

CHEMICAL INDUSTRIES & COMPETITION LAW IN INDIA

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ABSTRACT

In this paper, the aim is to put across the importance of chemical industries. Chemical industries have also been discussed with relation to the different types of market competition and the space for such endeavours in the Indian context. Furthermore, the relevant case laws have also been discussed within this paper with relation to the idea of the functioning of chemical industries in the region.

This paper explores the meaning and importance of chemical industries. It magnifies the importance in day-to-day life as well as in the industrial sector. We discuss that chemicals help in food preservation, agricultural promotion, medical scope, biological sphere, importance in day-to-day life, environmental endeavours, contribution of chemicals to artistic and academic lives, the petro-chemical industry, need for chemicals in the construction industry and automobile industry. Within this paper, we see the scope, reach and the need for the chemical industry.

Furthermore, in this paper we explore very briefly, the meaning and the different kinds of market competition – (i) pure and perfect market competition, (ii) monopolistic and imperfect, (iii) monopoly, (iv) oligopoly and duopoly & (v) oligopoly and cartels.

Finally, the paper also explores the competition law in India. The case laws that set precedent for the future cases have also been discussed to give a general understanding. Two most important cases to the Indian Law for chemicals have been discussed – *Indian Chemical Council vs General Insurance Corporation of India* & *Corby Group Litigation v. Corby Borough Council* [2009] EWHC 1944 (TCC).

The paper has taken a holistic view of chemical industries, while keeping in mind the Indian atmosphere and the functioning of this industry.

Keywords: Chemical Industries; Market Competition; Precedents; Judgements.

MEANING

According to the Cambridge dictionary, a chemical can be referred to as “any [basic substance](#) that is used in or [produced](#) by a reaction involving changes to atoms or molecules”.

BACKGROUND

Chemicals have been used since time immemorial. However, it was in the 18th century's Industrial Revolution in which the Chemical Industry was established where chemicals were produced in large quantities and made available in markets.

In the 1920s, chemical companies were integrated into a large conglomerate. IG Farben in Germany, Rhone-Poulenc in France, Imperial Chemical Industries in the United Kingdom. DuPont became a major American chemical company in the early 20th century.

IMPORTANCE OF CHEMICAL INDUSTRY

1. Increase the Life of Food

Chemicals play a major role in our food. Preservatives, seasonings and flavors help make foods delicious and extend their shelf life. The food industry is thriving because preservatives not only help maintain food quality, but also import food into different parts of the world. With these advances, you can enjoy fruits, canned foods and convenience foods from all over the world.

2. *Promote Agriculture*

Fertilizers and pesticides are useful for agriculture and development. The Green Revolution was made possible only by advances in the Indian chemical industry. Fertilizers and pesticides not only increase crop yields, but also prevent the invasion of pests. In addition to the self-consumption of food in our country, we export many grains, fruits, flowers and ornamental stems to different parts of the world. A country's GDP rises dramatically with this industry.

3. *Medical Scope*

The pharmaceutical industry and life-saving medicine are one of the fastest growing industries in India. This industry aids to medical tours. Numerous laboratories have also been set up to study various medicines for endemic and epidemic diseases. Prior to these laboratories in our country, we were exporting many chemicals that were expensive and almost inaccessible to most of the population.

4. *Biological Sphere*

Advanced researches like bio-engineering, mutation, artificial human organ production and genetic-reengineering are made possible in the world and in India, only with the help of the proper chemical industries. Stem-cell and other research projects are helping humans to live a long and healthy life.

5. *Importance in Day-to-Day Life*

Plastics we use everyday are produced by the chemical industry. Furthermore, the toiletries such as scents, soaps, perfumes, etc. are also a product of this industry.

6. *Environmental Endeavours*

The chemical industry is expanding its roles in energy efficiency, trace chemical detection and mitigation, applications of natural biochemical materials and processes, and water and air pollution control technology development and application. The industry expects to be a major contributor to expanding the science and technology that supports life cycle environmental assessment and sustainable development policies.

7. *Contribution to Artistic and Academic Lives*

Paint, crayons and colour pencils as well as charcoal pencils for sketching are all produced by the chemical industry. The pens we write with also use the ink produced by the chemical industries.

8. *Necessity of the Petro-Chemical Industry*

Petrochemicals involve converting crude oil and natural gas into basic petrochemicals such as ethylene, propylene, butadiene and benzene. Refining crude oil produces many by-products that are classified as petroleum products. These petrochemical products form the components of various products. These products, down to the most important ones, are present in our everyday trifles. The use of these products is so important that living without them is simply impossible. The most common products containing these by-products include paints, thinners, dry cleaning chemicals, inks, pesticides, charcoal lighters, and construction chemicals.

9. *Need in the Construction Industry*

The housing market is a large consumer of chemicals. Chemicals make up about 17% of all materials used in new buildings. Synthetic materials such as plastic pipes and siding are used to build and buy homes. Construction stimulates demand for appliances, carpets, furniture and paints, including those made from chemicals. The strength of the construction industry has a direct impact on the strength of the chemical industry.

10. Automobile Industry

Chemical products such as plastics, rubber, textiles and paints are used in large quantities in automobile manufacturing. All cars include chemically treated products and products worth over \$ 2,000. Most of the large and diversified chemical companies serve the automotive sector in the specialty paints and plastics sector.

DEFINITION OF MARKET COMPETITION

Market competition refers to a situation where different economic firms are in contention to obtain goods that are limited by varying the elements of the market.

Types of Market Competition

Pure & Perfect

Pure Competition – A market situation where there is a large number of independent sellers offering identical products. It means it is a term for an industry where competition is stagnant and relatively non-competitive. Companies within the pure competition category have little control of price or distribution of products.

This can be characterised by a large number of buyers and sellers. The number of buyers and sellers must be so high that no one is in a position to influence the price and performance of the industry as a whole. In the market, the position of the buyer or seller is like a drop of sea water.

The product should be homogenous. There should be homogeneity in the products. This way, no buyer prefers one seller's product to another. If the product is homogeneous, the price will be the same everywhere.

There should be no restriction on free entry and exit of any firm. If there is a desire for profit, the company will start a business, and if there is possibility of loss, the company will leave the business.

All buyers and sellers must have Perfect Knowledge of the Market. Buyers and sellers need to have a complete understanding of the prices at which goods are bought and sold and the prices at which others are willing to buy and sell. This contributes to uniform pricing.

There should be no control over price. There should be complete and absolute openness in the buying and selling of the goods. Therefore, prices should be liable to change without any restrictions with regards to demand and supply.

Monopolistic & Imperfect

There are various firms in a large quantity, however the quantity is not as big as in perfect competition. This means that every firm has some amount of control over its pricing policy. One company's pricing policy is not expected to receive response from other companies. That is, each company follows an independent pricing policy.

When the existing firms are making super-normal profits, newer firms will start entering. With the entry of new companies, supply will increase, prices will fall, and existing companies will only get normal profits. If an existing company suffers a loss, some of the marginal companies will leave. It will reduce supply, it will raise prices, and existing businesses will be left with normal profits.

Product differentiation is a major part of this. Product differentiation refers to the situation in which a product purchaser distinguishes a product from other products. Basically, the products of different companies are not completely different. They are slightly different from the others. Companies that manufacture differentiated products dominate their products, but face competition. The actual difference is in design, materials used, skills, etc., but the imaginary difference comes from advertising, brand, etc.

Another feature of monopolistic competition is that companies are trying to promote their products through different types of costs. Advertising is the most important factor in selling costs and affects both product demand and cost. The main purpose of the monopoly is to get the maximum profit. Therefore, he adjusts this type of spending accordingly.

Lack of perfect knowledge is another feature that characterises this form of competition. Buyers buy products from several varieties sold near their homes. From time to time, the buyer knows a particular item for which it is available at a low price. But he can't get there due to

lack of time, is too lazy, or can't find a suitable promotion. Like the , the situation is not available because the seller does not know exactly the buyer's preferences.

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Under monopolistic competition, demand curve is more elastic. In order to sell more, the firms must reduce price.

MONOPOLY

“Mono” refers to one. Therefore, monopoly refers to a market system where there is a single seller.

Monopoly is a system where there is one seller and multiple buyers. Also, there is no distinction between the firm and the industry as a firm constitutes the entire industry.

There are entry restrictions in such forms of market competition. The restrictions may be economical, legal, institutional, artificial, etc.

A monopolistic firm sells products for which there is no close replacement. The price elasticity of demand for monopoly products is less than one. Therefore, monopolies are facing a downward demand curve. Monopolies can leverage their single sales force in every way to maximize their bottom line. (Price discrimination) In real life, complete monopoly is very rare. However, one company can control the offer. For example, utilities such as transportation, water, and electricity usually have a monopoly market to take advantage of large-scale production.

Since there is only one company selling the product, it is a price maker for the entire industry. Consumers must accept the price set by the company as there are no other sellers or close alternatives.

Robinson’s definition of Price Discrimination – “Price discrimination is charging different prices for the same product or same price for the differentiated product”.

First Degree - Refers to price discrimination when different people are charged different prices. Different prices are calculated depending on the consumer's income level and willingness to buy

Second Degree - The monopolist charges different prices for a specific quantity or block of output. This means that one block of product will be sold at a certain price and another block will be sold at a lower price. This form of price discrimination is more common than the first form.

Third Degree – the price charged by the monopolist in one market varies for the same product in different markets. Dividing the entire market into two or more submarkets is essential for this form of price discrimination. In reality, three-time price discrimination is the most common.

DUOPOLY & OLIGOPOLY (& CARTELS)

An oligopoly can be described as “a market or industry is dominated by a small group of large sellers” where the product may be homogenous or heterogeneous. It lies between pure monopoly and monopolistic competition, with few sellers able to dominate the market and control product prices.

Duopoly is a special case of oligopoly, with just two sellers. Duopoly can have the same effect on the market as monopoly if two parties vote for price or production.

There are few large companies. The exact number of companies is not specified. Every company produces a significant portion of its total production. There is fierce competition between different companies, and each company tries to manipulate both price and production to outperform each other. For instance, the Indian car market is oligopolistic due to the small number of manufacturers. The Number Companies are so small that actions by a single company can affect competing companies. As a result, all companies closely monitor the activities of their competitors.

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of companies, the actions of a single company can affect competitors. As a result, all companies closely monitor the activities of their competitors.

The most important feature of oligopoly is the interdependence of different companies in decision making. A small number of large companies form an industry, one of which launches a large advertising campaign or designs a new model of product that will soon enter the market, causing a backlash from competitors in the industry. There is no doubt that it will cause.

Under oligopoly, competitors are in control and remain vigilant about policy-changing companies. Therefore, advertising is a powerful tool in the hands of oligopoly. Oligopoly companies can launch aggressive advertising campaigns to win most of the market.

Oligopoly has few sales reps, so changing sales reps can quickly affect one's competitors. As a result, all sales reps are always vigilant, closely monitoring what their competitors are doing, and trying to get back on track. In the long run, there are several types of barriers to entry that prevent new companies from entering the industry.

- (A) Economies of scale enjoyed by some large corporations.
- (b) Mandatory and special input control.
- (c) High capital requirements due to equipment costs, advertising costs, etc.
- (d) Exclusive patent. And license. If access is restricted or blocked by such natural and man-made barriers, the oligopolistic industry can generate above-average profits in the long run.

Oligopoly interdependence makes it impossible to draw such a seller's demand curve, except in situations where the form of interdependence is well defined. In actual business operations, the demand curve remains undefined. Under the oligopoly, companies can expect at least three different reactions from other sellers when they lower prices.

Oligopoly companies can produce homogeneous or differentiated products. When a company manufactures homogeneous products such as cement and steel, we talk about pure or complete oligopoly. When a company produces a differentiated product such as an automobile, the industry is called a differentiated or incomplete oligopoly.

CARTELS (COLLUSIVE OLIGOPOLY)

An oligopolistic salesperson can have as much market power as a monopoly. This is done in an oligopolistic arrangement called a cartel, where the seller acts more like a division of a company than a rival company that coordinates its activities well and makes independent decisions about quantity and price. The cartel is usually not tolerated by the government in the area where these markets operate. Even collusion, a necessary part of a real cartel, is illegal.

Quota Fixed Cartels

The purpose of these cartels is to limit supply. To achieve this goal, they try to limit production by setting production quotas for each member. Members may not produce more than their quota.

Pricing Cartels

These cartels regulate prices by limiting production. The lowest price of the product is set. Members may not sell products at a price lower than the lowest price.

Zonal Cartels

They are essentially like territorial pools. It is created to secure a certain amount of sales for each member. The entire market is divided into regions and members have the right to trade in specific regions. For example, you can divide the entire Indian market into north, south, east, and west zones, and assign each zone to a specific member.

The member unit concludes a contract to establish a joint sales office. Member units sell products syndicated at a price called the accounting price. The settlement price covers the production cost and includes the rate of return. The Syndicate explores the market structure of individual markets and sells at the highest possible price in each market. Therefore, the price charged by syndicate depends on the market. The price charged by the syndicate is higher than the book value and is profitable. Profit is shared among members.

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EXAMPLES

Pure & Perfect Competition

In the chemical industry, it is very hard to say that there exists pure and perfect competition anywhere. Pure and perfect market competition is the rarest form of market competition as it is based on the concept of utopian equality.

Monopolistic & Imperfect Competition

This means a market which has a large number of buyers and sellers; however, the market is small enough for the sellers to have some control over their prices. In the chemical industry, day to day products that are made out of chemicals can be put into this category of market competition.

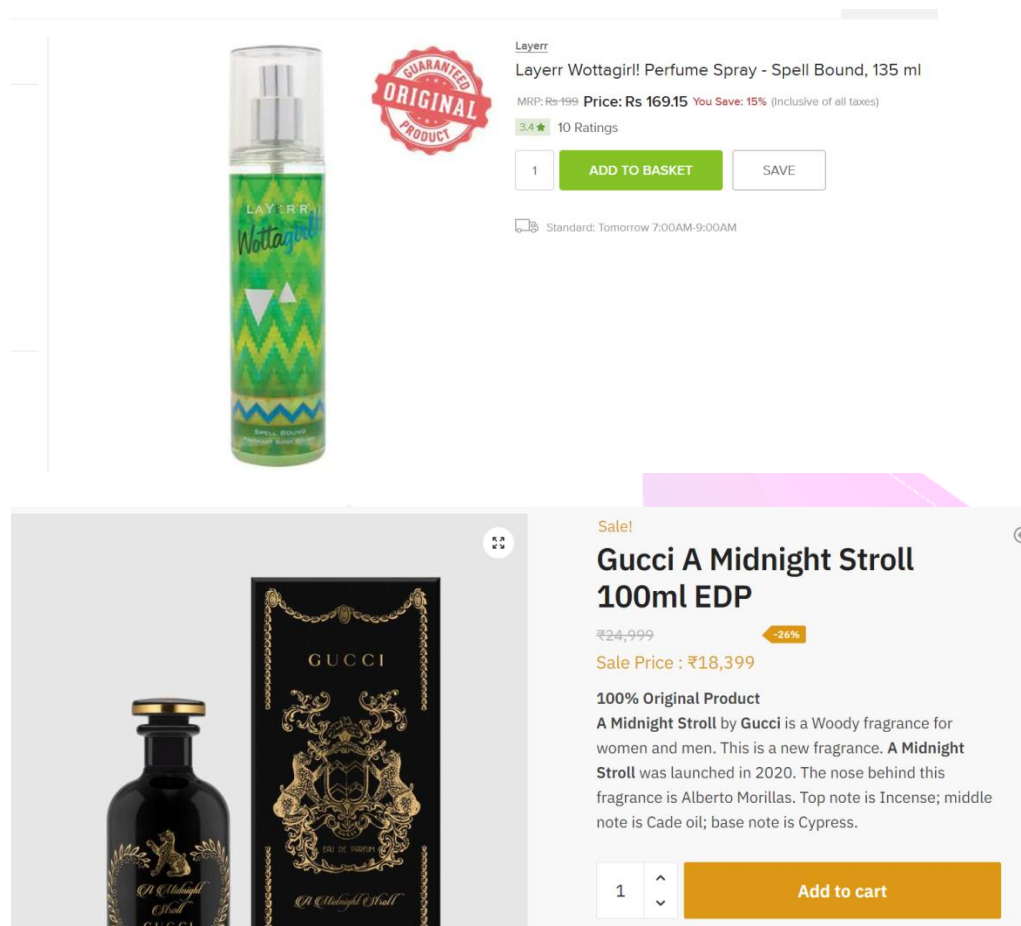
Petrochemical produce is also dependent on where it is being bought from and how much. These items cost less in the wholesale markets than normal markets and have schemes where they cost lesser if bought in a higher quantity somewhere.

Egs.: Soaps, Plastic containers, creams, etc.

Other examples include agricultural chemicals and medical chemicals.

Real time example

As shown in the image below, both the items are fragrances. However, there is a major difference in price, product quality, brands and packaging.



The Whattagirl body fragrance costs Rs. 169.15/- after discount where the original price was Rs. 199/-. At the same time, the new Gucci perfume, i.e., ‘A midnight stroll’ costs Rs. 18,399/- after a substantial discount, where the original price was Rs. 24,999/-.

Monopoly

As far as Monopoly is concerned, they exist but in limited numbers. Following is a list of the largest chemical monopolies in the world as of 1974.

Table 1. Indicators of the financial and economic strength of the leading chemical monopolies (1974, in millions of dollars)

	Sales	Assets	Corporate capital	Research expenditures	Net profit	Employees (thousands)
BASF (Federal Republic of Germany)	8,497	6,075	1,897	232	201	111
Hoechst (Federal Republic of Germany)	7,821	7,795	1,880	308	205	179
ICI (Great Britain)	6,912	7,428	3,144	204	568	201
Du Pont (USA)	6,910	5,980	3,753	344	404	137
Bayer (Federal Republic of Germany)	6,301	6,801	1,415	310	189	135
Montedison (Italy)	6,190	6,865	778	87	174	153
Union Carbide (USA)	5,320	4,883	2,505	94	530	110
Dow Chemical (USA)	4,938	5,114	1,973	149	558	53
Rhône-Poulenc (France)	4,234	5,487	1,869	163	180	119
AKZO (Netherlands)	4,010	3,898	1,296	134	142	105
Mitsubishi Chemical Industries (Japan)	3,563	3,638	1,755	322	—	53
Monsanto (USA)	3,498	2,938	1,767	126	323	61

Oligopoly & Cartels

We find the biggest example of a cartel in the Petroleum Industry. The aim of the OPEC is to regulate the supply of oil as so to control oil prices of the world. The OPEC is consisted of 13 nations including – Saudi Arabia, United Arab Emirates, Algeria, Angola, Equatorial Guinea, Gabon, Iran, Iraq, Kuwait, Libya, Nigeria, the Republic of the Congo and Venezuela.

COMPETITION LAW IN INDIA

Competition law in India is regulated by the **Competition Act, 2002**. The Act has been used as a way of promoting healthy competition among firms, setting boundaries and making sure that the competition does not take a dangerous turn.

All clauses of the Act apply to the Chemical Industry. They apply in all regions of India, unless otherwise prescribed.

Indian Chemical Council vs General Insurance Corporation of India

It is an Indian Landmark case that covers sections 4(2)(a), 9(1), 19(1), 26(2) & 33.

Established under Section 9 (1) of the Non-life Insurance Business (Nationalization) Act of 1972, GIC was re-informed in November 2000 as an Indian reinsurance company. GIC is subject to a statutory 5% quota for general insurance policies in India up to a certain limit. This means that all insurers operating in India must allocate or transfer 5% of their liabilities to GIC from the insurance contracts they issue.

The main complaint of the informant is the circulation dated February 12, 2019 issued by GIC to all reinsurance companies that have signed reinsurance contracts and have notified of certain changes in the premium calculation method. Circulation "). Must be included in the fire insurance segment to which the ceding insurance company complies. The new premium calculation parameters came into effect on March 1, 2019, and it was argued that insurers in the fire insurance sector would calculate multiples of existing premiums with such changes by GIC.

i. With reference to the aforementioned circulation, the informant cited the following case in which the GIC abused its dominant position in violation of the provisions of Article 4 (2) (a) of the Act. GIC does not provide adequate justification for changing premium calculation parameters in the context of contracts. In addition, I have never consulted with non-life insurance or professional associations, and the trickle-down effect of the change is not taken into consideration.

ii. The revised parameters are not causally related to the GIC's underlying costs for providing reinsurance services.

iii. Changes introduced by Circular do not apply equally to similarly placed assignments. GIC relied on a "loss cost plan" set by the Insurance Information Agency, which regulates the rates for 109 people. However, GIC has decided to apply the modified parameters of reinsurance to only eight employees (ie, the production of textiles, plastics and rubber products, chemical products below the ignition point below 32 ° C. Production, storage of category III goods, shipping companies, steel mills, power plants)).) Without explaining the reason. In addition, GIC did not distinguish between low-risk and high-risk units. Circular does not offer low premium rates for better insurance risk. This not only violates better risk management practices, but also violates commercial logic.

iv. GIC does not voluntarily offer high deductions or discounts. In the insurance market, it was common for insureds / policyholders to always have better premium rates if they wanted to take part in the risk through higher deductions. v. GIC violates IRDAI, Vid's "Risk Pricing Guidelines". Violated the circulation dated November 12, 2014. These guidelines include, among other things, risk analysis for calculating premiums.

Based on the above averments and allegations, the Informant has, inter-alia, prayed that GIC be directed to withdraw the Circular dated 12.02.2019, issued by it to its ceding insurance companies under their respective treaties. The Informant has also filed an application under Section 33 of the Act praying that GIC be restrained from implementing the Circular against the ceding insurance companies under its reinsurance treaties.

Commission considered the matter in its ordinary meeting held on 16.04.2019 and decided to make a reference to IRDAI (Statutory Regulator) after pursuing the information as per provisions under s. 21A seeking for the opinion of the IRDAI (12.02.2019). Opinion of the IRDAI was also sought specifically on (a) whether circular dated 12.02.2019, issued by GIC is violative of the circular dated 12.11.2014 of IRDAI on Guidelines for pricing a risk in respect of policies issued to commercial entities; and (b) whether said circular dated 12.02.2019 is in consonance with the provisions of the **Insurance Act**, 1938, IRDAI (Reinsurance) Regulations, 2018 and other relevant regulations, if any, issued by IRDAI.

The Commission received a response to the above reference from the June 12, 2019 IRDAI Video Letter. The letter stated that the February 12, 2019 GIC Circular did not violate the November 12, 2014 IRDAI Circular. This was done in line with relevant rules issued by IRDAI, including the provisions of the **Insurance Act** of 1938 and the IRDAI (Reinsurance) Regulations of 2018. IRDAI also said it would not interfere with the pricing of reinsurers. This allows you to control price cuts from market power and secure competition. IRDAI also emphasized the fact that certain written petitions were submitted to the Delhi High Court and the Telangana High Court. This, among other things, challenged the GIC Circulation dated February 12, 2019. The Hon`ble Delhi High Court has dismissed the petition with reference to the Common Order dated April 12, 2019 (W.P. 3670 of 2019 and other related matters). The Delhi High Court has full authority to determine the amount of premiums GIC claims is within GIC's commercial wisdom and to determine the rate at which reinsurers exist in relation to risk. I decided that it was. Offers covered by various insurance companies.

Based on the above, the Commission has not found any allegations of breach of the provisions of Section 4 of the Act against GIC. 13. In view of the above, the Committee is of the opinion that there were no incidents and the submitted information was closed in accordance with Article 26 (2) of the Act. As a result, there are no cases of considering a provisional injunction requested by an informant under Article 33 of the Act.

The secretary has been directed to communicate the order of the information accordingly.

Corby Group Litigation v. Corby Borough Council [2009] EWHC 1444 (TCC)

The Corby Toxic Waste Case was a proceeding settled by The Hon. Corby Group Proceedings v Corby Autonomous Region Council Proceedings in London's High Court on July 29, 2009, Judge Akenhead. The judge discovered the Corby Autonomous Region Council on negligence, public harassment, and breach of legal obligations regarding the restoration of the Corby Works in the town of Corby in Northamptonshire between 1985 and 1997. Atmospheric connection Producing toxic waste and birth defects. All previous cases were related to water pollution and influenced other council restoration programs and methods of performing restorations in England and Wales, and other common law countries including India, South Africa and Jamaica. The case has been described as "the British Erin Brockovich".

Corby founded the Stewarts & Lloyd manufacturing facility in the 1930s to become the center of steel production and by 1960 had grown into one of Midland's most industrialized areas. But in 1981, the factory became unprofitable and its owner, British Steel Corporation, closed the site. Previously, it was one of the largest steelmaking operations in Western Europe, covering an area of 680 acres (280 hectares), with four blast furnaces, two coke oven complexes and related facilities. During operation, a large amount of industrial waste, including toxic waste, was dumped there. Between 1984 and 1999, the Kobe Autonomous Region Council demolished, excavated, and redeveloped the site as part of an urban renewal program. This included transporting waste through densely populated areas to a quarry north of the site, moving up to 200 vehicles per day. Toxic waste was carried by open trucks, spilling mud on the road and releasing large amounts of dust into the atmosphere. Then, from the late 1980s to the 1990s, the rate of upper limb defects in babies born in Corby was almost three times that of babies born in the region and ten times that of populous cities. It turned out that. 60,000 is expected. In all cases initially brought to court, the family had no history of limb defects.

In November 2005 expert evidence was submitted to the High Court in London by the mothers of thirty children who claimed that during their pregnancies they were exposed to contamination from the waste removal operations and who sought to bring a legal action to try to prove a link between the mismanagement of the toxic waste and the birth defects suffered by their children. The evidence presented included reports detailing the higher rate of birth defects, and alleging that exposure to the toxic waste was the likely cause of the children's

deformities. They also presented a report written by Roger Braithwaite, an environmental expert instructed by the families, which concluded that the negligent handling of the waste by Corby Borough Council demonstrated "naivety, arrogance, ignorance, incompetence and a possible serious conflict of interest... At this early stage it would seem to me that these... badly polluted lands have never been effectively or comprehensively assessed, properly permitted, regulated, monitored or adequate records maintained... This is environmental negligence on a grand scale."

After reviewing the evidence presented by all parties to the case, the order approved by then Chief Judge Sir Phillips of Worth Matlabers was a dispute relating to the management and implementation of "land reclamation" by the council. I have set the conditions for. The "Contract from 1985 to 1999" and all obligations to family and parents were granted permission to prosecute the Corby Proceedings as a class action against a child born between 1985 and 1999.

It was 2009, it was ruled by Judge Akenhead as he said it was clear that the council allowed the release of toxic waste into the atmosphere. He also had a "statistically significant" accumulation of congenital deficiencies between 1989 and 1999, "toxicologically speaking, the species from 1985 (and perhaps earlier) to 1997. I was on and off the site of the Corby Autonomous Region Council for the entire period of the year. " Lamentation of impurities that can cause birth defects.

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