-287, 288, 300, 282-284, 300-A, 31-A, 31-B.

49. Constitution of India, Part XIV.

of goods and services demanded by consumers at various stages in the agriculture, industry and services sectors. The ruling politician through these laws governs the establishment and running of the production, distribution and sale economy through formal and informal contracts entered into between individuals, producers, sellers and consumers as proprietors/persons, association of persons, partnerships, cooperatives, companies.

The money required and generated by this political economy of ruling politicians and their administrators is provided by ruling politicians through laws enacted, amended and implemented by them as laws of contracts, transfer of property, money lending, banking, export import, foreign exchange, bullion, shares, debentures, government lending and borrowing through grants, schemes, treasury bonds, commercial paper, dividends, risks insurance saving schemes, direct and indirect taxes. The ruling politician finances his government and himself, the institutions of governance and what he governs through the governing power given to him by these laws. The minimum prescribed equipment<sup>50</sup> and process for treating and releasing the polluted air and water of production may be there, but it may or may not function, depending on the expense of the energy consumed by these. This creates pollution arbitrage and harms the level playing field of competing goods and services. Monetary wisdom requires that this arbitrage be worked collectively by the producers and consumers. These Acts do not make any of the relevant Ministers or Secretaries liable even for continued gross violation of these laws resulting in a significant scale of victims of pollution. Generally, the victims do not even know what is it that has made them ill or caused their death.<sup>51</sup>

None of the ruling politicians, demand pollution be treated as a continuing health threat, as they constitute the top percentile of pollution inequality, protected as they are from the harshest effects of pollution at the cost of the State or the public, making it unnecessary for them to invoke the Supreme Court created fundamental rights to a life of dignity, clean environment and medi-care. In any event, the National Disaster Management Authority Act puts announcement and management of disasters under the control

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50. The law provides for bank loans for pollution control equipment and provides income tax exemption for the business concerned on the expense for such equipment.

51. Manual Scavengers keep on dying in sewers despite the Prohibition of Employment of Manual Scavengers and Rehabilitation Act 2013. According to the National Commission of Safai Karamcharis there are 12 lac manual scavengers in India. However, the official figure is half of this at 6,76,009.

of the ruling politicians. Further the ruling politicians at the Centre take charge of court cases on behalf of the victims under the Supreme Court declared doctrine of *parens patriae*.<sup>52</sup>

### 15. KEEP THE CONSUMER IGNORANT

In the chain of consumer demand – production -pollution, the consumer is the king that triggers the entire economic cycle. Yet the consumer figures nowhere in the anti-pollution Acts which completely ignore the consumer and make the ruling politician the king of the pollution produced from production only on demand of goods and services by the consumer. These Acts are: Water (Prevention and Control of Pollution) Act, 1974, Air (Prevention and Control of Pollution Act, 1981 and the Environment (Protection) Act, 1986. Pollution in the manufacture of goods and services in the country's agriculture, industry and services sectors is not linked to the consumer under The Consumer Protection Act, 2019. It is also not linked to the major consumption areas of citizens: food under the Food Safety and Standards Act, 2006,

In any event the language in these Acts and the pollution control Acts is that of chemistry, beyond the understanding of even the average educated consumer. Hence consumer does not know whether by creating demand by spending his -her money and thereby the production of these goods and services, how much pollution s/he is creating through their own money.

Nothing in health law links pollution to health although "prevention" of pollution as per the water and air quality standards laid down for the industries/activities mentioned in the Water & Air Acts and in Schedule I of the Environment Act or its Rules.

Prevention of Pollution is based on the powers of location of industries, consent for production, based on installation and certification of the pollution control equipment by the authorities is without any public information, hearing or participation of those likely to be directly affected by an industry in or near the area where they live or of mandatory public information of the performance of the pollution control equipment. This is despite pollution being defined in the Water Act as harmful or injurious to public health/safety, to legitimate uses of water and the life/health of animals, plants or of aquatic organisms.

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52. *Charan Lal Sahu v Union of India* (1990) 1 SCC 613 and *Union Carbide Corpn v Union of India* (1991) 4 SCC 584 : AIR 1992 SC 248.

The same is the legal situation under the Air Act in its definition of “air pollutant”. The Air Act, in para 4 of the Statement of Objects and Reasons speaks of an “integrated approach” after referring to health in para 2 and “preservation of quality of air.” But the provisions of the Act do not make the final consumer or the home/livelihood place of the innocent citizen, using the air of an industry in the air corridor connecting the industry and the citizen, an inherent vitally affected party entitled to know about the pollution s/he is likely to consume and is actually consuming. There is no provision for a product-pollution index to let each consumer know that the product being bought by him/her is the result of how much pollution.

#### **16. POLLUTION INDEX CERTIFICATE**

None of the three environment Acts mandate that products offered to consumers must have a Pollution Index Certificate from an authority specifically charged to certify the pollution place in terms of its effluents and toxic air and water/air used, as compared to the ambient air quality and water quality of the air pollution control area and the water pollution control area, where the production unit has been allowed to be located. The data on water and air would be easily available from the annual environment statement in Form V under Rule 14 of the EP Act for the production units for which consent of the Pollution Control Board is mandatory. Industry, parameters and standards of concentration<sup>53</sup> of the pollutant in the water or in the air are given in Schedule I of the EP Act for specific industries.

#### **17. NO CONSTITUENCY WISE DATA**

However, this mandatory data from specific industries is not required by the Act to be made public constituency wise. The data should be sent to the Public Relations/Media officer, the Social Welfare officer and the Health Officer of the Area with a direction to ensure that the same be put out in the public domain in simple local/vernacular language explaining the implication of the data in relation to health. In the absence of this the vital link between the elected politician in a constituency who participated in the enactment of the law for the “prevention, abatement and control” of pollution is lost, even though he participated on behalf of the voters in the constituency. The three environment Acts do not provide for such accountability of the elected representative.

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53. EP Act 1986, s 7.

### **18. PARALLEL ECONOMY**

This rule of law political economy of producing and supplying what is demanded produces tangible and intangible waste of various kinds using the common inputs of air water, land, skilled and unskilled humans, as well as manufacture of energy from these common inputs. The nature and extent of this waste of this political economy determines the harm to the rule of law political economy, The ruling politician counters the intangible but visible waste of corruption by enacting anti defection, vigilance , anti-corruption, money laundering and tax evasion laws to curb the visible demonstration effect of the life styles of ruling politicians, administrators , producers, distributors and sellers earning from the parallel political economy established by using their respective power in the political economy, The success or failure of these laws determines the harm done to the political economy or in legal language, to the constitutional preambular justice---- social, economic and political. The Constitution and the laws do not hold the ruling politician accountable for the design and enforcement failure of laws that are designed to fail by ignoring the necessary provisions of information to the citizens in the defined territorial constituencies, of the manufacture and implementation of the political economy laws, the nature and duration of the pollution cases pending against them as also those disposed of.

### **19. CONCLUSION**

There is an urgent need for thought leadership on the contents of the rule of law in a representative democracy for environment protection instead of mere pollution protection. Representative democracy is meaningful only to the extent that the representatives are accountable for an environment that sustains life of all citizens.