



Courts on Polluting Industries

PATANCHERU & BOLLARAM INDUSTRIAL AREA

Did the Polluter Pay?

Esha Rana

CASE BRIEF

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December 2020

vidhilegalpolicy.in

This case brief is an independent, non-commissioned piece of work by the Vidhi Centre for Legal Policy, an independent think-tank doing legal research to help make better laws and improve governance for public good.



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Suggested Citation

Rana E, 'Courts on Polluting Industries- Patancheru & Bollaram Industrial Area: Did the Polluter Pay?', Vidhi Centre for Legal Policy, December 2020

The Supreme Court of India has a stellar track record on environmental protection. It is credited with taking important steps to clean Delhi's air, protecting the Taj Mahal from industrial pollution, preserving forests and halting polluting activities in the Ganga. However, the life of environmental law exists beyond the courtroom and case books. While the recognition of important environmental principles as part of the law of the land is the first step towards environmental protection, we would be failing in our duty as environmental lawyers, activists and academics if we did not scrutinise the practical implementation of these principles. We must examine whether there is compliance with the Court's orders and directions, and if not, identify and address the reasons for this.

With this objective, the Vidhi Centre for Legal Policy has been tracking the implementation of five landmark judgments of the Supreme Court of India and the National Green Tribunal ("NGT") on environmental protection. These judgments span different geographical areas-the rivers of Uttarakhand, industrial areas in Telangana, rhinoceros' territory in Assam, and toxic air and landfills in Delhi. They also span different environmental issues-ecological threats posed by dams, efficacy of effluent treatment plants, wildlife conservation, air pollution, and waste management. Through a combination of field research, judgment analysis and

interviews with petitioners, lawyers and other stakeholders, Vidhi has produced a set of five case briefs that provide a comprehensive overview of each of these judgments and their implementation on the ground. These briefs provide the legal background for each case, present the key facts, summarise the major orders and directions of the Supreme Court and NGT, and discuss the degree of success with which these have been implemented.

In focus in this case brief, is the long drawn legal battle spanning 30 years and concerning pollution beginning in the 1970s by nearly 200 chemical and pharmaceutical industries in the Patancheru and Bollaram Industrial Development area, in Medak District, Telangana. The legal claim revolved around the discharge of unscientific waste in the Nakkavagu stream, contamination of drinking water and ground water, and the consequent compensation to locals living in the area for harm to their health and livelihoods. This brief explores the use of the polluter pays principle to hold the industries accountable, and examines why justice has been delayed for so long.

Acknowledgments

The author would like to thank Advocate M.C. Mehta, Late K. Chidambaram, Advocate P. Niroop Reddy, Dr Narasimha Donthi Reddy, Dr Kishan Rao, Shilpa Rao, Dr K. Purushottam Reddy, Dr. Vijay Gudavarthy, Dr Lubna Sarwath, Batte Shankar, Dr Babu Rao, Advocate Katyani, Advocate Tanvi Suresh, Advocate Srinidhi Srinivasan, and Capt. Rama Rao for providing us insights into the background and history of the NGT's Kasala Malla Reddy judgement on industrial pollution plaguing Patancheru and Bollaram industrial areas in Telengana. We would also like to thank residents of the villages in both industrial areas, especially Ashwaq, Gautam, Prabhakar, Srisailam, Pradeep, and Rajkumar, for showing us the polluted sites, and helping us understand the ground realities. Without all of their insights, and without the patient editing by Dr Dhvani Mehta, this case-brief could not have materialized. The author is also thankful to her colleagues Shyama Kuriakose, Yogini Oke and Debadityo Sinha for their inputs and help.

Vidhi would like to thank Tata Education and Development Trusts and Universal Comfort Products Limited for supporting the work.

The case of Patancheru & Bollaram

Pharmaceutical Pollution and its Impact in India

India is one of the world's leading suppliers of generic drugs, accounting for 20% of global exports in terms of volume.¹ However, due to the economic benefits of this industry, the negative impacts of the production of pharmaceutical products on the environment are overlooked. In India, the discharge of pollutants from pharmaceutical industries remains largely unregulated, with extremely toxic impacts on the human and animal population. Pharmaceutical pollution enters the environment at various stages during production. Another key concern is the discharge of antibiotics into the environment, promoting the development of antibiotic-resistant pathogens.² The pharmaceutical industry in India is highly fragmented, with more than 20,000 manufacturing units.³ It is also geographically dispersed: production takes place in multiple locations across the country, with the states of Maharashtra, Gujarat, Telangana, Andhra Pradesh, West Bengal and Tamil Nadu all registering a sizeable manufacturing and processing presence.⁴ Telangana, amongst all these

states, is responsible for close to 40% of the total bulk drug production.⁵

Relevance of Patancheru and Bollaram Industrial Areas to Pharma Pollution

Patancheru and Bollaram Industrial Development Areas (“IDA”) located in the outskirts of Hyderabad city were set up pursuant to the Industrial Policy Resolution Act 1948. A large number of industrial units came up in these IDAs between 1975 and 1983, especially on the banks of the Nakkavagu, a tributary of the river Manjira. These chemical units, directly or indirectly discharge their effluents into the Nakkavagu River. These discharged effluents seep into the river Manjira as a consequence. The dumping of these effluents has had dire environmental consequences, such as;

- Severe water contamination by virtue of the unscientific discharge, polluting the potable water, making it unfit to drink;
- The death of livestock in the area due to the ill-effects of the contaminated water; and
- Genetic deformities in people living in



The polluted waters travel downstream all the way into Edulabad which is 72 kms away from Patancheru and Bollaram. Edulabad is primarily an agricultural belt which uses water from River Musi to irrigate its produce.

close proximity to the Patancheru-Bollaram industrial cluster as a result of pollutants emanating from this industrial area.⁶

Effluent treatment plants that were set up to address this pollution are far from satisfactory. The treatment has not been proper and scientific and consequently, effluents continued to be pumped into the Nakkavagu. However, following the approval of a Joint Action Plan (“JAP”) by the Central Pollution Control Board (“CPCB”) and the Telangana State Pollution Control Board (“TSPCB”) in 1998, the water quality is said to have improved.

The industries in this area also include paper and cellulose manufacturing units. However, more than 200 pharmaceutical industries manufacturing bulk drugs for international markets operate in these industrial areas. This pharmaceutical industry cluster, has caused severe pollution causing it to be designated a *Critically Polluted Area*. The issue of pollution caused by these industrial clusters has been raised time and again by several petitions in various forums. Courts have passed several orders and judgements in this regard.⁷ Through desk-based review and field interactions, we attempted to find out the extent to which these court orders have been implemented and the reasons for successes and failures if any.

Factual Matrix of the Case

This issue has a chequered judicial history from 1989, with orders having been passed by the Supreme Court (“SC”), the Andhra Pradesh High Court (“APHC”) and the National Green Tribunal (“NGT”). Despite public protests and several judgements, the actions of the Central and State Governments and the TSPCB have fallen short in ensuring that these orders and

judgements are appropriately implemented. Violations by polluting industries have continued.

This case began when Advocate C. Pratap Reddy from Sangareddy addressed a letter dated December 8, 1989 to the Hon’ble Chief Justice of India regarding the plight of the villages residing in and around the IDA, for the previous 10 years.⁸ The letter kickstarted the legal battle and was filed as Writ Petition Civil (“WPC”) 1675 of 1990 in the APHC.⁹ The petitions pertaining to the issues of pollution in the IDA continued to pile up, with the petitioners including Dr Kishan Rao, a medical practitioner, residents of Patancheru and Prof. T. Sivaji Rao, an academic, joining in the battle. Notably, pursuant to Supreme Court interventions, there was even a ban notification dated October 14, 1996 issued by the State Government preventing the establishment or expansion of bulk drug manufacturing units in the industrial area. . See Annexure (Table 1) for the judicial history.

The most recent case in this matter, *Kasala Malla Reddy and Others vs. State of Andhra Pradesh* was adjudicated in the NGT on October 24, 2017. This judgement was a culmination of all the previously litigated issues. Some of the issues raised are described in more detail in the next sections.

Ensuring Disbursement of Compensation

In WPC 1675 of 1990, an Anti-Pollution Committee was formulated in 1989. This committee observed a loss amounting to Rs. 1,326 Crores for damage caused to agricultural land and the livelihood of the farmers living in and around the area.¹⁰ However, in its final order dated April 10, 1990, the High Court did not acknowledge

the issue of compensation. This was followed by a case in the SC, *Indian Council for Enviro Legal Action (“ICELA”) v. Union of India* [WPC 1056 of 1990] highlighting the same issues of industrial pollution and its impacts on the villages in and around the industrial area. In this case, the SC directed the State Government to deposit an amount of Rs. 28,34,000/- as the losses suffered by 10 villages. These villages included: Inole, Chitkul, Lakadaram, Ganapathigudem, Pocharam, Peddakanjarla, Bachugudam of Patancheru Mandal and Arutla, Chidruppa and Byathola of Sangareddy Mandal. Additionally, the APHC was to direct the concerned District Judge to prepare a Report based on which an assessment would be made to ascertain the farmers entitled to compensation, and to determine the amount of loss to be compensated. This report was to be submitted to the SC.

Post these judgments, compensation as an issue was neither discussed nor implemented. It was only 26 years later in the Kasala Malla Reddy case in the NGT that the issue of compensation was addressed. In its judgement dated October 24, 2017,¹¹ the NGT directed the

“State government to compensate people for a period from 1986-1987 to 2001-2002 at the rate of Rs 1,000 per acre (0.4 hectares) per annum in case of dry land and Rs 1,700 per acre per annum in case of wet agricultural land.”

It should be noted though, that this value of compensation is nowhere close to the assessed amount stipulated by the Anti - Pollution Committee in 1989.

Setting up of Common Effluent Treatment Plant (“CETP”)

When the industries were first set up, industrial effluents were being discharged outside their premises, which ultimately ended up as a pool of waste water or joined the natural water course. Highly toxic effluents were discharged by hazardous industries in and around the Patancheru and Bollaram Area, which in turn created havoc in the lives of people, their cattle, crops, wells, and drinking and irrigation water sources. Public protests and campaigns regarding this widespread pollution prompted the installation of a CETP in 1994.

The continued discharge of toxic effluents into inland streams was first addressed in *ICELA v. Union of India* [WPC 1056 of 1990]. The SC directed the Andhra Pradesh State Pollution Control Board (“**APSPCB**”) to furnish a list of industries which were still not members of the CETP and to ascertain whether effluents discharged by them met norms of safety discharge as prescribed by the CPCB.¹²

Each industry was to provide the necessary pre-treatment to the waste waters in their own premises, after which the waste waters would be let out into sewers. This pre-treated waste water from all the industries was to be brought to the CETP by a sewerage system. In the combined waste water treatment plant, the waste water was to be treated to meet the dischargeable standards for inland streams. Unfortunately, these pre-treatment processes were not followed by the industries and untreated discharge of the effluents continued to seep into inland streams, in this case, the Nakkavagu. This

discharge, which is highly toxic, eventually reached the Musi River. This issue has time and again appeared in the legal history of the Patancheru Bollaram Area. One of the main reasons for the same is the lack of implementation of important orders stipulated by Courts. The SC further directed the APSPCB to close down the industries that were not sending effluents to the CETP.

Following this judgement, the CPCB and APSPCB furnished the JAP that was submitted on May 6, 1998. This Action Plan categorised three measures; immediate, medium and long-term. This JAP also stipulated certain important measures pertaining to the CETP:

- i) The State Government should declare the ban notification dated October 14, 1996 as permanent for new industries after the expiry of the notification in December 1998.
- ii) When the CETP receives effluent exceeding the norms, penal action shall be taken.
- iii) The State Government shall ensure the commissioning of the Secondary Treatment Systems in the large industries of Patancheru and Bollaram Industrial Development Area.
- iv) It shall be ensured that the work involving pipes for laying sewerage systems of the CETPs, both upstream

and downstream, is initiated at the earliest.

- v) The non-member industries that have no effluent treatment plants shall become members of the Patancheru CETP and must adhere with all norms stated in the Action Plan.
- vi) The State Government and the industries shall ensure the commencement of work on sewerage network and discharge of effluents into this network.
- vii) An Action Plan for cleaning of River Musi may be prepared by the National River Conservation Directorate under the National River Action Plan.

Amongst the various measures stipulated by the JAP along with the Supreme Court judgement, one can notice partial implementation of these measures. One such measure that was strictly implemented was the moratorium on expansion of the Industrial Area and setting up of new industries. However, the measures pertaining to the CETP were not implemented, which led to the CPCB 2009-2010 report declaring the Patancheru Industrial Area as a '*critically polluted area*' based on the Comprehensive Environmental Pollution Index ("**CEPI**") scoring.

Additionally, on October 26, 2010, the Ministry of Environment, Forest and



Effluents were found seeping from inside the industrial premises into the nearby lake called Ayyamma Cheruvu in Gaddapotharam Village, Bollaram Industrial



This water body located behind a drug manufacturing unit at Borpatla. We found outlets located on the boundary walls of this unit.

Climate Change (“MoEFCC”) lifted the moratorium allowing projects that require Environmental Clearance in the Patancheru-Bollaram areas. The issue of CETP was not brought forth again until the NGT Kasala Malla Reddy case. The NGT in its judgment dated October 24, 2017¹³ directed:

“... the closure of the existing industrial units in Patancheru and Bollaram that refuse to have their primary effluent treatment system inside the unit, whether they are members of Central Effluent Treatment Plant or not and the same has to be scrupulously enforced by the Regulatory Authority...”

Ensuring Zero-Waste Discharge

Following the ICELA case, Supreme Court banned the establishment or expansion of bulk drug manufacturing units in the estate in 1997. To improve the quality of surface and groundwater, it ordered the pollution control authorities to channelize effluents from the CETP to the mega sewage

treatment plant (“STP”) at Amberpet through an 18-km pipeline so that industrial effluents could be diluted by mixing with sewage. It also asked the industries to ensure zero liquid discharge (“ZLD”), which means that they would have to treat the wastewater and reuse it within their premises.

Since these industries discharge effluents with different chemical compositions, to ensure ZLD, they need to employ different technologies. For treating effluents with high level of total dissolved solids (“TDS”), the industry has to install a multi-effect evaporator (“MEF”) and agitated thin film dryer (“ATFD”), whereas low-TDS effluents are treated at the biological treatment plant and reverse osmosis (“RO”) plants. The industries further recycle the RO permeates and send the rejects to MEF and ATFD for further treatment. But employing such technologies turns out to be expensive for plants that generate a smaller volume of low-TDS effluents. This prompted the industries to violate the ZLD

policy and clandestinely send their low-TDS effluents to the CETP.

In fact, the 18-km pipeline meant to shift wastewater from the Patancheru CETP to the Amberpet STP has not been effectively serving its purpose. The wastewater from the CETP has merely transferred the intensity of the pollution from the Nakkavagu to the Musi River. Additionally, the Amberpet STP is also ill-equipped to treat pharmaceutical effluents with different chemical compositions. Due to this, untreated effluents are directly discharged into the river.

Availability of Drinking Water

The provision of drinking water has been another contested issue, with the Court's direction having been only partially implemented. This issue was first raised in the APHC in *C. Pratap Reddy v. Chief Secretary Andhra Pradesh* (WPC 1975 of 1990). The APHC's interim order dated April 10, 1990, directed that:

"the District Collector, Medak was directed to take immediate steps to supply drinking water to the residents of the Villages."

Following this order, on September 21, 2007, the State Government via G.O. No. 87 directed all 113 industries of M/s Patancheru Enviro Tech Limited ("PETL") to pay for the supply of drinking water to the affected villages in Medak District.

However, due to these regulatory agencies slacking when it comes to implementation of the APHC order, 25 years later, this issue was reiterated in the Kasala Malla Reddy case, wherein the NGT¹⁴ directed:

"State Governments to supply drinking water to the affected villages, paid by the polluting industries."

Implementation of Court Orders

During our field-visit, we had the opportunity to interact with Dr Kishan Rao, Dr Gudavarthy Vijay and Dr Purushottam Reddy, experts in the area of industrial pollution, all of whom have been active participants in the long legal history of the Patancheru Industrial Area. It is due to regular follow-ups by these experts, along with the support of local and national agencies that there has been some successful implementation of various court orders and judgments, such as the moratorium on the establishment of new industries. However, during our field visits, we observed non-implementation of court orders and judgments, despite these issues being raised time and time again over the span of the last 30 years.

Here are some observations from our field visits to Patancheru between November 9, 2019 and November 13, 2019 as well as our Right to Information ("RTI") requests to TSPCB:

I. NGT in its order dated November 14, 2019 examined 43 industrial clusters in 16 states identified as Critically Polluted Areas (CPAs) and enquired about plans prepared by the SPCB and CPCB with regard to these areas. The NGT directed the SPCBs/Committees to submit action plans with regard to the identified polluted industrial clusters to restore environmental quality in accordance with norms.

As a follow up to this order, the TSPCB, devised action plans for 3 highly polluted regions, namely, Patancheru-Bollaram Area, Kukatpally and Kattendan.

II. In the 2017 NGT Judgement, the Tribunal ordered the State Government

to establish a Government Super Speciality Hospital with adequate medical facilities to treat all sorts of occupational diseases for which the industrial establishments situated in the industrial hub shall contribute 75% of the total cost and the remaining amount will be contributed by the State Government.

In reply to our RTI Application dated December 30, 2019 addressed to the Public Information Officer, TSPCB, a 100 bedded Area Hospital operating in Patancheru Area is already operational. As per the last meeting held by the Chairman of TSPCB in 2018, a decision was made to convert the 100 bedded hospital and upgrade it with all Speciality Departments and with necessary infrastructure.

- III. Another direction in the 2017 NGT Judgment required the State Government to provide drinking water to the affected villages.

In response to our RTI, as of November 2019 the State Government has been providing water to 20 villages stipulated in the NGT Judgment. Drinking water is being supplied by the Rural Water Supply (RWS) Division under the Comprehensive Protected Water Supply Scheme, free of cost.



See Annexure (Table 2) for a more detailed status of the implementation of court orders.

However, more than the successes, there are many ongoing challenges which act as a hurdle towards complete implementation. These are as follows:

- I. The victims of the rampant industrial pollution in the Patancheru Industrial Area have been demanding compensation for the past 30 years. This, however, has not materialised due to the lackadaisical attitude of implementing agencies and regulatory bodies. Dr Kishan Rao, in his interview elaborated on this, stating that the legal battle that has lasted for approximately 30 years now, has given a lifeline to the polluters rather than the people affected by this pollution.
- II. The very understanding of the PPP is twofold; first, to act as a deterrent and prevent industries from polluting any further and second, to ensure fair compensation has been provided to the affected parties. However, since the quantification of damages was in terms of agricultural land, only those parties that have land-dependent livelihoods were granted compensation, but those parties whose livelihood was water-dependent are yet to be compensated.

It is alleged that industries are pumping their effluents into the grounds which has led to flooding of the water table, causing toxic effluents to seep through the surface and damaging vegetation on these lands. Surface flooding was seen near many parts of the Gaddapotharam Village, Bollaram Industrial Area.

Dr Gudavarthy Vijay, also elaborated on the partial implementation of orders pertaining to compensation, stating that some of the compensation directed by the courts has been granted to the affected parties. However, some of the compensation has been given through court settlements, where the affected parties have been made to sign a Memorandum of Understanding (“MoU”). These MoUs apportioned very meagre compensation amounts to parties as they were not required to follow the compensation rate directed by the Courts. Additionally, we discovered through the RTI response to our query that the disbursement of only Crop Compensation has been done by the Revenue Department. The remaining is yet to be received by the affected parties.

III. Despite there being schemes in place for the provision of drinking water to the affected villages, Dr Kishan Rao, during his interview, elaborated on how the water supply that is provided to these affected areas is only drinking water and there is not enough water supply for sustaining the villagers as well as their cattle.

IV. The 2017 NGT judgment is a culmination of all the previous judgements and orders pertaining to the Patancheru Bollaram Industrial Area by the High Court, Supreme Court and NGT starting from the 1990s. It is sobering to observe that even after 25 years, the judiciary continues to pass the

same orders related to compensation, drinking water, discharge of effluents, etc. Our interactions have highlighted a lack of pro-activeness amongst regulatory agencies, despite being questioned time and again by the courts regarding poor implementation. The colour of the Nakkavagu remains unchanged, and there is clear evidence of toxic discharge and seepage into natural water bodies.

V. The reliance on CETP by the Courts, was first raised in the Supreme Court in 1992. The effectiveness of this CETP has to be questioned after nearly 15 years of its introduction. The level of pollution continues to be the same. Even the solution of constructing an 18 km pipeline connecting the Patancheru CETP to the Amberpet STP has failed because of a lack of investment in better technology to ensure proper disposal, and extremely toxic discharge is now being disposed into the Musi River. This is in spite of the NGT’s direction to all the companies to attain ZLD status. It is clear that this ZLD status has not been achieved.

Understanding the Polluter Pays Principle

Origin of the Polluter Pays Principle (PPP)

The PPP was first mentioned in the recommendation of the Organisation for Economic Co-operation and Development's ("OECD") Guiding Principles concerning International Economic Aspects of Environmental Policies.¹⁵ The OECD defines¹⁶ the principle as follows:

"the polluter should bear the cost of measures to reduce pollution according to the extent of either the damage done to society or the exceeding of acceptable level (standard) of pollution."

This principle was finally introduced in the 1992 UN Conference on Environment and Development ("**Rio Declaration**")¹⁷ where it was expressed as

"National authorities should endeavour to promote the internalisation of environmental costs and the use of economic instruments, taking into account the approach that the polluter should, in principle, bear the cost of pollution, with due regard to the public interest and without distorting international trade and investment."

Introduction of the PPP in Indian Environmental Jurisprudence

The PPP was first established in *ICELA v. Union of India ("Bichhri")*.¹⁸ In Bichhri, the Supreme Court for the first time placed the burden on the offending industry to repair the damages caused. This case went a step ahead in the interpretation of this principle by incorporating it as a general legal principle in environmental law rather than

an international law principle. This principle was later specifically evoked in the case *Vellore Citizens Welfare Forum v. Union of India*.¹⁹ This case dealt with the pollution caused by the discharge of effluents into the river Palar in Tamil Nadu, which polluted the surface and groundwater. The Supreme Court²⁰ elaborated on the PPP, stating:

"The absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of remedying environmental degradation...the polluter is liable to pay the cost to the individual sufferers as well as the cost of reversing damaged ecology."

The Court in this case interpreted this principle as part of the Constitutional mandate to protect and improve the environment.²¹ The PPP has now become a landmark principle that incorporates two aspects of environmental justice—compensation and restoration. Thus, application of this principle entails assigning liability to the polluter. Liability acts as a deterrent,²² holding the polluters responsible for the environmental damage and payment of compensation to the victims.²³

The liability principle in environmental jurisprudence has evolved from the strict liability principle to the principle of absolute liability. The strict liability principle was established in *Rylands vs. Fletcher*, where it is not required to prove that the polluter was at fault, in order to hold them responsible for the damage caused by their actions. However, the strict liability principle is subject to a number of exceptions. In Indian jurisprudence, the principle of absolute liability evolved in *M.C. Mehta v. Union of India ("Oleum Gas Leak")*.²⁴ This case dealt with the leakage of

oleum gas from a unit of Shriram Foods Fertiliser Industries. This transition seemed necessary at the time as India had just been through the Bhopal Gas tragedy a year prior. The Court thus wanted to incorporate a principle that would impose a heavy burden on the polluter and serves as a deterrent to other polluters.

The Vellore case further referring to the Oleum Case interpreted²⁵ the PPP as:

“...absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation...”

This interpretation further distorted the understanding of the principle, as it endorsed the absolute liability principle as an integral part of the PPP.²⁶ This interpretation goes beyond what was established in international environmental law, as it included compensation for the damage caused along with cost of remediation of environmental damage.

Challenges in implementing the principle in India

Due to the ambiguity in the interpretation of PPP and the heavy burden placed on this principle without any specification, it causes several challenges when it comes to implementation.

A. Problem in Quantification of Damages

One of the main concerns with the court's application of the PPP is the lack of a quantitative assessment. The NGT has time and again relied on guesswork when arriving at a compensation amount.²⁷ Another problem that arises with this is the lack of a rationale when assigning a penalty amount. The aim of the PPP is to act as a

deterrent and prevent any further environmental degradation. However, in several cases, the penalty amount is insignificant when compared to the polluting industries' overall turnover. Due to this lack of clarity in the methodology when quantifying damages, the polluter ends up paying a meagre amount for environmental restoration.

B. No transparency in processing/ disbursement of compensation

The PPP holds the polluter liable for payment of damages. This entails ensuring assessment of the loss, determining the amount of compensation and a procedure to ensure the recovery of the same from the polluter.²⁸ However, given a high degree of scientific uncertainty in pollution cases and lack of technical expertise, the judiciary in India lacks the competence to quantify the loss adequately. Thus, in order to assess the damage caused, courts in India appoint committees or employ existing institutions and committees to quantify and ensure disbursement of compensation to the victims of pollution. In several cases, the Pollution Control Boards are assigned the responsibility to constitute expert committees to resolve matters based on which the compensation is to be assigned. However, there is a lack of transparency in terms of the quantification of the amount and the process for disbursement of the compensation. Thus, many times, there is no way of tracking if all the victims have received the amount due, unless the issue of compensation is raised again in Courts due to non-implementation.

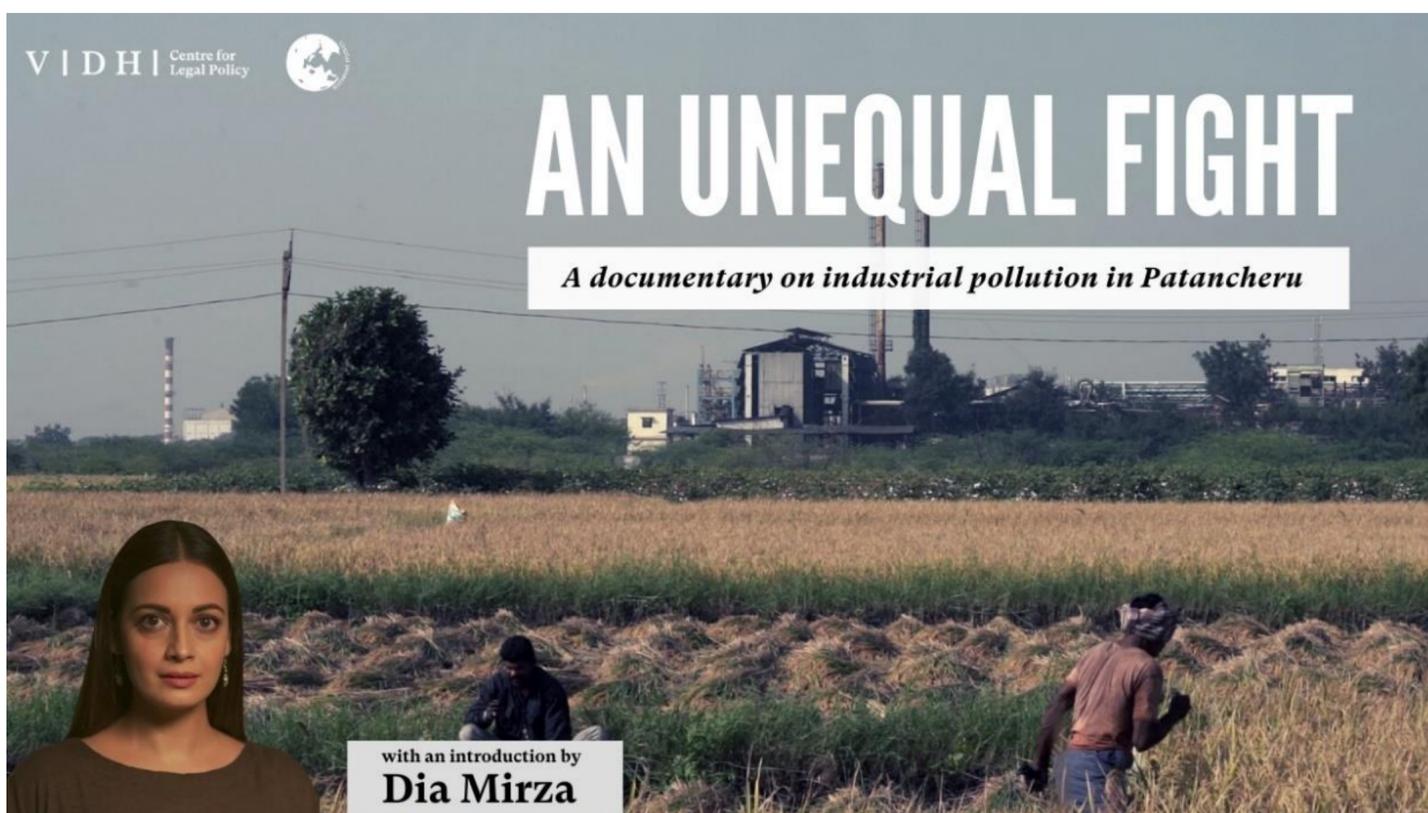
Conclusion

This case brief which highlights judicial intervention in the Patancheru-Bollaram Industrial Area, is especially important in understanding how competing interests of different kinds of stakeholders, be it pharmaceutical companies, local communities or regulatory bodies, have not been balanced. The last 30 years have just given a lifeline to these pharmaceutical industries to continue their activities undeterred, rather than provide relief to the locals and people affected by this pollution. The PPP, rather than acting as a deterrent to prevent further pollution, has just added a price to continue polluting activities.

Filing of petitions by people in various forums over such a long period of time had a profound effect on keeping the issue alive in public consciousness. This had put the pressure on regulatory agencies and forced

them to respond. Decision on the moratorium on new industries, establishment of the super-speciality hospital and provision of drinking water can be considered as some of the successful outcomes of the continuous follow up by the litigants.

However, the number of failures surpasses the successes in this case. Our field visits and interviews with experts and petitioners highlighted that some of the measures provided by courts are yet to be implemented. Reasons for non-implementation can be identified as lack of funds/waiting for budgetary allocation, weak infrastructure, ambiguity regarding the authority in charge, lack of pro-activeness from regulatory agencies, etc. In the meantime, pollution continues unabated and the people of the region continue to suffer without an end in sight.



An Unequal Fight is a film produced by Vidhi Centre for Legal Policy which tracks the implementation of the court orders for restoration of environment in Patancheru & Bollaram area. It is part of five films produced in association with Riverbank Studios on the implementation of environmental judgments.

Bibliography

1. Changing Market and Ecostorm, 'Impacts of Pharmaceutical Pollution on Communities and Environment in India' (Nordea Asset Management, 2016) <<https://www.nordea.com/Images/35-107206/impacts%201-20.pdf>> accessed 13 November 2019
2. Allie Nawrat, 'Pharma and the Environment Pollution continues despite Public Pressure' (Pharmaceutical Technology, 2 October 2018), <<https://www.pharmaceutical-technology.com/features/pharma-and-the-environment-pollution-trend/>> accessed 13 November 2019
3. n 1.
4. n 1.
5. Srinivas M., 'Telangana proving its worth as bulk drug capital', (Telangana Today, 12 April 2020), <<https://telanganatoday.com/telangana-proving-its-worth-as-bulk-drug-capital>> accessed 15 April 2020
6. V. Nilesh, 'Patancheru- Bollaram pollution causing genetic deformities' (New Indian Express, 10 January 2019) <<https://www.newindianexpress.com/states/telangana/2019/jan/10/patancheru-bollaram-pollution-causing-genetic-deformities-1923129.html>> accessed 17 November 2019
7. n 1.
8. Kasala Malla Reddy v. Union of India [24 October 2017] O.A. 69/2013 (National Green Tribunal)
9. *ibid.*
10. n 8, p. 180.
11. n 8, p. 244.
12. n 8.
13. n 8.
14. n 8.
15. Organisation of Economic Co-operation and Development, Guiding Principles concerning International Economic Aspects of Environmental Policies (1972) <<https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-0102>> accessed 23 November 2019
16. United Nations, Glossary of Environment Statistics, (Studies in Methods Series F. No. 67, New York, 1997) <https://unstats.un.org/unsd/publication/seriesf/seriesf_67e.pdf> accessed 23 November 2019
17. Rio Declaration on Environment and Development 1992, Principle 18
18. Indian Council for Enviro-Legal Action v. Union of India [1996] (1996) 3 SCC 212 (Supreme Court)
19. Vellore Citizen Welfare Forum v. Union of India [1996] AIR 1996 SC 2715 (Supreme Court)
20. *ibid*
21. n 19.
22. n 19.
23. n 19.
24. M.C. Mehta v. Union of India [1987] AIR 1987 SC 965 (Supreme Court)
25. n 19, p. 12.
26. Geetanjoy Sahu, 'Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence' (2008) 4/1 Law, Environment and Development Journal <<http://www.lead-journal.org/content/08001.pdf>> accessed 23 November 2019
27. *Ibid*
28. Shibani Gosh, Indian Environmental Law: Key Concepts and Principles (Orient Black Swan, 2019)

Annexure

Table 1- Brief on the Judicial History of the Patancheru-Bollaram Industrial Developmental Area

S. No.	Date	Particulars
1.	1989	Letter from Adv. C. Pratap Reddy to the CJI complaining about the plight of thousands of villagers in and around Patancheru and Bollaram Industrial Area based on a report in the Telugu Daily "Eenadu", Medak edition dated 07.12.1989. CJI forwarded the letter to the APHC to be treated as a Writ Petition and APHC took it on as WPC 1975 of 1990.
2.	10.04.1990	Based on the Writ Petition filed, the APHC heard the case and passed the interim orders as follows: <ul style="list-style-type: none"> - A number of industries identified by APSPCB were categorised as red industries against which the Government has passed orders of closure. - The District Collector, Medak was directed to take immediate steps to supply drinking water to the residents of the Villages.
3.	1990	<i>ICELA v. Union of India & Ors.</i> WPC 1056 of 1990 filed in the Supreme Court.
4.	10.11.1995	The Supreme Court in <i>ICELA v. Union of India</i> , directed as follows: <ul style="list-style-type: none"> - State Government to deposit amount of Rs. 28,34,000/- minus the amount paid by industrialists with the APHC. APHC to direct the concerned District Judge to obtain a Report based on which an assessment was made, ascertain the farmers entitled to compensation, determine the amount of loss to be compensated and submit the report to the SC.
5.	09.01.1998	The Supreme Court in <i>ICELA v. Union of India</i> , directed as follows: <ul style="list-style-type: none"> - APSPCB to furnish a list of industries which are not members of M/s. PETL indicating whether effluents discharged by them meet norms of safe discharge as prescribed by CPCB. - APSPCB to furnish a list of industries which are not members of Bollaram Common Effluent Treatment Plant (BCETP) and take all steps permissible in law to make these industries comply with the prescribed norms. - APSPCB shall also give notice to all polluting industries in the area of Patancheru and Bollaram informing them that in case they do not comply with the norms for safe discharge of effluents or, in the case of member industries, with the norms prescribed by the CPCB for sending their effluent to the CETP on or before January 31, 1998, they are liable to be closed down. - PETL and its member industries to remove the sludge which is being dumped on the banks of the river and put it in secured landfills on or before January 31, 1998.
6.	05.05.1998	The Supreme Court in its order directed the CPCB and APPCB to jointly prepare a scheme of action for containing industrial pollution and disposal of industrial waste.
7.	06.05.1998	The JAP submitted by the CPCB and APPCB in furtherance of the Supreme Court order was categorised into three measures; immediate measure, medium measures and long term measures. Some of the important measures were: <ul style="list-style-type: none"> - The State Government to declare the Ban Notification dated October 14, 1996 as permanent for new industries after it's expiry in December 1998. - When the CETP receives effluent exceeding the norms, penal action

		<p>shall be taken.</p> <ul style="list-style-type: none"> - The State Government shall ensure the commissioning of the Secondary Treatment Systems in the large industries of Patancher and Bollaram Industrial Development Area. - Ensure initiation of plans for laying sewerage systems both upstream and downstream of the CETPs. - The State Government in consultation with SPCB and CPCB shall prepare conservation and management plans from Kristareddypet, Asanikunta and Kazipally cheruvus, which are most affected by toxic industrial discharge. The State Government to close all discharges of industrial effluents into these cheruvus. - The non-member industries that have no effluent treatment plant shall become members of the Patancheru CETP and must adhere with all norms stated in the Action Plan. - The State Government and the industries shall ensure the commencement of work on sewerage network and discharge of effluents. - An Action Plan for cleaning of River Musi may be prepared by the National River Conservation Directorate under the National River Action Plan.
8.	20.04.1999	G.O. No. 62 issued by the State Government banning establishment/ expansion of certain categories of polluting industries in Medak, Rangareddy, Mahboobnagr and Nalgonda District.
9.	07.03.2000	Order in <i>ICELA v. Union of India & Ors.</i> , the court expressed anguish at the delay in implementation of orders under this matter and continuance of the issue for more than a decade, directed the following: <i>"State Government to submit a report on what action has been taken so far by it in respect to the District Judge's report regarding compensation payable to affected persons and long term and short term actions to be taken to eliminate this pollution."</i>
10.	18.07.2000	Order in <i>ICELA v. Union of India</i> , wherein the Supreme Court highlighted the glaring lack of implementation and unabated pollution despite its continued monitoring. The important directions in this order was as follows: <ul style="list-style-type: none"> - APSPCB to see that the use of fresh water as far as possible should now be completely stopped. - The various stakeholders involved to put up their suggestions either jointly or separately about concretization of the plan of laying down for 18 km pipeline within a specified time.
11.	10.10.2001	The Supreme Court in <i>ICELA v. Union of India</i> , transferred the case to the APHC to ensure regular monitoring and implementation of these orders.
12.	21.09.2007	G.O. No. 87 superseding all notifications issued earlier imposed restrictions on establishment/expansion of various categories of industries in all Industrial Estates/Industrial Development Areas and other industrial areas and one km around these industrial areas in the District of Medak, Rangareddy, Mahaboobnagr and Nalgonda. Additionally, 113 industries of M/s PETL to pay for supply of drinking water to the affected villages in Medak District.
13.	2009	In the CPCB report 2009-2010 the Patancheru Industrial Estate was declared as a critically polluted area according to the CEPI scoring.
14.	26.10.2010	The MoEF&CC lifted the moratorium allowing projects for Environmental Clearance in respect of the Patancheru-Bollaram areas.
15.	2012	Order of the Appellate Authority (AA) under the Water Act dated January 28, 2012 lifted the moratorium against establishment of industries or enhancement of capacity in critically polluted areas.
16.	12.03.2013	By an order in WPC 19661 of 2002 in the APHC, <i>ICELA v. Union of India</i> case was transferred to the NGT (O.A. No. 90/2013)

17.	17.09.2013	The MoEF re-imposed the moratorium on the area after finding that the pollution levels have gone up again.
18.	10.06.2014	The moratorium was lifted after the MoEF&CC received a letter from APSPCB about steps taken by it to control the pollution.
19.	2017	Following the transfer of the case from the APHC to the NGT, the NGT in its judgment placed a ban on establishment and expansion of polluting industries imposed in the area.
20.	13.12.2018	By an order in O.A. No. 1038/2018 , NGT directed SPCBs to prepare an action plan for critically polluted areas.

Table 2- Directions by NGT and their implementation status

S. No.	Directions by NGT	Status of Implementation (As Per RTI Responses)
1.	<i>“No significant improvement in the groundwater quality particularly in the Manjira River Basin...which ultimately lead to Nakkavagu...”</i>	<p>Updates as per the 4th Periodic Report dated November 2019:</p> <ul style="list-style-type: none"> ▪ The construction of STPs to be taken up by HMWS&SB and maintenance of STPs beyond ORR to be taken up by HMDA. ▪ About 350 crores is required for Sewerage system and STPs, once the report is received from M/s Shah Consultants, will be addressed to the government for necessary budgetary requirements. ▪ After financial tie-ups, 18 months required for completion of STPs.
2.	<i>“The arrangement of supply of drinking water of adequate quality to the villages of.... Patancheru.... shall be continued by the State Government which shall be entitled to recover the cost thereof from the industrial units proportionately....”</i>	<p>Updates as per the 4th Periodic Report dated November 2019</p> <ul style="list-style-type: none"> ▪ State Government has been providing water to the 20 villages stipulated in the NGT Judgement. ▪ Drinking water is being supplied by the Rural Water Supply (RWS) Division under the Comprehensive Protected Water Supply Scheme free of cost.
3.	<i>For the period from 1986-1987 till 2001-2002 the villagers were entitled to compensation at the rate of Rs. 1,000 per acre per annum in respect of dry land and Rs. 1,700 per acre per annum in respect of wet agricultural land.</i>	<p>As per the meeting convened by the Chief Secretary, Govt. of Telangana on 22.10.2019:</p> <p>The District Collector, Sangareddy stated that disbursement of crop compensation has been done by the Revenue Dept. The balance amount has not yet been distributed as some of the beneficiaries are reported to not be residing in their village.</p>

<p>4.</p>	<p><i>The State Government shall constitute an Expert Committee to make a thorough study in all villages forming part of Manjeera River basin in and around Nakkavagu and other water bodies.</i></p> <p><i>(Study was to look into, health hazards and anti-microbial resistance due to industrial activities.)</i></p>	<p>The Director of Medical Education (DME) stated that they have requested the Government for sanction of budget for the health study. The Chief Secretary directed the DME to start the study with the available resources and instructed the HM&FW Department to take necessary action for sanction & release of the necessary budget.</p> <p>The Nodal Officer of the Expert Committee vide letter dated 19.10.2019 submitted a Preliminary Report of “<i>Epistemological Study on morbidity associated with Antimicrobial Resistance among residents in and around Nakkavagu, Manjeera and Musi River Basin</i>” stipulating the objectives, methodology, list of affected villages, etc.</p>
<p>5.</p>	<p><i>“In light of our findings that no adequate health facilities are available in the area, we direct the Govt. of Telangana to establish a Government Super Speciality Hospital....”</i></p>	<p>There already exists a 100 bedded Area Hospital operating in Patancheru area.</p> <p>In further meetings held in 2018 the chairman of TSPCB decided to convert the 100 bedded hospital and upgrade it with all Speciality Departments and with necessary infrastructure.</p>
<p>6.</p>	<p><i>“There is no necessity to direct closure of the existing industrial units in Patancheru and Bollaram. However, until restoration activities are completed the Regulatory Authority shall not consider any applications for expansion..”</i></p> <p><i>“Direct the creation of a Corpus Fund – Patancheru-Bollaram Environmental Relief Fund...this is independent of the payment directed against the unit under ‘polluter pays’ principle or contribution of amount by the units for establishment of Super Speciality Hospital.”</i></p>	<p>Via G.O.M. No. 24 dated 24.04.2019, amending the Ban Notification on establishment/expansion of certain polluting industries..”</p> <ul style="list-style-type: none"> ▪ The Environment, Forest, Science & Technology Department via G.OMs No. 31 dated 24.04.2019, constituted a committee for taking a decision to utilise the fund for restoration of the Environment in the Patancheru-Bollaram Industrial Area. ▪ Collection of Corpus Fund at 1% from industries seeking expansion and 0.5% from all the Industries on the Annual Turnover. ▪ A total amount of Rs. 19,85,98,404/- has been collected from some of the Industries.
<p>7.</p>	<p><i>“All existing units shall have their primary effluent treatment system inside the unit, whether they are members of CETP or not..”</i></p>	<p>The Board has already submitted (2) Status reports to the Hon’ble NGT. The Board has been filing monthly status reports to CPCB through an online portal from August 2018 onwards.</p>

8.	<i>“At present there is no necessity for any direction against any of the units to pay any amount under ‘polluter pays’ principle except leaving it to the authority to invoke the same in appropriate cases.”</i>	The Board has invoked the “Polluter Pays Principle” in cases warranted.
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Table 3- Committees and their findings

Date	Committee Details	Particulars	Recommendations
1989	Anti-Pollution Committee	Loss observed was Rs. 1,326 Crores.	
10.04.1990	High Court appointed a Committee of Experts.	<ul style="list-style-type: none"> ▪ Submit a report to the Government in respect of 15 industries with a direction to the Government to pass appropriate orders. ▪ If any of the industries fail to implement the order of the Government, to be closed. 	
13.10.1997	High Powered Committee on the Management of Hazardous Waste constituted by the Supreme Court.	To look at various aspects of hazardous waste management.	CETP is a major source of pollution.
25.09.2003	Fact finding committee constituted by the High Court.	To look into aspects such as: <ul style="list-style-type: none"> ▪ Compensation ▪ Necessary steps including safety measures to be taken for the completion of 18 kms pipeline. ▪ Extent of implementation of Supreme Court orders. ▪ Action required to be taken to supply drinking water to the affected villages. ▪ Status of compliance by 	<ul style="list-style-type: none"> ▪ Payment of compensation to the farmers. ▪ Setting up a Taskforce of APPCB exclusively to enforce environmental regulations and to ensure continuous compliance of HC orders. ▪ The rate of pollution to the Nakkavagu basin from CETP has considerably reduced.

		different industries with the directions of the Supreme Court and High Court	
Oct 2004	Supreme Court Monitoring Committee (SCMC) constituted by the Supreme Court under Hazardous Waste Management Rules.	Inspection of PETL and other areas of Hyderabad	CETPs are not environmentally friendly.
28.02.2009	Special Taskforce was constituted by the High Court for Medak District	As per the recommendations of the Fact Finding Committee	Closure orders were issued for non-compliance in respect of those industries running without consent to operate apart from non-compliance of many other requirements including the discharge of acidic effluents outside the premises.
02.04.2011	APPCB constituted a Local Committee for the Patancheru-Bollaram area.	<ul style="list-style-type: none"> ▪ To carry out bi-monthly review of the implementation of action plans of CPA of Patancheru - Bollaram Area. ▪ Review of implementation of action plan submitted by 27 industries for upgradation of their treatment systems. ▪ Submit periodical reports to CPCB. ▪ Monitoring the surface water quality of the lakes and carry out ambient Air quality studies in IDAs of Medak District. 	<ul style="list-style-type: none"> - Discharge of industrial effluents into Nakkavagu is controlled and domestic waste water from M/s. BHEL, STP and other small colonies in and around Patancheru area are discharging their domestic waste water into Nakkavagu - Due to diversion of treated effluents from PETL to Amberpet STP, there is an improvement in the quality of water.
2012	High Level Expert Committee constituted by APPCB	To study the request of Bulk Drug Manufacturers' Association (BDMA) to allow the expansion of existing Bulk Drug and its Intermediate Manufacturing units with ZLD facilities.	Request for expansion could be considered subject to availability of water resources, study on Ambient Air Quality including Volatile Organic Compounds (VOC), capacity of treatment, storage and disposal facility (TSDF) and CETPs along with their performance and scope for

			using organic waste in cement plants for co-processing.
09.03.2015	NGT Principal Bench constituted a Joint Inspection Team (consisting of representatives from MoEF, APPCB and TSPCB)	To conduct inspection of all major Pharma industries.	<ul style="list-style-type: none"> - All the units may be directed to provide above ground effluent storage tanks with 3-7 days storage capacity to store the High TDS and Low TDS. - STP may be proposed in the upstream of Nakkavagu near Pocharam area as the Nakkavagu and Iskavagu streams are contaminated with domestic sewage from the residential colonies in the surrounding areas. - Another STP may be proposed in the upstream of Asanikunta to treat the effluents generated from the residential colonies situated in Bollaram area. - The CETP to establish a facility to analyse the heavy metal in the inlet and outlet of CETP as per the directions of the State Board. - The industries may be directed to provide separate storm water drains to avoid mixing of effluents/spillages and connect to rainwater collection tank. - Installation of online system for continuous monitoring and filing of report regard Stack/Ambient air quality.
30.10.2015	NGT ordered Committee headed by Hon'ble Sri. Lakshmana Reddy, retired Judge of the Andhra Pradesh and Dr. A. Kishan Rao and Sri. Kaushik N. Sharma	Inspect PETL and JETL and give report within a period of 8 weeks.	Committee could not proceed since an objection was raised that Dr. A. Kishan Rao was also a petitioner in the NGT Application.

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