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# Environmental Pollution and Judicial Remedies in Delhi

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DISHA KALRA<sup>1</sup>

## ABSTRACT

*This research paper addresses the pressing issue of environmental pollution in Delhi, recognized as one of the most polluted cities globally. The study explores various pollution sources, including vehicle emissions, industrial waste, and construction activities, and their roles in compromising air and water quality. Delhi, the capital of India and the heart of India, is considered to be the most populous city in the northern part of India. The city of Delhi, has been a long sufferer to the problem of environmental pollution. The increased rural to urban migration, and, rapid industrialization in the city of Delhi has put an increased pressure on the resources of Delhi. The overutilisation of resources by the increased population, has caused various kinds of pollution, like, Air Pollution, Water Pollution, accumulation of wastes, soil pollution etc. Utilizing a mixed-methods approach, the research incorporates quantitative data from structured surveys administered to a diverse population sample.*

*Results reveal significant disparities in awareness across various demographic groups, with many individuals lacking knowledge about the health impacts of pollutants and the strategies available for mitigation. The findings underscore how factors such as education, socioeconomic background, and media exposure influence public awareness. Furthermore, the paper evaluates the effectiveness of current awareness initiatives and identifies challenges in information dissemination. In conclusion, the study offers various suggestions that are given by the Delhi's population in effectively addressing environmental maladies through Judicial frameworks.*

**Keywords:** *Pollution, Industrialization, Overpopulation, Judicial Remedies.*

## I. INTRODUCTION

Delhi, the 'heart of India', is the home to India's finest culture, and, handicrafts. Being the capital of India, it is the home to the three organs of the Indian Government, i.e., the Legislature, the Executive, and the Judiciary. Delhi is the central neighbour to the neighbouring states of, Uttar Pradesh, and, Haryana. It has two geographical access, to the Aravalli Hills that run through Delhi, and the Yamuna River, originating in the Himalayas and the largest flowing river

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in northern India. The Yamuna river area, has a dense population, and, is a rich agriculture and industrial sector.

According to the Census of India, 2001 the population of Delhi as on 1<sup>st</sup> March,2001 was 13.78 crores. The estimated growth rate of Delhi between 1991-2001 is considered to be at 3.81% per annum. As per the latest Census of India, 2011 the city of Delhi, has a total population of 1.68 crores, of which males and females are 8,987,326 and 7,800,615 respectively. According to the World Health Organisation (WHO), Delhi is the fourth most populated city in the world, in terms of Suspended Particulate Matter (SPM).

The city has gained enormous economic growth in the past few years. But, this economic growth, in the city has happened at the cost of the environment. Couples with this, the problem of overpopulation, and, rapid urbanization, have further added to the problem of environmental pollution and degradation.

Description	2011	2001
Approximate Population	1.68 Crores	1.39 Crore
Actual Population	16,787,941	13,850,507
Male	8,987,326	7,607,234
Female	7,800,615	6,243,273
Population Growth	21.21%	46.31%
Percentage of total Population	1.39%	1.35%
Sex Ratio	868	821
Child Sex Ratio	871	868
Density/km <sup>2</sup>	11,320	9,340
Area(Km <sup>2</sup> )	1,483	1,483
Total Child Population (0-6 Age)	2,012,454	2,016,849
Literacy	86.21 %	81.67 %

Table 1- Population Census of 2001 and 2011<sup>2</sup>

Pollution has remained a crucial problem in the city of Delhi. The city, has been a long sufferer of various kinds of pollution, like, the Air pollution, Water Pollution, Deforestation etc.

The three major causes of these environmental issues, are the rapid population growth that the city has been experiencing, industrial development, and heavy transportation use within the city.<sup>3</sup> (Government of NCT of Delhi Department of Planning, 2014

#### 1. Rapid population growth-

The population of Delhi, has grown extensively since a last few decade. The rapid increase in both the urban and rural population of Delhi, has put an extensive pressure on the limited

<sup>2</sup> Delhi Population | Sex Ratio | Literacy, <https://www.census2011.co.in/census/state/delhi.html>, ( Accessed on Nov 17, 2023)

<sup>3</sup> Jordan Neposlan, Environmental Problems in New Delhi, Research Gate, ( Sep 15, 2024, 10:05 am) <https://www.researchgate.net/publication/>

resources of the city. The population of Delhi, as per the census of 1951 was 1,744,072 approximately, which, has grown up to 1.68 crores. These trends of population growth, clearly reflect that it can pose a big threat to the environment.

Also, the increased migration from rural to urban areas, in Delhi has further added to the problem of population in the city. 'As per Delhi's Economic Survey 2022-23, Migration added 283,000 people to Delhi's population in 2021, more than double the 101,000 number contributed by births adjusted for deaths'.<sup>4</sup> Delhi, the city having good employment, education, tourism etc., attracts many people from the neighboring cities of Uttar Pradesh, Bihar, Haryana, Punjab, Rajasthan etc. These migrants from the different cities add to the labour, hence increasing the economic growth, but only at the cost of the environment. Delhi, has now become the 'Migration capital of India'.<sup>5</sup>

## 2. Industrialisation

The main reason, behind the migration in Delhi, is Industrialisation. The city, provides an appealing opportunity to the people, because of its rapid industrialisation, social and economic development. Industrial development has a key role in the development of the city's economy. But, just as the coin has two sides, the development of the economy is at the cost of the environment. The various harmful emissions, that are released from the industries, cause air pollution in the city.

## 3. Increased vehicles

The population of Delhi's increased dependence on vehicles also lead to environmental pollution. The harmful chemicals and gasses, released from these vehicles, further adds to the problem of pollution. The smog, that is an amalgamation of carbon monoxide, nitrogen oxides and hydrocarbons into the atmosphere, emitted by the vehicles. This is also a contributing factor to Air pollution.

## **II. ENVIRONMENT POLLUTION IN DELHI**

The different kinds of environmental pollution, prevalent in the city are-

- AIR POLLUTION-

Air pollution is defined as "the introduction of chemicals, biological matter, or particulates into

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<sup>4</sup> Abhishek Jha, Migration added more to Delhi's population than births: Economic Survey, Hindustan Times., Mar 21, 2023.

<sup>5</sup> Delhi, has now become the 'Migration capital of India', TOI, MARCH 23, 2018.

the atmosphere.”<sup>6</sup>

For Delhi, Air pollution has always been a serious environment issue. The increased use of vehicles on the road of the city is the major contributor to the problem of Air pollution of Delhi. The harmful gasses and chemicals that is, carbon monoxide, nitrogen oxides and hydrocarbons into the atmosphere, together leads to the formation of Smog in the environment. The Delhi Government, has to time and again impose the Odd- Even scheme to reduce Air Pollution in the city.

Also, the rapid industrial development is a contributing factor to the problem of Air pollution in the city. The Air Quality Index(AQI) of Delhi, has always remained high. There are many other factors, coupled with the above to which contribute to Air pollution in Delhi.

The consequential environmental maladies, due to Air pollution, are, respiratory diseases, asthma etc.

- WATER POLLUTION-

Water, is an indispensable resource for the sustenance of human life. Every human being has a right to clean and safe drinking water. The prime water resource, of the city is the Yamuna river. But, since a last few decade the water of Yamuna river is no longer safe for consumption. The presence of Industrial waste, household waste, etc. have polluted the river badly. Today, Yamuna is considered to be the most polluted river of the world. The various problems associated with environment pollution, are,” Lesser Dissolved Oxygen, Higher Bio-Chemical Oxygen Demand, Faecal coliform and Toxic chemicals and heavy metals”.<sup>7</sup>

*The World Health Organisation(WHO) “defines polluted water as, the water has been changed to an extent, that it is unusable”.*<sup>8</sup>

The various environmental maladies caused due to water pollution are, cholera, diarrhoea etc.

- NOISE POLLUTION

Noise pollution is also one of the major pollutions that are prevalent in the city of Delhi. The city, faces noise pollution from various sources like the Loudspeakers, the fireworks and the increased use of vehicles. This type of pollution, like any other kind of pollution is a major threat to the human life, animals and also the plants. The loudspeakers used in various kinds of celebrations, religious processions, political rallies etc, the use of firecrackers, the vehicular

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<sup>6</sup> Doberstein, 2012, pp. 264

<sup>7</sup> Department of Environment (Government of NCT of Delhi), Water Pollution, ( Sep 16, 2023) <https://environment.delhi.gov.in/environment/water-pollution>

<sup>8</sup> World Health Organisation,( Sep 16) 2023) <https://www.who.int/>

traffic all contribute to the problem of noise pollution in Delhi.

The various environmental maladies, related to noise pollution are high blood pressure, speech disruption, hearing impairment etc.

### III. JUDICIAL FRAMEWORK FOR ADDRESSING ENVIRONMENTAL POLLUTION

There are various tortious remedies, like, nuisance, strict liability, and negligence, and statutory remedies, for addressing the problem of environment pollution in the city of Delhi are provided, under the Environmental (Protection) Act, 1986, Criminal Procedure Code, 1973, and, under Indian Penal Code, 1860.

#### (A) Environmental pollution and environmental maladies

The City of Delhi is considered to be the most populous city in northern India. The city, is considered to be the largest commercial centre in the northern part of India. The presence of Industries in Delhi, makes it a hub of migration. Many people, in search of employment, education, health care etc, migrate from various rural areas to the urban areas of Delhi, which further adds to the population of the city. The rapid population growth from the census of 1951 to 2011, reflects that Delhi's population has increased significantly. The ever-growing population of Delhi, puts an increasing pressure over the limited resources available in Delhi. The city, has been a long sufferer of environmental concerns. The increased vehicle use, In spite, of the presence of metro and other public transport in Delhi increases the Air pollution, and, the noise pollution in the city. The presence of Industries, in Delhi is a causal factor, behind the increased economic growth, but, on the other side of the coin, it can cause Air pollution and Water pollution.

According to The Collins Dictionary, 'Malady' means any disease or illness.<sup>9</sup> The environment pollution, can cause different form of environment maladies. Every pollution can cause a specific malady, like, the Air Pollution can cause various respiratory diseases, skin cancer etc, Noise Pollution, can cause temporary hearing loss, speech disruptions etc.

There are various kinds of pollution., prevalent in Delhi. They are-

#### 1. Air Pollution

According to the World Health Organisation (WHO), "*Air pollution is the contamination of the indoor and the outdoor environment by any chemical, physical or biological agent that modifies the natural characteristics of the atmosphere*".<sup>10</sup>

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<sup>9</sup> The Collins Dictionary.

<sup>10</sup> Ibid note 7.

Delhi, the capital of India is considered to have the most toxic air. The heavy vehicular traffic, rapid industrialisation and urbanisation are some of the factors that trigger environment pollution in Delhi.

Causes of air pollution in Delhi-

- The vehicular pollution, i.e., caused by excessive vehicle traffic on road . The pollution is caused by the amalgamation of various gasses and chemicals, like carbons , nitrogen oxides etc can lead to the formation of Smog, that causes low visibility and various health issues.
- The hazardous gas, i.e., Ammonia that is released from the agricultural products, like, the insecticides, pesticides etc. can further pollute the Air.
- The harmful emissions from the industries, further adds to the problem, of pollution in Delhi. The pollutants, like The Particulate matter 2.5 and 10, Nitrogen Oxide, Carbon and Sulphur dioxide emitted from the Industries, can cause air pollution.
- The burning of household Waste in open, can further trigger the problem of Air pollution in Delhi. According to a survey, Delhi produces approximately 9500 tine waste produce every day. The burning of this waste in open, can lead to Air pollution.
- The Construction and demolition of the building is also considered to be a causative factor of air pollution in Delhi. The increased construction activities and demolitions is one of the effects of the ever increasing population. The labourers, and other people living near or around the vicinity of the site, are regularly exposed to such kinds of pollutants, which, can take a toll on the health of the people.

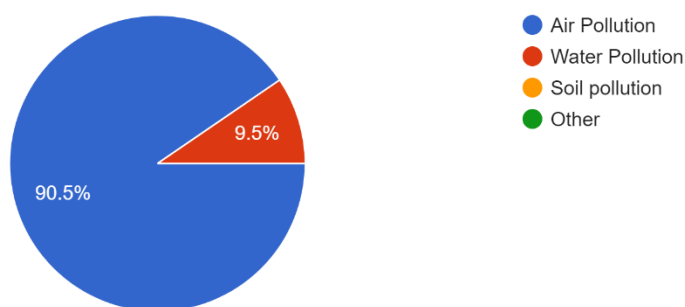
The Air Pollution, has a long-lasting impact on the human health, plants, animals, and the environment. Air pollution can be considered as a trigger of various kinds of health issues in the city of Delhi. The various environment maladies, associated with Air pollution are-

- a) The air we breathe, has a close relation with our overall health. Polluted air can impact the mental health of a person. Living in a polluted environment can cause various issues, like, anxiety, depression etc.
- b) The polluted air that we breathe, can have a toll on our quality of life, i.e., it can cause tiredness, low interest in doing any physical activities.
- c) The Air pollution can also weaken our Immune System, hence reducing the capacity of the body to fight against diseases, and, also making it prone to different ailments.

- d) Continuous exposure to pollution, can expose the person to the risk of Lung cancer and skin cancer.
- e) The exposure of an expecting mother, to Air pollution can lead to issues in the development and growth of the Child.
- f) Continuous exposure to air pollution, can lead to, respiratory problems. Inhaling of harmful pollutants can lead to asthma, bronchitis, lung infections etc.

What according to you, is the major type of pollution prevalent in Delhi?

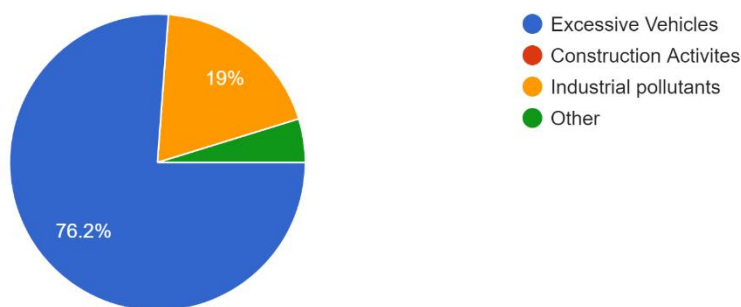
21 responses



According to the empirical data, collected through questionnaires from Delhi population, 90.5% of the population believe Air pollution as the major type of pollution that is prevalent in Delhi. The present Air quality Index, ( as on 18 November 2023) is 376,i.e., Severe. Being the commercial centre and a hub of various industries, the Air pollution is the most growing pollution in Delhi. Coupled with this factor, various other factors like, Population increase, vehicular emissions cause air pollution. The effects of Air pollution, on the population of Delhi is much higher then of any other city in India.

What according to you, is the major Cause of pollution in Delhi?

21 responses



As per the empirical data, collected from the questionnaires, 76.2% of people believe Excessive



vehicles to be the major causative factor behind environment pollution in Delhi, whereas only 19% believe industrial pollutants to be the causative factor behind pollution in Delhi.

## 2. Water Pollution

*The World Health Organisation (WHO) “defines polluted water as, the water has been changed to an extent, that it is unusable”.*<sup>11</sup>

Water, is a necessity for the sustenance of life on earth. Everyone has the right to get clean and safe drinking water. Water contamination, or water pollution means when due to the presence of various pollutants in the water, the water becomes unfit for use. Yamuna River is the sole water resource for Delhi. Since, last few decades Yamuna River isn't been considered to be a safe drinking resource. The presence of various kinds of pollutants in the river, industrial waste, household waste etc. have polluted the river to such an extent, making it unfit for human consumption. Today, the Yamuna River is considered to be the most polluted river of the world.

Causes of water pollution in Delhi-

- The industrial effluents, that are released in the waters of Yamuna River , containing various pollutants, chemicals, and poisonous gasses can contaminate the river.
- Rapid Urbanisation in the city of Delhi, is also a causal factor behind water pollution.
- Disposal of untreated sewer waste in the river, can further contaminate the water resource.
- The improper dumping of plastic and other non-biodegradable materials, into water bodies, can disrupt the aquatic life, can lead to the introduction of toxins in the river, and contributes to the reduction in quality of water.

Effects of water pollution in Delhi-

- Consumption of contaminated water, can lead to many health issues to a human being, like cholera, typhoid, and gastroenteritis.
- The polluted water, has decreased the quality of drinking water.
- Due to water pollution, there is a reduction in visual appearance of the river. The presence of floating debris and stagnant discoloured water, Unpleasant Odors from the river , can impact the overall appearance of water bodies.
- Water Pollution, can also cause harm to agriculture.If the water that is used for

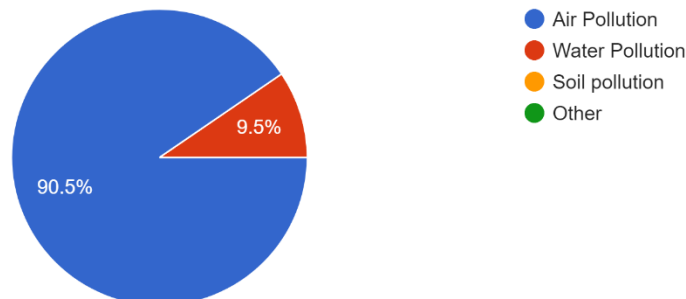
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<sup>11</sup> Ibid note 7.

irrigational purposes, is polluted it can cause a damage to the crops.

What according to you, is the major type of pollution prevalent in Delhi?

21 responses



According to the empirical data, collected by questionnaire, 9.5% of the Delhi population believe, water pollution to be the major pollution prevalent in Delhi.

The second largest tributary of the Ganga River and one of the longest tributaries of India, the Yamuna River, originates from Yamunotri glacier in Uttarakhand. It merges with the Ganga River in Prayagraj , Uttar Pradesh by flowing across the seven states.

As per the Hindu scriptures and mythology, the Yamuna River holds religious importance. It is worshipped in Hinduism as the ‘Goddess Yamuna’. It is believed, that the Yamuna River, daughter of the Sun and sister of the Yama the ‘God of Death’. It is common practice for the holy worshippers to bathe the sacred waters to rid oneself of sins and perform the last rites of the dead at the rivers.

The Yamuna River, facilitates in the formation of a highly fertile alluvial Yamuna- in the Indo-Gangetic plain. Around, 57 million people depend on the Yamuna’s waters. The River, is the major water resource for Delhi.

The major causative factor behind pollution in The Yamuna River is Domestic wastes.

*“According to a report submitted by the Delhi Pollution Control Committee and the Central Pollution Control Board (CPCB) to the Yamuna Pollution Control Committee, at least 90% of domestic wastewater in the city flows into the Yamuna”.*

The domestic waste water, that comes in Yamuna contains high quantity of detergents, soaps etc. These wastes also contain phosphate compounds in them. These phosphate compounds are responsible, for the formation of white toxic foam on the river.

According to a report submitted by the Delhi Pollution Control Committee and the Central Pollution Control Board (CPCB) to the Yamuna Pollution Control Committee, at least 90% of

domestic wastewater in the city flows into the Yamuna.

Industries releasing heavy metals in the river, disposal of untreated sewage in water all factors contribute in the pollution of the Yamuna River.

Various projects have been launched, to protect the Yamuna River. They are-

- Yamuna Action Plan

A bilateral plan between the Government of India and Japan, it is one of the largest river restoration and protection plans in India which is a. The National River Conservation Directorate and the Ministry of Environment and Forests and the Government of India, executes and enforces the plan.

The project is divided into 3 parts:

- Yamuna Action Plan I (YAP I) – 1993 – 2002, 2002 – 2003 (Extended Phase)

The Yamuna Action Plan 1, focuses on both sewage and non sewage disposal plans. The plans were executed by the ‘National River Conservation Directorate (NRCDD), Ministry of Environment in collaboration with various State Department’.

- Yamuna Action Plan II (YAP II) – 2004 – 2011

YAP II was mostly to undertake for enforcing non-sewerage plans.

The main focus of the plan was, to encourage public participation & awareness, Public Relations and Strengthening & Capacity Building of Municipal Corporation of Delhi(MCD).

- Yamuna Action Plan Phase III – 2018 onwards

Various Projects under National Mission for Clean Ganga (NMCG) have been enforced to River Yamuna in Delhi including treatment of the sewer projects.

- Yamuna Purification Drive, 2018

The drive launched in 2018, was organized by the Public Health Department covering 15 towns including Gurgaon, Faridabad, Yamuna Nagar, Karnal, Panipat, and Sonipat. It also aims, to control and regulate the discharge of untreated waste in the river.

### **3. Noise Pollution**

The word noise, originates, from the Latin term ‘Nausea’, meaning sickness in which one feels the need to vomit. Noise pollution, can be defined as the unwanted or disturbing sound, which causes harm to the well-being of the human beings. It is also referred as Sound Pollution. According to the WHO, noise is harmful when it exceeds 75 decibels (dB) and feels painful at

levels above 120 dB. According to the Department of environment, Government of NCT of Delhi, the major sources of noise pollution are industrial, aircraft, transportation and diesel generator sets.

The Government of Delhi has notified an area of 100 meters, around the hospitals with 100 beds or more, educational institutions with 1000 students or more, all court complexes, all Govt. Office complexes as Silence Areas/Zones.<sup>12</sup>

#### Causes of noise pollution

- The increased vehicular traffic, leading to constant congestions on the road, and, persistent honking is one of the prime cause behind noise pollution in Delhi.
- The machinery that is used in the construction and demolition activities, contribute to the noise pollution.
- The noise that is generated from the heavy machineries that are used in the industries, are also responsible for the noise pollution in Delhi.
- The loudspeakers that are used in different political rallies and the religious gatherings, further contribute to the overall noise pollution in Delhi.

#### Environmental maladies associated with noise pollution

- Continuous exposure of the ears to loud noises, can cause a damage to our hearing, by causing complete or partial deafness, especially in the very young and the very old age groups.
- Various physical ailments, like Respiratory agitation, racing pulse, high blood pressure, headaches, and, in case of extremely loud, constant noise, gastritis, colitis and even heart attacks.
- Noise pollution has various psychological consequences. It can cause stress, fatigue, depression, anxiety etc. in both humans and animals.
- Noise above 45 dB stops you from falling asleep or sleeping properly. Remember that according to the World Health Organization, a sound should not be more than 30 dB. A sound above 45 dB prevents a person to fall asleep. Loud and continuous noise can also effect our behaviour, causing aggressive behaviour and irritability.
- Noise pollution can take a toll on our memory and concentration power. It may affect the ability of the people to focus, which leads to low performance over time. It also blunts

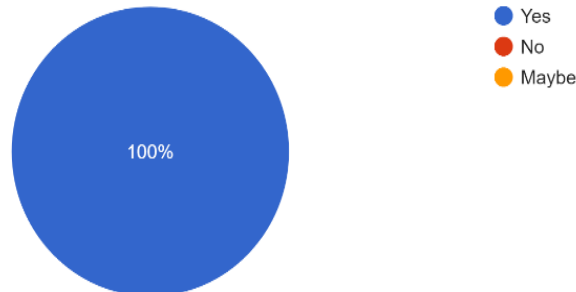
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<sup>12</sup> Ibid note 2.

the memory of a person , making it hard for the person to remember anything.

Do you think, these environment maladies affect your health and well-being?

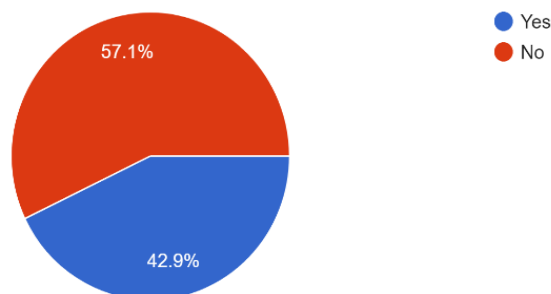
21 responses



According to the empirical data collected from the questionnaire, 100% of Delhi's population believe, that the environment maladies affect their health and well being.

Have you ever personally witnessed any Environment maladies in Delhi?

21 responses



According to the empirical data collected through questionnaires, 42.9% of Delhi's population has personally been a victim of environmental maladies.

#### IV. CONSTITUTIONAL FRAMEWORK FOR ENVIRONMENT PROTECTION

The preamble to The Indian Constitution states-

*“WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:*

*JUSTICE, social, economic and political;*

*LIBERTY of thought, expression, belief, faith and worship;*

*EQUALITY of status and of opportunity;*

*and to promote among them all*

*FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;*

*IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION”*.<sup>13</sup>

The preamble sets out the basic objectives for the formation of the Constitution. It is the key to open the mind of the makers. When any ambiguity arises in the interpretation of the law, the preamble can be referred to interpret the law. It declares, as to what the makers of the constitution intend to achieve.

The term ‘environment justice’ doesn’t find a place in the preamble to the constitution. The preamble of our Constitution provides, that India is based on the “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems. Although the term ‘environment justice’ isn’t specifically mentioned in the preamble, but the term ‘justice’, as used in the preamble can be interpreted to include ‘environment justice’.

The Stockholm Deceleration, by the International Conference on Human Environment in 1972 which had its focus upon man’s sole responsibility to protect and improve the environment for both the present and future generations. This deceleration sensitized the Indian Parliament, and, the protection of environment was clearly pronounced, by, The Constitution (Fourty-second Amendment ) Act, 1976. It added two articles in the Indian constitution. These are , Article 48-A ( Directive Principles of the State Policy), and, Article 51-A(g) (Fundamental Duties) dealing with environment protection were inserted.

### 1. Article 14 :Right to Equality

*“ Equality before law: The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India ”*.<sup>14</sup>

Article 14 of the Constitution of India, imposes a duty on the state not to deny any person, citizen or non-citizen equality before law, and, equal protection of laws/.

The first principle of The Stockholm Deceleration,1972 recognises the principle of equality in environment, and, states,

*“Principle 1. Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future*

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<sup>13</sup> The Constitution of India, 1949

<sup>14</sup> India Const. Art. 14

generations”.<sup>15</sup>

## 2. Article 19: Protection of certain rights regarding freedom of speech, etc.—

Article 19, provides certain rights to the citizens of India. Article 19 (1)(g) of the Indian Constitution, provides-

*“Article 19. Protection of certain rights regarding freedom of speech, etc.—*

*All citizens shall have the right—*

*(g) to practise any profession, or to carry on any occupation, trade or business.”<sup>16</sup>*

Article 19(1) (g) provides the citizens of India, the right to practice any profession, trade or business. This right isn't however unreasonable, and is subjected to certain reasonable restrictions, as provided under clause 6.

*“(6) Nothing in sub-clause (g) of the said clause shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions on the exercise of the right conferred by the said sub-clause, and, in particular, [nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to,—*

*(i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or*

*(ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, business, industry or service, whether to the exclusion, complete or partial, of citizens or otherwise.”<sup>17</sup>*

Many citizens are indulged in such trade, profession or occupation which harms the environment and endangers the life of human beings, animals and plants. The clause (6) of The Constitution of India gives power to the state, to make laws for imposing reasonable restrictions for the protection of the environment, in the exercise of Article 19(1)(g).

## 3. Article-21: Right to Life and Personal liberty

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<sup>15</sup> The Stockholm Deceleration, 1972

<sup>16</sup> India Const. Art.19, cl.1

<sup>17</sup> India Const., Art.19, cl.6

Article 21 of The Constitution of India states,

“ . *Protection of life and personal liberty.—No person shall be deprived of his life or personal liberty except according to procedure established by law*”.<sup>18</sup>

Article 21, provides Right to life, and , personal liberty to all persons, including the citizens and the non citizens. Right to get pollution free environment is a right included under Article 21.

In ***Subhash Kumar vs. State. of Bihar***<sup>19</sup>, the Supreme Court held that right to life is a fundamental right under Art. 21 of the Constitution and it include the right to enjoyment of pollution free water and air for full enjoyment of life.

In ***M. C. Mehta Vs. Union of India***<sup>20</sup> speaking for the Court clearly treated the rights to live in a healthy environment as fundamental right under Article 21 of the Constitution.

#### **4. ARTICLE 32 Remedies for enforcement of rights conferred by this Part**

*“(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.*

*(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*

*(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).*

*(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution”.*<sup>21</sup>

Article-32 provides power to Supreme Court, to issue directions or orders or writs, i.e., habeas corpus, mandamus, prohibition, quo warranto and certiorari. These directions, orders, or writs can be issued to enforce fundamental rights.

In the case of ***Rural Litigation and Entitlement, Dehradun v. State of Uttar Pradesh***<sup>22</sup>, the plaintiff filed a petition in Supreme Court alleging that illegal limestone mining was damaging the ecosystems in the Dehradun region. In return, the Court treated the letter as a writ petition under Article 32 of the Indian Constitution. Although the Court’s decision did not state that

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<sup>18</sup> India Const. Art.21.

<sup>19</sup> 1991 AIR 420, 1991 SCR (1) 5

<sup>20</sup> 1987 AIR 1086, 1987 SCR (1) 819

<sup>21</sup> India Const., Art. 32.

<sup>22</sup> 1985 AIR 652, 1985 SCR (3) 169



fundamental rights had been violated, exercise of Article 32 jurisdiction by the Supreme court implied the infringement of the fundamental right.

**5. ARTICLE 226 Power of High Courts to issue certain writs.—**

(1) *“Notwithstanding anything in article 32 3\*\*\*, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including*

*[writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.]*

(2) *The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.*

*[(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without—*

*(a) furnishing to such party copies of such petition and all documents In support of the plea for such interim order; and*

*(b) giving such party an opportunity of being heard, makes an application to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open; and if the application is not so disposed of, the interim order shall, on the expiry of that period, or, as the case may be, the expiry of the said next day, stand vacated.]*

*[(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of article 32.]”<sup>23</sup>*

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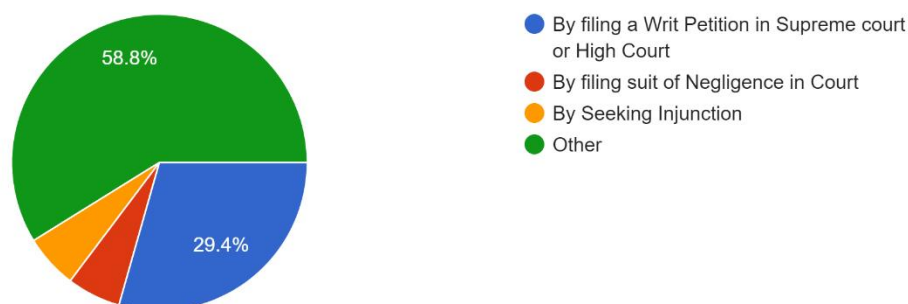
<sup>23</sup> India Const., Art.226.

Article 226, provides power to the High Court, to issue directions or orders or writs for the enforcement of fundamental rights and for other purposes.

To get the Right of clean and Pollution free environment as provided under Article 21, Supreme Court and High Court have been given the power to issue directions, orders or writs for clean environment.

If Yes, how did you sought legal remedy for the same?

17 responses



From the empirical data, collected through questionnaire, 29.4% of Delhi's population have filed writ petition in the Supreme Court or the High Court to get remedy against environment pollution and maladies.

#### **6. ARTICLE -48A Protection and improvement of environment and safeguarding of forests and wild life**

*“The State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.”<sup>24</sup>*

Article 48 A was added in The Constitution of India, by the 42<sup>nd</sup> Amendment Act, 1976. The article imposes a duty on the state to to protect and improve the environment and to safeguard the forests and wild life of the country.

#### **7. ARTICLE 51A. Fundamental duties.—**

*“It shall be the duty of every citizen of India—*

*(g) to protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;”<sup>25</sup>*

Article 51-A was added by the 42<sup>nd</sup> Amendment Act, 1976 , and indicates that it is the duty of

<sup>24</sup> India Const. Art. 48A.

<sup>25</sup> India Const. Art. 51A.

every Indian citizen to preserve and enhance the natural environment, including forests, lakes, rivers, and animals, as well as to have compassion for all living things.

In *T.N. Godavarman Thirumalpad v. Union of India and Ors*<sup>26</sup>, a three-Judge Bench of the Court read Article 48-A and Article 51-A together as laying down the foundation for a jurisprudence of environmental protection and held that "Today, the State and the citizens are under a fundamental obligation to protect and improve the environment, including forests, lakes, rivers, wild life and to have compassion for living creatures"

**8. ARTICLE 253: Legislation for giving effect to international agreements.—**

*“Notwithstanding anything in the foregoing provisions of this Chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body.”*<sup>27</sup>

Article 253 states that Parliament has power to make any law for the whole or any part of the country of India for implementing any treaty, agreement or convention with any other country. In other words this Article suggests that in the wake of Stockholm Conference of 1972, Parliament has the power to legislate on all matters linked to the preservation of natural

## **V. LEGAL FRAMEWORK AND ENVIRONMENT LAW**

In common parlance, environment means everything that surrounds us. According to the Webster Dictionary, it is defined as the “Aggregate of all the external conditions and influences affecting the life and development of an organism.”<sup>28</sup>

According to Section 2(a) The Environment (Protection) Act, 1986, environment “includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other living creatures, plants, micro-organism ,and property.”<sup>29</sup>The environment provides basic necessities of life, to the people. The environment of Delhi has been grappling with the problem of pollution for a very long time. Various kinds of pollution, like, The Air Pollution. Water Pollution etc. These environmental pollutants use different form of environment maladies, that are harmful to the health and well-being of the human beings, flora and fauna. Various common law remedies, i.e., tortious remedies are made available to the

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<sup>26</sup> 1997) 2 SCC 267

<sup>27</sup> India Const., Art. 253.

<sup>28</sup> The Webster dictionary

<sup>29</sup> THE ENVIRONMENT (PROTECTION) ACT, 1986, Act No.29, Acts of Parliament,(1986)

people, in case of any infringement of a person's right relating to environment. Various theories have also been propounded in various judicial pronouncements. Various laws like the Environment protection, Air Act etc. have also been enacted. The Indian Penal Code, also provides legal framework for the protection of environment.

The people, however, face certain difficulties in getting legal remedies. Less public awareness and less participation of the public, in the environment protection campaigns, is a major drawback. People have no or very less knowledge, regarding environment protection laws.

### **(A) Tortious Remedies-**

#### a) Nuisance-

Nuisance means the act which creating a hindrance to the enjoyment of the person's property, in form of smell, air, noise, etc. Nuisance means the unlawful interference with one's enjoyment of land or any right arising from it, thereto.

According to Stephen, "*nuisance is anything done to hurt or annoyance of lands, tenements of another and not amounting to trespass*".

It can be divided into Public Nuisance or Private Nuisance. As the name suggests, public nuisance deals with interference with a right of the public.

Whereas, a private nuisance is interference with the right which is exercised exclusively by a private entity or an individual.

#### b) Trespass-

It means act of intentional or negligent interference with the personal or proprietary rights of a person without any lawful reasons.

The prerequisites for establishing trespass are:

- 1) There must be 'an intentional or negligent interference' with personal or proprietary rights of a person.
- 2) The interference must be direct, and not consequential with the personal or proprietary rights of a person.

#### c) Strict Liability-

This rule was propounded in the case of, *Rylands v. Fletcher* by Blackburn J, i.e., "*is that the person who for his own purpose brings on his land and collects and keeps there anything likely to be a mischief, if it escapes, must keep it as its peril, and if he does not do so is prima facie even though, he will be answerable for all the damage which is the natural consequence of its*

*escape*".<sup>30</sup> The doctrine of strict liability has an utmost importance in environment related matters ,especially in the cases dealing with the harm caused by the leakage of poisonous substances.

d) Damage

In the recent case of Oleum Gas Leak, involving a leakage of Oleum gas which caused a big environmental harm to the citizens of Delhi, the Hon'ble Supreme Court held that the "*quantum of damages awarded must be proportionate to the capacity and magnitude of the polluter to pay*".<sup>31</sup>

e) Injunction

- **Barney's Encyclopaedia of the law of England.** "Injunction is defined as a judicial process by which one, who has invaded or is threatening to invade the rights (Legal or equitable) of another, is restrained from continuing or commencing such wrongful act".
- **According to Lord Halsbury.-** An injunction is a judicial process whereby a party is ordered to refrain from doing or to do a particular act or thing.

Injunction is governed under Section 37 to 42 of the Specific Relief Act, 1963.

According to Section 37 of the Act, there are two types of injunctions-

- Temporary injunctions are such as are to continue until a specified time, or until the further order of the court. These may be granted at any stage of the suit, and are governed by the Code of Civil Procedure, 1908 (5 of 1908).
- A perpetual injunction can only be given by the decree of the court that is made at the hearing and upon the merits of the suit, the defendant is thereby restrained perpetually from the assertion of a right, or from the commission of an act, which would be against the rights of the plaintiff.

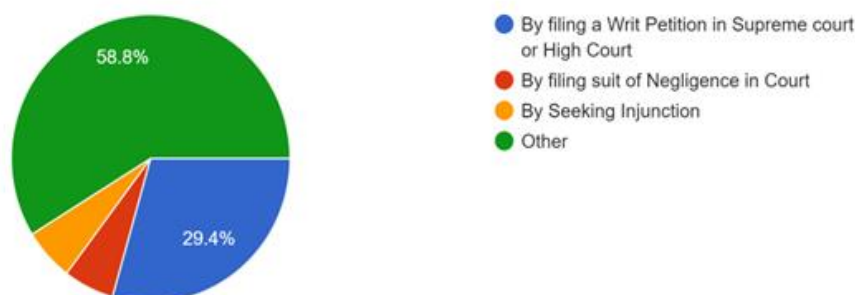
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<sup>30</sup>Rylands v Fletcher (1868) LR 3 HL 330

<sup>31</sup> M.C. Mehta And Anr vs Union Of India & Ors on 20 December, 1986, 1987 AIR 1086

If Yes, how did you sought legal remedy for the same?

17 responses



From the empirical survey, collected through questionnaire approximately 5.9% of Delhi's population filed an injunction suit to get remedy against environmental pollution.

### (B) Indian Penal Code

The CHAPTER XIV of the Indian Penal Code, deals with the Offences affecting the public health, safety, convenience, decency and morals (Section 268- 294A)

#### a) Section 268 and 290: Public nuisance

Section 268 defines public nuisance as,

*“268. Public nuisance.—A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage”.*<sup>32</sup>

Section 290 IPC, states the punishment for Public nuisance. It states,

*“290. Punishment for public nuisance in cases not otherwise provided for.—Whoever commits a public nuisance in any case not otherwise punishable by this Code, shall be punished with fine which may extend to two hundred rupees”.*<sup>33</sup>

Therefore, if any person commits an act, that causes environmental pollution, is guilty of causing public nuisance, and, is punishable with a fine extendable up to two hundred rupees.

In the case of *Ratlam municipality v. Vardhi Chandra*<sup>34</sup>, Justice Krishna Iyer stated that the

<sup>32</sup> THE INDIAN PENAL CODE, 1860, ACT NO. 45, Act of Parliament, 1860.

<sup>33</sup> THE BHARATIYA NYAYA SANHITA, 2023, ACT NO. 45, Act of Parliament, 2023.

<sup>34</sup> 1980 AIR 1622, 1981 SCR (1) 97

pollutants that are being discharged by big industries, is causing public nuisance, which is a challenge to social justice and rule of law.

b) Section 277 : Fouling water of public spring or reservoir.—

Section 277 IPC states,

*“Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both”*.<sup>35</sup>

c) Section 278: Making atmosphere noxious to health

*“Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees”*.<sup>36</sup>

**(C) Other statutes for environmental protection**

The various legislations, that provide for environment protection in India are,

- THE NATIONAL GREEN TRIBUNAL ACT, 2010

This act had been enforced in 2010, to establish the National Green Tribunal (NGT). The Act ensures that the issues related to environment are managed and regulated effectively.

The Act also ensures the protection of the natural resources and the forest cover.

- AIR (PREVENTION AND CONTROL OF POLLUTION) ACT, 1981

The Act is also referred as the ‘Air Act’. It provides for a mechanism to curb air pollution and to regulate it. For these purposes, the Act also makes the formation of various boards at the centre and the state level.

The Act also puts certain restrictions, for stopping air pollution.

- WATER (PREVENTION AND CONTROL OF POLLUTION) ACT, 1974

As the name suggests, the Act aims to prevent and control water pollution. It also tends to make such rules so as to maintain the quality of drinking water. For achieving these purposes, the Act establishes, different boards at the centre and the state level. These boards facilitate in the prevention and control of the water pollution.

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<sup>35</sup> THE INDIAN PENAL CODE, 1860, ACT NO.45, Act of Parliament, 1860

<sup>36</sup> THE BHARATIYA NYAYA SANHITA, 2023, ACT NO. 45, Act of Parliament, 2023.

- ENVIRONMENT PROTECTION ACT, 1986

The preamble to the Act states-

*“An Act to provide for the protection and improvement of environment and for matters connected therewith”.*<sup>37</sup>

The Act provides for the protection of the environment. The Act establishes a mechanism for the quick and speedy disposal of environment related matters.

Section 15 of the Act provides-

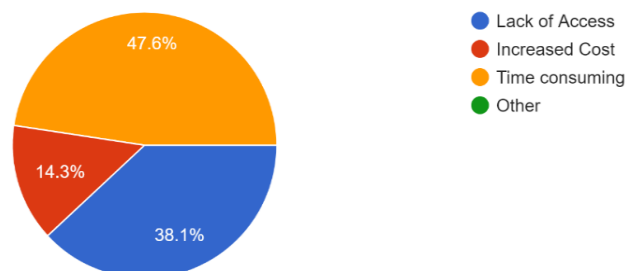
*“15. Penalty for contravention of the provisions of the Act and the rules, orders and directions.*

*(1) Whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued thereunder, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.*

*(2) If the failure or contravention referred to in sub-section (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term which may extend to seven years”.*<sup>38</sup>

What barriers, according to you people generally face in seeking the legal remedies, addressing these issues in Delhi?

21 responses



<sup>37</sup> ENVIRONMENT PROTECTION ACT, 1986, Act-29, Act of Parliament, India

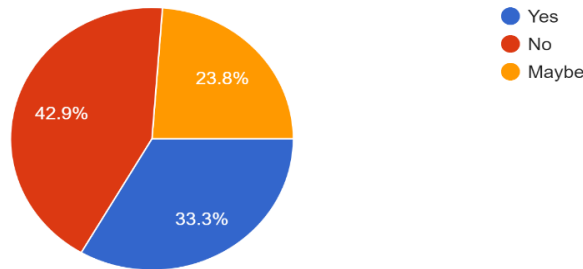
<sup>38</sup> Supra note.36.



According to the empirical data collected by questionnaire, 47.6% of Delhi’s population is of the view that legal remedies that are available, are time consuming.

Do you think these laws and regulation are able to address the problem of environmental maladies in Delhi?

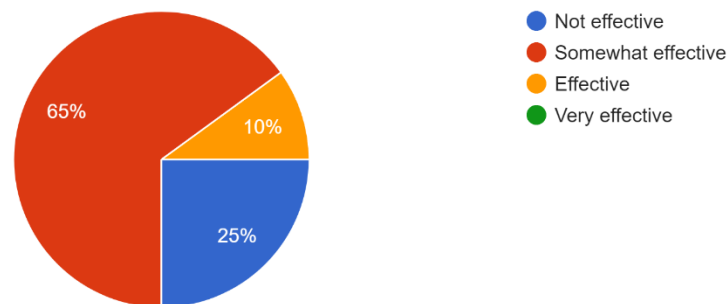
21 responses



According to the empirical data, collected by questionnaire, 42.9% of Delhi’s population believe that the present laws and regulations concerning environment aren’t able to effectively address the issues of the environment.

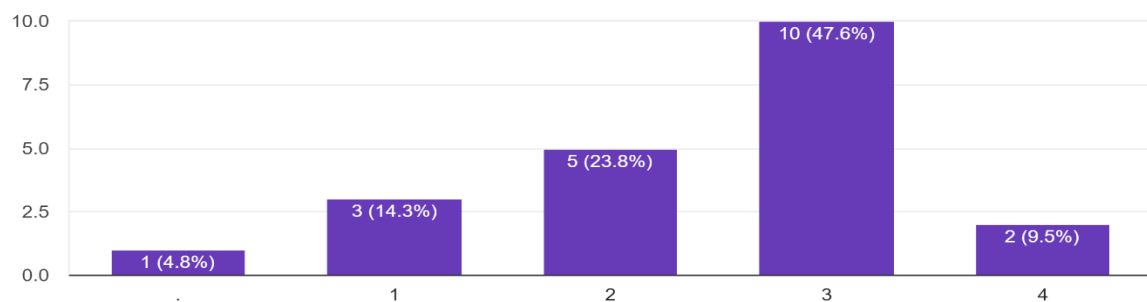
In your opinion, how effective are the present legal remedies in addressing these issues in Delhi?

20 responses



How satisfied are you with the effectiveness of the Judicial remedies for the protection of the environment?(On the Scale of 1 to 5, where 1 is not satisfied and 5 is Very Satisfied)

21 responses

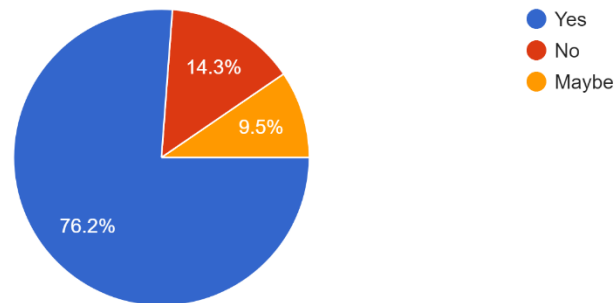


According to the empirical data, collected through questionnaire, 47.6% of Delhi's population believe that the judicial remedies that are available for addressing the environmental issues, are somewhat effective.

## VI. PUBLIC AWARENESS REGARDING ENVIRONMENTAL CONCERNS

Are you aware of the major Environmental maladies in Delhi?

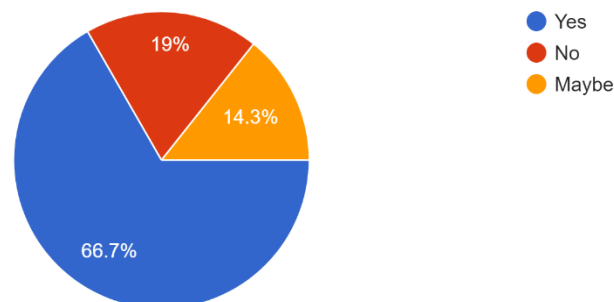
21 responses



According to the empirical data collected through questionnaire, 76.2% of people are aware of the general environmental maladies and pollution in Delhi.

Are you aware of any laws and regulation, addressing the environmental maladies in Delhi?

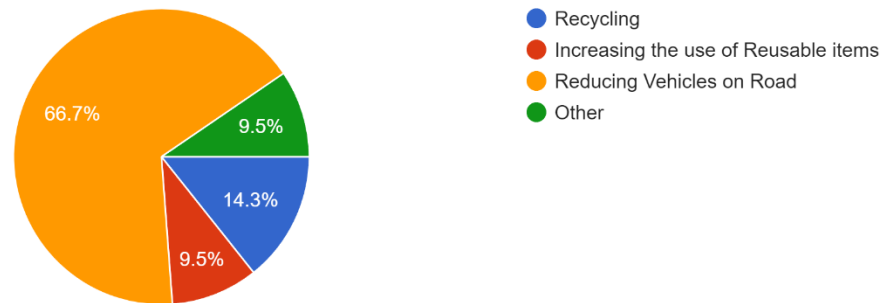
21 responses



According to the empirical data collected through questionnaire, 66.7% people are aware about the laws and regulations addressing environment maladies in Delhi.

What improvements according to you are needed to effectively address environment concerns in Delhi?

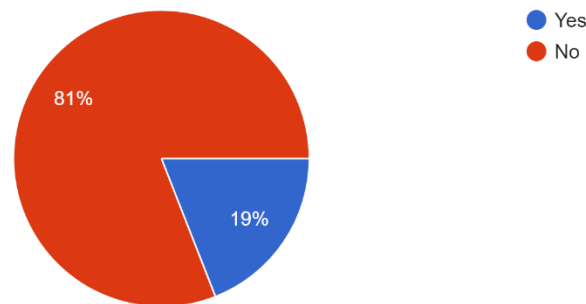
21 responses



According to the empirical data collected through questionnaire, 66.7% of people believe that by reducing vehicles on the road, environmental pollution can be reduced.

Have you ever participated in Environment protection activism in Delhi?

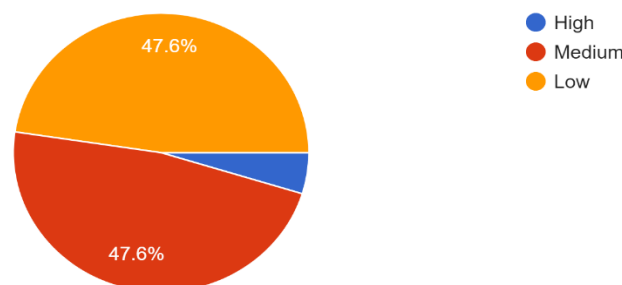
21 responses



According to the empirical data collected through questionnaire, 81% of the people in Delhi have never participated in environment protection activism in Delhi.

What according to you, is the level of Public awareness among the population of Delhi, regarding the Judicial frameworks for Protection of the environment?

21 responses



According to the empirical data collected through questionnaire, some people are of the view that there is a high public awareness regarding environment, whereas some believe it to be low. Hence, we can conclude that the level of public awareness regarding judicial remedies for addressing environment pollution in Delhi, is medium, i.e., neither too high nor too low. Hence, the hypothesis, The level of public awareness regarding judicial remedies for addressing environment pollution in Delhi, is quite low, isn't proved.

## VII. CONCLUSIONS AND SUGGESTIONS

In a layman's language, environment, is everything that surrounds us. Environment supplies the basic necessities of life to the humans. The City of Delhi is considered to be the most populous city and the most polluted city in northern India. The ever-increasing population, rural to urban migration, industrial development and increased vehicle use. The constitution of India provides various kinds of rights of a person or citizen against environment protection. The legal remedies provided in the Indian framework are both tortious, and, statutory remedies. Various other legislations, have been framed for environment protection in India.

However, these legislations haven't proven to be effective to combat the environment pollution and its consequential maladies in Delhi. Hence we can conclude that the first, second and third hypothesis is proven, and not the fourth one.

The various suggestions that are given by the Delhi's population in effectively addressing environmental maladies through Judicial frameworks, in the empirical survey are-

- Paperwork and documents are very strong but implementation at ground level is very poor
- Awareness campaigns should be organised at the school/settlement level to sensitise societies about the adverse health effects of air pollution.
- There should be some law for sufficient open spaces for the pollutant to disperse. The entire National capital region should be treated as one unit. Right now each state be it Delhi, Haryana, U.P & Rajasthan act in isolation. There should be one entity, which see any development as whole. That way air pollution can be handled up to some extent.
- More strict laws can be implemented and various programs can be organized to increase awareness among people who live in slums and are uneducated/
- Judiciary must strictly

- enforce environmental laws,
- adjudicate environmental disputes,
- safeguard environmental rights of citizens
- Strict law with penalty
- Legal awareness
- More public awareness of the laws.
- Strict action should be taken by the government.

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