

## Constitution of India and Environmental Governance:

### Administrative and Adjudicatory Process

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### Lecture 44

#### Law on Management of Hazardous Waste and Biomedical Wastes in India

In our enquiry as today waste management legal regime, we had a definitely good idea of the international legal developments on that. From that we move on to the Indian law concerning waste management. In the time constraint that is available we will not be able to deal with every consumable aspect of waste management in India, but we shall be able to reflect upon some other major ones to both understand what the legal regime is about and how it is working. Let us begin with the Hazardous Waste Management Law in India.

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#### I. HAZARDOUS WASTES (HW) MANAGEMENT LAW



- \* NUMBER OF RULES AND REGULATIONS, CONCERNING A WIDE VARIETY OF HAZARDOUS SUBSTANCES/WASTE IN INDIA, ARE MADE UNDER THE ENVIRONMENT PROTECTION ACT, 1986, LIKE:
  - MANUFACTURE, STORAGE AND IMPORT OF HAZARDOUS CHEMICAL RULES, 1989; BATTERIES (MANAGEMENT AND HANDLING) RULES, 2001; THE CHEMICAL ACCIDENTS (EMERGENCY PLANNING, PREPAREDNESS AND RESPONSE) RULES, 1996; E-WASTE (MANAGEMENT AND HANDLING) RULES, 2010; NATIONAL IMPLEMENTATION PLAN FOR STOCKHOLM CONVENTION ON PERSISTENT ORGANIC POLLUTANTS, 2011; THE CHEMICAL ACCIDENTS (EMERGENCY PLANNING, PREPAREDNESS AND RESPONSE) RULES, 1996; RULES FOR THE MANUFACTURE, USE, IMPORT, EXPORT AND STORAGE OF HAZARDOUS MICRO-ORGANISMS/GENETICALLY-ENGINEERED ORGANISMS OR CELLS, 1989 - THIS IS DISCUSSED IN DETAIL IN THE MODULE ON BIODIVERSITY LAW).
  - IN ADDITION TO THESE, THE MOST PROMINENT AND COMPREHENSIVE ONE ON THE SUBJECT IS,
  - THE HAZARDOUS AND OTHER WASTES (MANAGEMENT AND TRANSBOUNDARY MOVEMENT) RULES, 2016 (- AMENDED IN 2019)



As you could see on the screen, numerous rules and regulations are made concerning a wide variety of hazardous substances, waste in India. Quite a good number of other areas of waste are covered, but specifically with regard to hazardous operations, hazardous substances just to give a snapshot on that you have the manufacture, storage and import of hazardous chemicals rules, way back in 1989; Batteries Management And Handling Rules of 2001.


The Chemical Accidents Emergency Planning, Preparedness and Responses Rule, 1996; E-Waste Management and Handling Rules, 2010; National Implementation Plan for Stockholm Convection on Persistent Organic Pollutants, 2011; The Chemical Accidents Emergency

Planning Preparedness and Response Rules of 1996; Rules for the Manufacture, use, import, export and storage of hazardous microorganisms, genetically engineered organisms or cells of 1989.

Please recall that this last one on hazardous microorganisms, we had an elaborate discussion in the module on Biodiversity Law. In addition to these, the most comprehensive and significant one on the subject is the hazardous and other waste management and handling rules, including trans-boundary movement made in the year 2016. We looked to the background of that its evolution and the current state of that particular law from now.


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- A NUMBER OF AMENDMENTS EFFECTED, OVER TIME, LEADING TO THE RE-CASTING THE LAW IN 2016 (- THAT HAS FURTHER BEEN AMENDED IN 2019-) MOST OF THE CHANGES , IN THE THIRD-ODD YEARS OF ITS LIFE, HAVE BEEN IN RESPONSE TO A NUMBER JUDICIAL PRONOUNCEMENTS OR TO CONFORM TO OUR INTERNATIONAL COMMITMENTS AND OBLIGATIONS, BESIDES TO KEEP PACE WITH THE DEMANDS OF THE TIME.
- A FEW INTERVENTION OF COURTS THAT TRIGGERED REFORM IN THE LAW:

1. LAW SOCIETY OF INDIA v. FERTILIZERS & CHEMICALS TRAVANCORE LTD. (1994, KER.): RESTRAINED A GIANT PUBLIC SECTOR FERTILIZER CO. FROM OPERATING ITS 10000 TON AMMONIA STORAGE TANK , IN COCHIN, AS A PRECAUTIONARY MEASURE, AS REQUIRED, TO PREVENT THE DEVASTATING IMPACT OF ACIDENTAL LEAKS FROM THE CHEMICAL BARRELS, NOT PUT IN PLACE, BY HOLDING THAT LOCATING A DANGEROUS INDUSTRIAL FACILITY, IN AN URBAN SETTING, WITHOUT PROPER SAFEGUARDS, AMOUNTS TO PUTTING THE FUNDAMENTAL RIGHT TO LIFE OF THE CITIZENS, AT HUGE RISK.



This law, although it has been in operation in the last 3-4 years from 2016, started its journey from 1989 and with periodic changes and amendments is further amended now in 2019 after having been broadly recast in 2016. In fact, most of the changes in the 30 years of its life, it has been in response to a number of judicial pronouncements or in response to various commitments that we made at the international level and to fulfil the same to come up with a legal regime in India.

We have brought in either a new law or has modified the existing one or kept on amending it to keep pace with the requirements of the international commitments and also the demands of the time. Let us just have a look at a few of the interventions of the courts that have triggered, reformed the law. The earliest I can record here as something which is of very great

significance concerns a public sector undertaking and this was a decision of the Kerala High Court, 1994.

The case Law Society of India versus Fertilizers and Chemical Travancore Limited, it is the fact corporation f-a-c-t. And what actually happened here? To put it very briefly, this is a decision by the higher judiciary of restraining a giant public sector fertilizer corporation from operating its 10000 tons of ammonia storage tank, in Cochin, as a precautionary measure to prevent the devastating impact of accidental leak from the chemical barrels.

By holding that locating a dangerous industrial facility in an urban setting, without proper safeguards amounts to putting the very fundamental rights of life of the citizens at huge risk. Here, it is not the application of any statutory provision as I was just mentioning about the hazardous substances or hazardous operations.

But actually invoking the highest law of the land, the constitution that if you are going to leave something which is hazardous unattended too and keep it in a very negligent condition as it happened in this particular case, huge storage of ammonia in several barrels and barrels it were leaking.

Despite several request and demands for taking care of that, nothing was done and so there is no alternative for a small group of people, an organisation called as Law Society of India to go the higher judiciary the high court of Kerala to make a plea that if this is allowed to remain like this, it would be a health hazard and would affect the life and liberty of the people and Right to Life is a fundamental right, however, a citizen of India.

And so the Supreme Court, the High Court invokes this particular provision and then sail if any activity if it would affect the lives of the citizen and puts into a high risk, then it is the responsibility of the state to ensure that anybody who is undertaking this kind of an activity, whether it is in public sector or private sector, it does not matter, it should act, control, regulate and even stop to the extent that it comes in the way of the normal, healthy life of the citizens of India.

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**2. RESEARCH FOUNDATION FOR SCIENCE TECHNOLOGY AND NATURAL RESOURCE POLICY v. UOI (1997, SC): ATTENTION OF THE SC DRAWN TO HUGE QUANTITIES OF UNATTENDED HAZARDOUS WASTES, DOCKED IN PORTS OF BOMBAY AND LYING UNATTENDED IN MAJOR CITIES LIKE DELHI, FOR A LONG PERIOD OF TIME- REVELATION OF THE FACT FINDING EXPERT COMMITTEE HIGHLIGHTED, ABSENCE OF A PROPER INVENTORY OF SUCH SUBSTANCES LYING IN DIFFERENT PORTS – COURT NOTES WITH GREAT CONCERN ABOUT THE POOR IMPLEMENTATION OF THE LAW, MADE QUITE SOMETIME BACK AND ORDERS FOR OBSERVANCE OF THE RECOMMENDATIONS OF THE COMMITTEE AND EFFECTIVE IMPLEMENTATION OF THE LAW**

**3. IN RE LE CLEMENCEAU: DE-COMMISSIONED FRENCH WARSHIP, ON THE LOOKOUT OF SHIP-BREAKING FACILITY-REFUSED ENTRY BY GREECE AND TURKEY- JOURNEYING TOWARDS AALANG, IN INDIA, FOR THE PURPOSE, AS THE INDIAN GOVT. HAD GIVEN ITS APPROVAL- FURORE OVER VIOLATION**



And so the Supreme Court, the High Court invokes this particular provision and then sail if any activity if it would affect the lives of the citizen and puts into a high risk, then it is the responsibility of the state to ensure that anybody who is undertaking this kind of an activity, whether it is in public sector or private sector, it does not matter, it should act, control, regulate and even stop to the extent that it comes in the way of the normal, healthy life of the citizens of India.

The next one is a Supreme Court judgement and this is another research and voluntary group, the case Research Foundation for Science Technology and Natural Resources Policy versus Union of India, a decision of the Supreme Court of 1997 in which the very attention of the Supreme Court was drawn to a fact, a very sorry state of affairs of huge quantities of unattended hazardous waste substances thrown helter and skelter, docked in ports all over India in different ports.

And especially in the ports of Bombay and lying unattended too even in major cities like Delhi, for a long period of time. Remember, we have made already a law with regard to hazardous substances in 1989, but here in the year 1997, and to the highest court the appeal is made look even beside that we have already a law that supposed to be enforced but 8 years down the line we do see this kind of a terrible state of affairs, hazardous substances are there lying unattended too. And it is not just one or few days, for years together.

The fact, when the committee was constituted by the court to look into the veracity of the assertions made on behalf of the petitioners and this fact finding committee, it is an expert committee, high power one, it highlighted in its report, the absence of a proper inventory of such substances lying in different ports.

We do not have a proper inventory, how much of it is available lying without anybody to care for it and the court notes this with great concern, not just about the poor implementation of the law, but about the irresponsibility of the one who has brought all this to India, putting in various ships and then leaving it unattended too in our ports and orders for the observance of recommendations of the committee and an effective implementation of the law which was made quite some time back.

The point I am just trying to highlight here is the from time to time the courts of law have questioned, warrant reprimanded even come up with a set of recommendations based on expert opinion as to how to deal with hazardous substances. First to apply the law and second to follow the superior wisdom of experts so that the hazardous wastes are brought under a proper regulatory mechanism and manageable.

I draw your attention to yet another huge spectacle of an incident which had international ramifications and that is with regard to a warship Clemenceau it is a De-commissioned French Warship that was in full play in the Second World War after decommissioning on it, you know the ship becomes useless and the ship has to be disposed of. The disposal of a ship is what is referred to as a ship-breaking.

Ship-breaking is an industry by itself wherein you draw raw materials from that, readymade iron you will get and many other parts which can be put to reuse and recycling, a huge industry. And here was this French Warship which was looking for a ship breaking facility, the problem with such ships is it has so much of toxic substances within it that it becomes very difficult for anyone to accommodate that unless you have the skill, the ability to effectively deal with that hazardous substance.

And when the ship was making enquiries, trying to get into arrangements for it to be taken somewhere so that it could be safely be disposed of, it went from port to port. Remember it is a French ship and from France it is not destroyed or disposed-off in France, it goes from port

to port refused entry by Greece, refused entry by Turkey and then somehow it tries to get into negotiations and successfully at that and it starts journeying towards Aalang.

Aalang you should know is the biggest ship breaking industry in the world and you must know that India and Bangladesh some of the southern Asian countries have the biggest ship breaking industry in the world, 90 to 95 percent of ship breaking activity takes place here and the most prominent one is Aalang on the Gujarat coast in India.

So, they got into a deal and it was moving towards Aalang, and it was in the Mediterranean and even the Indian government had given approval for that and that stage a huge furore breaks out.

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- **DISTINCTION MADE BETWEEN HAZARDOUS AND OTHER WASTES THAT ARE NON-HAZARDOUS IN NATURE (- THE LATTER WOULD INCLUDE, WASTE TYRE, PAPER WASTE, METAL SCRAP, USED ELECTRONIC ITEMS, etc.-) FOR THE PURPOSE OF UTILIZATION AS RESOURCE TO SUPPLEMENT INDUSTRIAL PROCESSES AND REDUCE THE LOAD ON THE VIRGIN RESOURCE OF THE COUNTRY**
- **WASTE MANAGEMENT HIERARCHY IN THE SEQUENCE OF PRIORITY OF PREVENTION, MINIMIZATION, REUSE, RECYCLING, RECOVERY, CO-PROCESSING AND SAFE DISPOSAL, INCORPORATED IN THE BODY OF THE LAW.**
- **THE PROCEDURES AND DOCUMENTATION, FOR PERMISSIONS, IMPORT/EXPORT, FILING OF ANNUAL RETURNS, TRANSPORTATION etc., SIMPLIFIED AND REVISED SIGNIFICANTLY WITH GREATER DEGREE OF STRINGENCY**
- **BASIC NEED FOR INFRASTRUCTURE, TO SAFEGUARD HEALTH AND ENVIRONMENT FROM WASTE PROCESSING INDUSTRY, PRESCRIBED AS STANDARD OPERATION PROCEDURES(-SOPS),SPECIFIC TO WASTE TYPE,**



One both in India and also internationally it draws a lot of international attention because you have the Basel Convention, there is a Basel Ban as you have already seen, you have the European Union Arrangement which says that any hazardous substance that is produced within the European Union need have to be safely and effectively be disposed off within the European Union, among the European Union countries only and not to be moved out.

There was a clear violation of that and so is the case with India also. The Indian government, the environment ministry gives the clearance and what assurance of safeguard measures; not very clear and so the matter reaches the Supreme Court. The scene is somewhat like this, the ship is in the Mediterranean, it is about to get into the Arabian sea at that stage, the matter reaches the Supreme Court of India.

The court critiques the position the government are facilitating violations of both international law and its own regulations. It ordered the prohibition of the entry of this particular ship into India. So, it needs a court's intervention to direct the government that what you sort to do, the kind of clearance that you have given is in clear violation of your own law, your own regulations.

And you should be a lot more careful than especially when you have something which has international implications, you shall not do this and you do not have a proper regulatory mechanism to control the ship-breaking activity. And number 2, whatever that you have put

in place is not adequate and till you do that you shall not allow such kind of entry of hazardous substances even for disposal in India.

The matter is if you really look to the story behind that to complete that story, France fearing great diplomatic and international back clash on that quietly withdraw the ship back to its own port. Now let just have a look at the salient features of the law that was made in the year 2016 in brief. The description of a hazardous waste under the India law, it includes any waste which by reason of its characteristics like physical, chemical, biological, reactive, toxic, flammable, explosive or corrosive characteristic feature causes danger to health or environment it is a hazardous waste.

It comprises of waste generated during the manufacturing processes of commercial products which includes aluminium, paint, electronic products and industrial activities that include petroleum refining, production of pharmaceuticals etcetera. The law also makes a distinction between hazardous and other waste that are non-hazardous in nature. The latter would include waste tyre, paper waste, metal scrap, used electronic items, etcetera.

The idea is to utilise the non-hazardous aspect of the waste to use it as a resource to supplement industrial processes and reduce the load on the virgin resources of the country. Like for example, as I told you that if bring iron scrap and we have a recycling industry and with this iron scrap with a little bit of a cleaning this iron scrap becomes iron ready for use to generate and produce iron.

If you subjected to a process, it would be a great strain on the virgin resources of the country where you have to explore, you need have to really do a bit of a exploitation exercise of taking the ore out, putting it in a furnace, then through and very long drawn out process get the iron out of it.

Now, you have a ready iron available which actually helps you in 2 ways; one is a minimum expenditure of energy and resources and number 2; reducing the pressure on the resources from getting exploited and exhausted in its natural condition. So, the idea is essentially a kind of a tight rope walking between number 1 to minimize the adverse impact to the waste and second, making waste a proposition of reducing pressure on the virgin resources through a process of refinement to be put to use for variety of activities in a recycle way.



So, waste management hierarchy in the sequence of priority as you have under this new law is number 1, prevention of production. Number 2, when it is inevitable minimized production. Third, you have produced and you have loads of it available. See, how much of it you can reuse, you can recycle, you can recover the original and subject it to a host of processes what is called as co-processing and finally safe disposal. This is the hierarchy or the sequence of priorities incorporated in the body of the law.

The procedures and documentation for permissions for import or export, filing of annual returns, transportation, etcetera which were actually a little cumbersome and had many window clearances have been simplified and revised significantly with the greater degree of stringency under this new law. The basic need for infrastructure for safe environment friendly disposal of the waste. The facility for processing and the standard operation procedures all are put in place under this law of 2016.

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**TO BE COMPLIED BY ALL THE CONCERNED AND ENSURED BY THE STATE POLLUTION CONTROL BOARD, AS THE NODAL AGENCY, BY MONITORING AND WHILE GRANTING AUTHORISATIONS**

- **CO-PROCESSING, AS THE PREFERENTIAL MECHANISM, OVER DISPOSAL, FOR USE OF WASTE AS SUPPLEMENTARY RESOURCE OR FOR RECOVERY OF ENERGY, PROVIDED**
- **APPROVAL PROCESS FOR CO-PROCESSING HAZARDOUS WASTES TO RECOVER ENERGY STREAMLINED AND PUT ON EMISSION NORMS BASIS, RATHER THAN ON TRIAL BASIS.**
- **PROCESS OF IMPORT/EXPORT OF WASTE, STREAMLINED BY SIMPLIFYING THE DOCUMENT-BASED PROCEDURE AND BY REVISING THE LIST OF WASTE REGULATED FOR IMPORT/EXPORT.**
- **IMPORT OF METAL SCRAP, PAPER WASTE AND VARIOUS CATEGORIES OF ELECTRONIC EQUIPMENTS FOR RE-USE PURPOSE, EXEMPTED FROM THE REQUIREMENT OF OBTAINING MINISTRY'S PERMISSION**



And all these are to be complied by all the concern and the State Pollution Control Board which is made the nodal agency to monitor and regulate this activity while granting authorizations. Co-processing, as I did mentioned a little while back as a preferential mechanism, over disposal, for use of waste as the supplementary resources or for recovery of energy provided here. So this is to keep pace with the changing times of developments in science and technology.

Through this particular process, you can recover resource and you can actually transform this into a raw material for energy production. So, put that into application rather than dispersing it off somewhere. Put waste in one form to different kinds of uses to be of use in different form appears to be a signature tune of this particular law as well like most of the other laws also concerning waste.

Approval process for co-processing hazardous waste to recover energy streamlined and these are put on emission norms basis, rather than on trial basis. So, there is nothing like trial and failure and success thing. We give you the permission provided you are going to assure that you are going to conform to the emission norms that are prescribed under the pollution control laws, then you can go ahead with this.

Otherwise, no, there is nothing like a trial because trial, if it leads to failure would cause so much of damage. So, no scope for trials but on norm basis, are you going to assure? They have the expertise, they have the ability, do you have the equipment, do you have the facility? Go ahead. Process of import or export of waste, streamlined by simplifying the document based procedure and by revising the list of waste regulated for import or export, this is very much necessary.

Even this was a little cumbersome earlier. Import of metal scrap, paper waste and various categories of electronic items for re-use purposes which had a very free entry into India. In fact, Indian are known to be the past masters in the art of recycle, re-recycle, re-use and things like that, not like the use and throw approach of the western people. And so, every kind of waste use to get into India.

And now this is and put under serious scrutiny and unless and until you are able to get the Ministrys permission, Environment Ministrys permission, which would make sure that these are not harmful, we will not allow its entry even into India, no matter whether it would be an income generating, employment generating exercise or whatever, environmental concerns are paramount. And health and hygiene considerations take precedence over economics here.

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- **RESPONSIBILITY OF THE STATE GOVT. FOR ENSURING THEIR ENVIRONMENTALLY-SOUND MANAGEMENT INTRODUCED, SUCH AS, BY REQUIRING TO SET UP/ALLOT INDUSTRIAL SPACE OR SHEDS FOR RE-CYCLING, PRE-PROCESSING AND OTHER UTILIZATION OF THEM; TO REGISTER WORKERS INVOLVED IN RECYCLING ETC., AND TO UNDERTAKE INDUSTRIAL SKILL DEVELOPMENT ACTIVITIES AND ENSURE SAFETY AND HEALTH OF WORKERS, etc.**
- **CLEAR PROHIBITION FOR IMPORT, IMPOSED ON ITEMS LIKE, WASTE EDIBLE FATS AND OILS OF ANIMAL OR VEGETABLE ORIGIN, HOUSEHOLD WASTE, TYRES FOR DIRECT RE-USE PURPOSE, SOLID WASTES INCLUDING PET BOTTLES, WASTE ELECTRICAL AND ELECTRONIC ASSEMBLY SCRAPS, etc.**
- **STATE GOVT. AUTHORISED TO PREPARE AN INTEGRATED PLAN FOR EFFECTIVE IMPLEMENTATION OF THE PROVISIONS AND SUBMIT AN ANNUAL REPORT TO MoEFCC.**



States are imposed with responsibility for ensuring the environment's sound management like by enquiring the governments to set up or allocate industrial space or sheds for recycling, pre-processing and other utilization of them. To register workers involved in recycling etcetera and to undertake industrial skill development activities and ensure safety and health of workers, etcetera.

So, a way bit of proactive measure something which would be supportive of number one industry and at the same time ensure precautions so that your, the system put in place before you carry on with this kind of activity of recycling, reusing or whatever. But all this should come under the frame of environment sound management mechanisms. Clear prohibition, now you look at this.

Not all kinds of waste can come to India, even if it is harmless like clear prohibition for import is imposed on items like waste edible fats and oils of animals or of vegetable origin, household waste, tyres for direct reuse purposes, solid waste including pet bottles, waste electrical and electronic assembly scraps, etcetera. The state government is authorized to prepare an integrated plan for effective implementation of the entire process. State Pollution Control Board are mandated to prepare an annual inventory of the waste generated, recycled, recovered, utilized, re-exported and disposed and they are supposed to submit this every year by 30th of September to the Central Pollution Control Board for its perusal and for further  
needful action

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• **SPCB, MANDATED TO PREPARE AN ANNUAL INVENTORY OF THE WASTE GENERATED, RECYCLED, RECOVERED, UTILIZED, RE-EXPORTED AND DISPOSED AND SUBMIT, BY 30<sup>th</sup> SEPT. EVERY YEAR, TO CPCB**



**WHILE THESE ARE EARLY DAYS TO ASCERTAIN THE EFFECTIVE IMPLEMENTATION OF THE NEW REGULATIONS, IT CAN SAFELY BE ASSERTED THAT THE CHANGES EFFECTED IN THE LAW HAVE BROUGHT IN GREATER DEGREE OF CLARITY IN BOTH THE SUBSTANCE, PROCEDURES, ROLES AND RESPONSIBILITY OF DIFFERENT ACTORS IN THE ENTIRE EXERCISE. THERE SEEMS TO EXIST LITTLE SCOPE FOR THE INDUSTRY TO COMPLAIN ABOUT HURDLES FOR EASE OF DOING BUSINESS. HOWEVER, THE NECESSARY INFRASTRUCTURE, EQUIPMENTS, WELL-INFORMED AND SKILLED PERSONNEL AND THE REQUIRED PREPARATION AT THE LEVEL OF PCBs AND THE STATES, TO ENSURE EFFECTIVENESS OF THE LAW AND IN ACHIEVING THE DESIRED RESULTS, ARE STILL TO BE PUT IN PLACE.**



Well, this law has been made just a few years back. These were very early days to ascertain the effective implementation of the new regulations. Although, there are lot of apprehensions, there are lot of concerns expressed by courts of law from time to time, but we can safely assert that the changes effected in the law have brought in a greater degree of clarity at least in substance, procedures, roles and responsibilities of different actors in the entire exercise that much is clear.

And industry can no longer complain about hurdle for ease of doing business, that ease of doing business all the while in an irresponsible way, now you have ease of doing business irresponsible way, but the necessary infrastructure, equipment, well informed and skilled personnel and the required preparations at the level of the pollution control boards and in the state governments to ensure effectiveness of the law and its procedures and the mechanisms in place, are still in progress.

So, with the result that one cannot really say that this are successful story but at least an attempt has been made on paper, the results are to be realised with a lot of work to be done by all the concern. This concludes the first part of this section on the Indian law. The second one under this module would be on biomedical waste regulations. That is the next part of.

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## II. BIOMEDICAL WASTES LAW

- UNATTENDED AND UNTREATED WASTE, PRODUCED DURING DIAGNOSIS, TREATMENT OR IMMUNIZATION OF HUMAN OR ANIMAL RESEARCH ACTIVITIES etc., HAVE ALWAYS POSED PROBLEMS OF HEALTH AND HYGIENE – QUITE UNLIKE THE HUGE VOLUME OF DOMESTIC AND MUNICIPAL WASTE, WHICH ARE BY AND LARGE HARMLESS AND BIO-DEGRADABLE, THE MEDICAL WASTES THREATEN THE HEALTH AND WELL-BEING OF A LARGE NUMBER OF POPULATION, IF NOT REGULATED, BY BEING INFECTIOUS AND WITH THE POTENTIAL OF SPREADING EPIDEMIC DISEASES- ROOTS OF THE LAW ON THE SUBJECT AND ITS EVOLUTION, LIE IN A COUPLE OF JUDICIAL PRONOUNCEMENTS AND THE CONSEQUENTIAL EFFORTS OF THE GOVT. OF INDIA IN DEALING WITH THEM, THROUGH NOTIFICATIONS UNDER THE ENVIRONMENT PROTECTION ACT, 1986
- B.L. WADHERA v. UoI[1996,SC]: THIS CASE STARTED AS A PLEA FOR SECURING INSTRUCTIONS TO THE MUNICIPAL CORPORATION OF DELHI TO PERFORM ITS



Biomedical Wastes Law, this poses a different kind of a problem situation and this is in relation to hospitals, diagnostic and research centres, mushrooming all over mainly city life but everywhere in India, unattended and untreated waste produced during diagnosis, treatment, or immunization of human or animal research activities have always posed problems of health and hygiene, this is quite unlike.

The huge volume of domestic and municipal waste which are by enlarge harmless and biodegradable. The medical waste, they threaten the health and wellbeing of a large number of population and if it is not regulated becoming infectious and having the potential of spreading epidemic diseases. The roots of law on this subject and its evolution over a period of time like in the previous instances, I have discussed with you, lie in a couple of judicial pronouncements, this is very significant.

And then ofcourse the consequential efforts of the government in dealing with them through a notifications under the Environment Protection Act and I refer to a couple of such case law. The first prominent one is the case of B.L. Wadhera versus Union of India it is a decisional Supreme Court of India in 1996. The case starts as a plea for securing instructions to the municipal corporation of Delhi to perform its statutory duties of keeping the streets clean, free of garbage that is how it started. As the humble beginning of it did not reveal, it ultimately turned to be a landmark case that triggered making of the biomedical waste rules by the government of India and later the solid waste management rules in the municipal area, municipality area. I will come to that a little later, but right now on biomedical waste rules by government of India.



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STATUTORY DUTIES OF KEEPING THE STREETS CLEAN, FREE OF GARBAGE, TURNED OUT TO A LAND MARK CASE THAT TRIGGERED MAKING OF THE BIOMEDICAL WASTE RULES BY THE GOVT. OF INDIA- THE HIGHEST COURT ISSUED INSTRUCTIONS AND GUIDELINES TO THE HOSPITALS AND ADVISED THE GOVT. TO EVOLVE APPROPRIATE REGULATIONS IN ENSURING THE HEALTH AND HYGIENE OF THE CITIZENS ARE PROTECTED- AMONG THEM THE INSISTENCE ON THE INSTALATION OF INCENERATORS AND OTHER ALTERNATIVE MODES OF WASTE DISPOSAL, IN EVERY HOSPITAL HAVING 50 OR MORE BEDS

- EVEN AS LATE AS 2012, IN SUPREME WASTECH PVT. LTD. V. STATE OF HARYANA, THE NATIONAL GREEN TRIBUNAL, TOOK THE NINE GOVT. RUN HOSPITAL TO TASK FOR THEIR NEGLECT IN HANDLING BIOMEDICAL WASTE IN THE PRESCRIBED MANNER
- THE BIO-MEDICAL WASTE(MANAGEMENT AND HANDLING-BMWMH) RULES, 1998, INCORPORATED THE RECOMMENDATIONS OF THE APEX COURT IN THE WADHERA JUDGMENT- AMENDED A NUMBER OF TIMES - THE NEW BMWMH RULES, 2016, AS AMENDED IN 2018, IS INTENDED TO IMPROVE COMPLIANCE AND STRENGTHEN THE IMPLEMENTATION OF THE POLICY FOR ENVIRONMENTAL VIABILITY



What did the court say? The court gave clear instructions and guidelines to the hospital, I think 14 guidelines were given and advised the government to evolve appropriate regulations in ensuring the health and hygiene of the citizens are protected. Among these instructions are the insistence in the installation of incinerators and other alternative modes of waste disposal in every hospital which has at least 50 or more beds.

If you looked to a couple of other cases, you see the state of offense did not improve much. In fact, even as late as 2012 in another case and this was a case decided in 2012, the case is Supreme Wastech Private Limited versus state of Haryana this was before the National Green Tribunal, government runs hospitals were in focus and 9 of them in Haryana brought under the minute scrutiny of the Green Tribunal.

The Green Tribunal took them to task for their neglect in handling biomedical waste in the prescribed manner. The Biomedical Waste Management and Handling BMWMH Rules, 1998, incorporated the recommendations of the apex court as recall in the Vandanas judgement, it was amended a number of times and what we have now is the new Biomedical Waste Management and Handling Rules of 2016 and as amended is intended to improve the compliance and strengthen the implementation of the policy for environmental viability.

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- MANNER OF SEGREGATION AT SOURCE AND THE PROCESS OF FLOW OF BMW GENERATION, SEGREGATION, STORAGE, COLLECTION, TRANSPORTATION, TREATMENT AND DISPOSAL, PRESCRIBED IN DETAIL
- IN ITS AMENDED FORM, PRE-TREATMENT OF LABORATORY WASTE, BLOOD SAMPLES, MICROBIOLOGICAL WASTE, BLOOD SAMPLES AND BLOOD BAGS, BY THE OCCUPIER, EMPHASISED – PHASING OUT OF CERTAIN ITEMS LIKE CHLORINATED PLASTIC BAGS, BLOOD BAGS etc., AS RECOMMENDED BY WHO GUIDELINES, ALSO LAID OUT
- DEVELOPMENT OF A DATABASE OF ALL THE INFORMATION CONCERNING COMPLIANCE WITH THE REGULATIONS AND MAINTENANCE OF A WEB-PORTAL, IN THAT REGARD, AS TO MAKE THEM AVAILABLE FOR SCRUTINY AND VERIFICATIONS- OBLIGATION OF THE OCCUPIER
- PROVISIONS FOR MONITORING COMPLIANCE, ACTIONS ON VIOLATIONS AND ASSESSMENT OF COMPENSATION PAYABLE FOR DEVIANCES, MADE IN FAIR DETAIL



Let me quickly run through the law as it stands now. What is its object? To reduce infectious or hazardous nature of waste, reduce its volume and extent of production, prevent misuse of waste, ensure occupational safety and health and to recycle besides safe disposal. The law covers a whole range of institutions and activities like hospitals, blood banks, nursing homes, dispensaries, veterinary institutions, animal houses, pathological labs whatever the size is.

Clinical establishments, research institutions, health camps, medical and surgical camps, first aid rooms, vaccination camps, (33:50). The occupier of the premises of these has a primary duty to apply for and secure authorization from its PCB. So, whatever the size is, however the extent of your operations are, all these would come under the purview of authorization by the State Pollution Control Board. Here, the ways are categorized into non-infectious, infectious and hazardous.

So, that is the degrees of harm on the basis of which the categorization is done and this is listed in the schedule with a detailed list under each category and what is the obligation of the occupier? To segregate at source with personal trained and equipped to handle them, this is entirely on the occupier. The manner of segregation at source and the process of flow of biomedical waste is in this form; generation, segregation, storage, collection, transportation, treatment and disposal all these are detailed in the law. In the amended form that has come just a year back, pre-treatment of laboratory waste, blood samples, micro-biological waste, blood samples and blood bags by the occupier are emphasised because these have huge problem.



And realising it this amendment has come phasing out of certain items like chlorinated plastic bags, blood bags, or recommended by the WHO, World Health Organisation guidelines and the same are incorporated under this law and this is something that is to be acted on a priority. Development of a database of all the information concerning compliance with the regulations and maintenance of a web portal in that regard to make them available for scrutiny and verifications are imposed as a very clear non-negotiable, non-transferable obligation of the occupier.

Look at the responsibility imposed on the occupier. He cannot say that I just have led this out premises, they are my tenants, what they are doing I do not know, you should know. If they are engaged in this kind of an activity, you should not only know but this is your responsibility. Otherwise, do not allow anybody to carry on this kind of an activity. So, primary obligation is on the occupier in all these situations as I have just mentioned.

Provisions for monitoring compliance, actions on violations and assessment of compensation payable for deviances made in fair detail. So, a little bit of a teeth is added to the law to make it more effective. Yes, the law on paper appears impressive. The problem is with in order to implementation and compliance especially by engaging trained, skilled and well-equipped personnel by the enforcers and the occupiers. This is less than satisfactory. Further, coordinated functioning among different agencies of state, the health services and others to help in strengthen the working of their State Pollution Control Board is pretty weak and in terms of developing information base, and updating the same, it is also in short supply.

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- *WHILE THE LAW ON PAPER APPEARS IMPRESSIVE, IMPLEMENTATION AND COMPLIANCE, BY TRAINED, SKILLED AND WELL-EQUIPPED PERSONNEL AMONG THE ENFORCERS AND THE OCCUPIERS, IS LESS THAN SATISFACTORY.*
- *COORDINATED FUNCTIONING AMONG DIFFERENT AGENCIES OF STATE LIKE, THE HEALTH SERVICES, IN STRENGTHENING THE WORKING OF THE SPECB, QUITE WEAK.*
- *UPDATED INFORMATION BASE, IN SHORT SUPPLY*
- *FREQUENT CHANGES AND MODIFICATIONS IN LAW, ALTHOUGH GIVE THE IMPRESSION OF BEING DYNAMIC, ALSO INDICATE STRAINED EFFORTS AND ATTEMPTS IN BRIDGING THE GAP BETWEEN ASPIRATIONS AND ACTUAL RESULTS!*



And the law as you could see has been frequently changed and modified, without giving a fair trial to that which is already in existence and also do a little bit of a performance audit before the next steps are taken. A bit of a knee jerk reaction to something or the interest in accommodating anything new and everything new into this whole scheme of things. Although, it gives the impression of being a dynamic law, it also indicates a strained effort, at a knee jerk reaction. Besides an amendment, sorry, besides an attempt in bridging the gap between aspirations and actual results. Well, that is for a beginning, as an introduction to the understanding of Bio-Medical Waste Management.