

## Constitution of India and Environmental Governance:

### Administrative and Adjudicatory Process

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Lecture - 42

### Basic Legal Framework and Strategies for Waste Management - 2

(Refer Slide Time: 00:15)

#### II. PRINCIPLES & STRATEGIES OF GOVERNANCE



##### PRINCIPLES

- 1. PREVENTION
- 2. PRECAUTION
- 3. POLLUTER PAYS- COMPENSATION, RESTORATION, RECOVERY
- 4. LIABILITY- GENERATOR, OCCUPIER, MANAGER, HANDLER, DISPOSER

##### STRATEGIES

- REGULATION
- MINIMISE, REUSE, RECYCLE
- SCIENTIFIC & TECHNOLOGICAL SOLUTIONS: INCINERATION, AUTOCLAVING, BIOREMEDIATION, etc.
- ADOPTION OF TRADITIONAL METHODS- HEALTHY AND ENVIRONMENTALLY-BENIGN, INEXPENSIVE APPROACHES



Let us take a little bit of contributories to the making of the law and strategies of governments. If you pick out the very essence of waste management, you come up with a set of principles, which guide and steer the managing of waste, and a number of strategies embellish the entire administrative machinery concerning the waste. And I just list them out.

First, to familiarize you with these tools and techniques of management as adopted and applied in different situations by different laws, policy frames, institutional mechanisms, and courses of action. You pick any law concerning the waste management, you either see one or many of the principles and strategies listed out here.

What are the principles? The first one is prevention. Of course, you cannot prevent the waste from getting generated. But what you can do is, can you really think of the waste that is generated through a particular developmental process be prevented from having adverse impact on life and lives of the people around. How do I prevent?

Well, if I have handled waste of, a particular kind of a waste, common sense would dictate to me, I do not go with bare hands, I use gloves. Thereby I prevent. When I come in contact with the waste, the waste to have an immediate adverse impact on my skin and my body, I take a protective gear. Prevention is better than cure. So that is the first principle of waste management.

The second one is the precaution. Prevention and precaution appear to be the two faces of the same coin, but precaution is one-step earlier to the principle of prevention. In the sense that, it is forward-looking, it is anticipation that you have an idea as to what is the kind of a waste. You have an idea as to what kind of impacts it would have on health, hygiene, well-being, and the environment. And so, you prepare yourself well beforehand, (well beforehand).

See, the prevention is and adverse impact is already happening. You are trying to put barriers for that; safeguard measures. Precaution is that you are already well prepared in advance, advance preparation. So that you will never ever feel the impact of it if you are well equipped. Anticipation, avoidance, attacking, and looking for alternatives of dealing with the problem situation constitute the principle of precaution.

The third principle is a very straightforward principle. In fact, this is part of every law concerning waste management, polluter pays. I have a duty not to pollute, I have a duty not to throw whatever waste I have generated and if I do that, then I have a duty to compensate any damage or loss that is caused.

So, it is like being fined for a wrongdoing, that I do not have a right to litter my surrounding and if I do so, I should pay the price of cleaning up, the cleaning up cost. The compensation, restoration, and recovery are part of the polluter pays principle. And since we have discussed these principles at the very beginning of our understanding of environmental law, I did not have to elaborate on them, I will just name them.

And the fourth major principle is fixing of liability. It is not just about you talk of principles that should you go wrong, these are the consequences you face, you will be fined, you will have to act in a particular way, some kind of a repair action and things like that. In addition to that, who is going to be fixed, and how? What is the magnitude of the damage that has been

caused or that is likely to be caused by you and how you are going to be made to pay, made liable.

And so fixing liability on the one who is responsible for the generation of waste, on the occupier of the premises who has overseen the generation of it, the kind of role and responsibility that he has and for dereliction of duty or the nature of liability, the role responsibility, function, and obligation of the manager, the handler of the waste, and the one who is engaged in disposing waste.

So, it may be the same person who may be a generator, occupier, manager, a handler, or a disposer or it may be different people or groups of institutions involved in it and they have different roles and responsibilities.

Fixing liability is one aspect of the law guided by these principles of strict liability, or absolute liability, or liability subject to a fault, liability without any intention to cause harm, and things like that, all these are principles which actually steer the very working of our law concerning waste management.

What are the kinds of management strategies that can be adopted and that are being adopted? If you extract it from the laws that are prevalent now, then you can name four or five of such strategies. One is of core - regulation. That is what the government does, that is what a statute does. The institution of enforcement regulates the management of the waste. That is one but that is common strategy.

But the real, more important strategy, which is custom made for waste management is the primary requirement of minimization, reuse, recycling, and recovery. These are the basic strategies that are supposed to be adopted in order to ensure an effective management of waste. Minimization, reuse, recycle, recovery.

The third set of strategies are to be found in the scientific and technological solutions and some of them are state-of-the-art technology, like incineration. Incineration is the burning of a waste substance that in a cauldron, at very high temperature, reducing large volume of waste into ash. And you have very special gadgets that are there for that kind of a thing. And it is one of the contributions of science and technology, modern science and technology for

number one, reducing the volume and weight of the waste and also it is transforming into an inert substance.

There are other solutions like autoclaving and bioremediation and things like that. As we go along, perhaps we would be able to have a little bit of an idea of that. Please remember that when I talk of environmental law and especially waste management law, there is so much of science involved in it, and there is so much of scientific solutions in it. And one should become, familiarize oneself with these to really understand the import of the law, its working, and its effectiveness.

Then, of course, another strategy which is something which is practiced by us without any state intervention, practiced by us for generations, something about which we are very familiar, something which is commonplace for us, but something which are carried on from generation to generation as traditional methods, which are inexpensive and environmentally benign.

And something which have provided lasting solutions to our problems, at least in the past. Adoption and continued application as a strategy for waste management, maybe another important tool or a mechanism in the whole system of governance.

(Refer Slide Time: 10:22)

### III. LEGAL FRAME



#### A. INTERNATIONAL

- NO SINGLE UNIVERSAL WASTE MANAGEMENT FRAMEWORK LAW
- 1. LONDON "DUMPING" CONVENTION, 1972: Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter, 1972 - to promote effective control of all sources of marine pollution and to take all practicable steps to prevent pollution of the sea by dumping of wastes and other matter- 87 Parties—in force since 1975- London Protocol, 1996: to modernize the Convention and, eventually, replace it- all dumping prohibited, except for possibly acceptable wastes (- "reverse list")- entered into force on 24 March 2006- 53 Parties- to be read with the United Nations Convention on the Law of the Sea, 1982(UNCLOS)(-it has elaborate provisions for Conservation and management of living resources of the high Seas and Protection and Preservation of the Marine Environment)



So having familiarized ourselves with the host of principles and strategies, we will take a snapshot of the entire legal frame at one go. First, I will very briefly refer to the international legal frame and then get into the domestic or the national legal frame in a capsular form.

First the international legal frame. The most striking feature of the international legal frame is, there is no single universal waste management legal frame at all for waste management. And so, all that we have is a couple of major international legal arrangements on certain aspects of waste management.

And a couple of those which are more of a voluntary in nature, although international in character, not having a binding nature of compliance, but more out of cooperation and voluntariness it has to be applied. And so, you have a very loose international legal frame.

But those that are a little bit more concrete and crystal clear, I will just give you a peep into it. And the first one is the London Dumping Convention of 1972. At the global level, one of the major concerns that was expressed when it came to waste and hazardous substances was with regard to the oceans and the seas of dumping, of untreated waste in the vast expanse of the ocean.

And why you dump it in the ocean? Because it does not pay anybody, it does not come up within the territorial jurisdiction of any country, so no sovereign to oversee your actions, free for all and free dumping site. Increased dumping of all such kinds of waste have led to a matter of very great concern. And I am referring to the timeframe right from early 1950s to 1980.

Over the period of 30 years at the international level, there has been the international summits with regard to bringing the entire oceans and seas under an international legal regime. The law of the sea regime. And one of the things they were concerned as a community of nations was of this irresponsible, unregulated, unlimited, and huge volumes of different kinds of ways being dumped in the sea.

In London, a global convention was entered into in the year 1972 and it is entitled, the Convention on the Prevention of Marine Pollution by Dumping of Wastes and Other Matter. What is the objective? It is to promote effective control of all sources of marine pollution and

to take all practicable steps to prevent pollution of the sea by dumping a waste and other matter.

There are around 90 country parties who have subscribed to this arrangement and this has been enforced since 1975. Some 20 years hence to this Convention, a protocol was entered into, called the London Protocol 1996, to modernize this Convention and to eventually replace it.

So, you remember in 1972, all kinds of ways dumping was prohibited. But over a period of time, the realization amongst the community of nations was that prohibition of dumping of all kinds of waste is unworkable, unmanageable, but we needed to really take into account certain kinds of waste that should never ever be dumped and they should be properly effectively disposed of, not by dumping in the sea.

And so, what this particular protocol did was to rework on the banning and it said that certain kinds of acceptable waste, a list was prepared, called the reverse list. These are exempt from this banning or prohibition, but something which is unbearable, unmanageable, something which would grossly affect the marine ecosystem, the life forms there are to be banned. And this came into force from the year 2006.

Please note the number of parties which are accepting the obligations under this arrangement. From the 87 parties, it has come down to 53 parties. And this is a bit of a tragedy that there are only out of about 200 odd countries in the world, about 50 odd countries are feeling obliged to respect, adhere to, and conform to the regulations of prevention of dumping of waste substances into the sea.

And this is a law that you needed to read with another major international arrangement called the United Nations Convention of the Law of the Sea, U N C L O S. UNCLOS 1982, a larger frame of a law in which elaborate provisions are made in separate sections and articles in it for the conservation and protection and management of living resources on the high seas and protection of the marine environment and its preservation by various measures, primarily through active cooperation, concerted effort, and support amongst the nations which are parties to this arrangement.

So together a particular limited level of prevention and prohibition of dumping in the open sea is put into application at the international level. This is the first of the arrangements.

(Refer Slide Time: 17:56)



- **2. POP CONVENTION:** The Convention on Persistent Organic Pollutants (POP), adopted on 22 May 2001 in Stockholm, Sweden- to protect human health and the environment from POPs (- listed chemicals and pesticides like, DDT, that affect human and animal health)- 152 parties -entered into force on 17 May 2004
- **3. PRIOR INFORMED CONSENT (PIC) CONVENTION:** Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, Rotterdam,- to help countries to avoid using pesticides that are recognized to be harmful to human health and the environment and highly toxic pesticides that cannot be handled safely by small farmers in developing countries- promotes sustainable agriculture in a safer environment- implemented on a voluntary basis since 1998- over 60 states parties
- **4. Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal, 1989 - in force since 5 May, 1992- 186 Parties – ELABORATELY DISCUSSED IN THE NEXT SECTION OF THIS MODULE**



The second one is what is referred to as the POP Convention, P O P or the Convention on Persistent Organic Pollutants, POP for short, adopted on 22nd May 2001 in Stockholm, Sweden. And it is a very huge arrangement. The basic idea is, especially in agricultural operations all over the world, very unscientific agricultural practices exist.

In order to increase production, all kinds of pesticides, insecticides, and inputs are there in the agricultural operations and many of them got really hazardous in nature. They are referred to as Persistent Organic Pollutants. To protect human health and the environment from these, there is a list that is available, list of chemicals and pesticides. You are all familiar with DDT. These are also included.

Those that affect human and animal health, in relation to them, regulation, prevention, prohibition, and management, these are part and parcel of this law. It came into force only from the year 2004 and it has a larger subscription. Nearly three-fourths of the countries in the world, 150 odd parties are members of this particular arrangement. A very important one. India is also a party to that.

In fact, most of the arrangement that I am referring to unless I mentioned it specifically, India as a party to them, and so India is bound by the obligations there, and India has internalized each one of these in its domestic law.

Now, third one is PIC Convention or the Prior Informed Consent Convention. What is this? It is a convention on prior informed consent procedure to be followed for certain hazardous chemicals and pesticides in international trade. This was a convention signed in Rotterdam, very much related to organic pollutants and also chemicals which are hazardous in nature. So, these stood together actually comes to major international arrangements.

And what is the objective? It is to help countries, to avoid using pesticides that are recognized to be harmful to human health and environment and highly toxic pesticides that cannot be handled safely by small farmers in developing countries. It promotes sustainable agriculture in a safer environment.

If you put these two arrangements together, they actually constitute major arrangements concerning inputs into the agriculture operations, but that is not only thing. It is even to do with production of chemicals, production of pesticides. So, it is also referred to industries, in relation to industries, urban developmental designs, and planning.

So, by and large, these are voluntary arrangements. And so, it is implemented on a voluntary basis from the year 1998. There was a small group of nations which are parties to that. About 60 odd states are parties to this arrangement. But these are very general ones, not very effective, not very powerful.

I am not saying that the one that I am going to refer now, the next one is far more effective, but definitely, both in terms of reach, application, impact, it is having a far-reaching application and that is what I refer to the Basel Convention on the Control of Transboundary Movements of Hazardous Waste and their Disposal. The year is 1989. It was signed in a place called Basel in Switzerland and that is why it is also called as a Basel Convention and this has been in force since the 1992.

There are over 180 countries which are parties to this and this is elaborated in the very next section of my discussion with you. So, I will not elaborate anything at that right now, but please remember, when we get into it, this is going to be a major international legal arrangement, much more than any other arrangement concerning waste management at the



international level, both in terms of reach, impact, application, and compliance. More about that in the next section.

(Refer Slide Time: 23:19)



**B. REGIONAL ARRANGEMENTS:**

- **EUROPEAN UNION HAS AN NUMBER OF VERY ELABORATE, COMPREHENSIVE AND EFFECTIVE LEGAL ARRANGEMENTS (- EU DIRECTIVES)- THESE INCLUDE, Directives on waste, hazardous waste, on the supervision and control of shipments of waste within, into and out of the European Community, landfill of waste, incineration of waste, packaging and packaging waste, batteries and accumulators and waste batteries , waste electrical and electronic equipment (WEEE) – MOST OF THESE DEVELOPMENTS HAVE DEEP AND ABIDING INFLUENCE ON THE WORKING OF THE WASTE MANAGEMENT LAWS, IN OTHER PARTS OF THE WORLD, INCLUDING INDIA**



Then there are regional arrangements and among the regional arrangements, the most significant ones are those that are entered into in the European situation. The most advanced arrangements. In fact, it is very true to say that whatever that happens with regard to waste management law at the European Union level today, the rest of the world wakes up to this, measures up to this, and attempts to accommodate this in their legal systems. Very true and definitely true in relation to waste management.

European Union has a very elaborate, comprehensive, and effective legal arrangements and these are referred to as directives, EU directives, or European Union directives and they include a wide variety of legal instruments. I will just name them.

For want of time, I will not be able to elaborate on any of them but certainly, they have their presence and their impact on a host of laws that are made on those subjects like directives on waste, hazardous waste, on the supervision and control of shipments of waste within, into, and out of the European community, landfill of waste, incineration of waste, packaging, and packaging of waste, batteries and accumulators, waste batteries, waste electrical and electronic equipment, and what have you.

Most of these developments have deep and abiding influence on the working of the waste management laws in other parts of the world and India is no exception to that (Refer Slide Time: 25:21)



### **C. LAW IN INDIA**

- **RULES AND NOTNs. ON DIFFERENT KINDS OF WASTES AND SUBSTANCES,**

**UNDER EPA, 1986, ISSUED FROM TIME TO TIME- THEY INCLUDE, HAZARDOUS SUBSTANCES/WASTES, BIOMEDICAL WASTES, SOLID WASTES,HAZARDOUS MICRO-ORGANISMS, LEAD ACID BATTERIES, HAZARDOUS CHEMICALS, ELECTRONIC WASTES , PLASTICS, etc. (- AMONG THESE, THE FIRST THREE ARE DEALT IN DETAIL, IN THE SUBSEQUENT SECIONS OF THIS MODULE)**



Now from this, let us take a quick look into the Indian legal design. By and large, Indian law concerning waste is purely a state subject and these are handed through legislations made by the state governments, and these are enforced through our urban and rural local bodies.

But it is only in recent times as I was mentioning, because of the environmental angle got into the whole scheme of things and environment being something has been considered to be of national importance and so you have national regulations in relation to them, right from around the 1997, 98, and even much earlier, especially to give effect to various international arrangement like from 1987, 88, rules and notifications on different kinds of wastes and substances are made and they are issued from time to time under the Environment Protection Act, the umbrella concerning environment protection.

And I will just make a mention of a few of them. They include hazardous substances and waste, biomedical waste, solid waste, hazardous wastes, hazardous microorganisms, lead-acid batteries, hazardous chemicals, chemical accidents, electronic waste, plastics, and a host of others.

Among these, hazardous substances or waste, number one; biomedical waste; number two; solid waste, number three, these are the ones which are dealt in greater detail in the subsequent sections of this module. And so, I will not elaborate right here.

Please remember that these notifications have been amended and recast from time to time, right from 1989 to the present day, to deal with a wide variety of ways that till recently did not pose much of a concern or a problem to us.

And as we realize their problem, their impacts, we are designing and evolving these regulations, which actually means that the laws that are being made and still being made even now are very dynamically evolving and they are in dynamic ferment in both in its making and its application in India now.

This concludes the first section of an introduction to the waste management law, the basic tools and techniques of waste management, the conceptualization of waste, the different wide varieties of waste, and a very general legal frame, both at the global, regional, and international level.

And from this, we get into, get detailed discussion on the laws in relation to some of the most significant aspects of specific sectors of waste management in the remaining sections from now onwards.