



Constitutional and judicial implications relating to the management and disposal of bio-medical waste in India: a critical study

Shiva kumar MA

Research Scholar and Assistant Professor, PG Department of Studies in Law, Karnataka University, Dharwad, Karnataka, India

Abstract

The main cause of environment degradation is the human activity in one way or the other. Law is a regulator of human conduct. Hence, the law plays an important role in the protection of environment from pollution by regulating the human activities. In any environment conscious state, environmental problems are generally handled at the legislature level. In India from time to time various laws for the protection of environment, flora and fauna have been enacted. But the Indian Constitution is perhaps the first constitution in the world which contains specific provisions for the protection and improvement of the environment. It reflects the human rights approach to environment protection through various constitutional mandates.

In India, the concern for environment protection has not only been raised to the status of fundamental law of the land, but it is also wedded with human rights approach and it is now well established that it is the basic human right of every individual to live in pollution free environment with full human right of human dignity.

Keywords: constitutional provisions on environment, role of judiciary, WHO guidelines, precautionary principle, polluter pays principle and public trust doctrine

1. Introduction

“Environment” Includes water, air and land and the inter-relationship which exists among and between water, air and land, and human beings, other creatures, plants, micro-organism and property^[1]. It may be noted here that the above definition is an “inclusive” definition and, therefore, it does not exhaust the entire universe of what is covered by the word “Environment”. Exhaustive definitions, in an evolving filed like environment control, are likely to lead to recourse to judicial interpretation of highly complex scientific and technological matters, whose complexion is ever changing as knowledge accumulates dynamically^[2].

2. Preamble and Protection of Environment

The preamble^[3] of our Constitution provides that our country is based on “Socialistic” pattern of society, where the State pays more attention to the social problems than on any individual problems. Environmental pollution which has emerged as one of the biggest social problems is being regarded as a real problem affecting the society at large and thus state is under an obligation to fulfill the basic aim of socialism, that is, to provide decent standard of living to all which can be possible from a pollution free environment^[4].

Environment as a subject matter has entered in our day to-day life in such a way that we cannot ignore deliberations on environmental matters when discussing about socio-economic or socio-political scene of the country

3. Principles of Sustainable Development and Protection of Environment

The term “*sustainable development*” was first coined by the International Union for the Conservation of Nature (IUCN) in the year 1980 in its “*World Conservation Strategy*”, although the term was at the time of ‘*Cocoyoc Declaration*’ On Environment and Development in the early 1970. Since then it is constantly been used. The idea was that the benefit of future generations, present generation should be modest in their exploitation of natural resources. But the concept popularized by the Report “Our Common Future” published by the “*World Commission on Environment and Development*”^[5] in 1987^[6]. The Brundland Report entitled “*Our Common Future*” published in 1987 Provides Sustainable Development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs.

¹ Section 2 (a) of The Environment Protection Act-1986

² P.S Jaswal, *Environmental Law* 297 (Allahabad Law Agency, Faridabad (Harayana) 2nd edn, 2003)

³ The Constitution (42nd Amendment) Act, 1976 received the assent of President of India on December 16, 1976

⁴ Manoharan, S “*Efficacy of hazardous and solid waste management laws in India a critical study*” 25 (A thesis submitted to Tamil Nadu Dr. B.R Ambedkar Law University, Chennai Published by UGC Shodhganga Infi lib, available at http://shodhganga.inflibnet.ac.in/bitstream/10603/76685/9/09_chapter%202.pdf visited on 2.08.2017

⁵ This report also known as “Brundtland Report”-1987

⁶ Smt. Shilpaa Mahadevaswamy “*Bio Medical Waste Management and Legal Regime-with Special reference to Mysore District* (2013) (Published Ph.d Thesis) (Post Graduate Department Studies in Law and Research, University of Mysore, Mysore), Published copy of Ph.d thesis available at <http://shodhganga.inflibnet.ac.in/bitstream/10603/76480/8/chapter%204.pdf> visited on 25.07.2017

a) Kofi Annan^[7]

The Secretary General of the United Nations Organization, who while writing the foreword to the State of World 2002, report published on the eve of Johannesburg Summit on Sustainable Development^[8] lamented on this issue. He observed;

“They called for a fundamental re-ordering of global priorities (At Rio) they illustrated the inescapable link between environmental, economic and social concerns. And they established sustainable development as the central organizing principle for societies around the world”

b) Our Common Future, Chairman's^[9]

"A global agenda for change" - this was what the World Commission on Environment and Development was asked to formulate. It was an urgent call by the General Assembly of the United Nations:

- a) To consider ways and means by which the international community can deal more effectively with environment concerns; and
- b) To help define shared perceptions of long-term environmental issues and the appropriate efforts needed to deal successfully with the problems of protecting and enhancing the environment, a long term agenda for action during the coming decades, and aspirational goals for the world community^[10].

3.1 The Precautionary Principle

The Precautionary principle is a persuasive principle governing health and safety protection. It was defined and adopted under the Rio Declaration on Environment and Development (UNEP, 1972) as Principle-15 “Where there are threats of serious or irreversible damage to the environment, lack of full scientific certainty should not be used as a reason for postponing cost-effective measures to prevent environmental degradation^[11]. Precautionary principle means

- 1) Environmental measures by the state government and the local authorities must anticipate, prevent and attack the causes of environmental degradation.
- 2) Where there are threats of serious and irreversible damage,

⁷ a Ghanaian diplomat who served as the seventh Secretary-General of the United Nations from January 1997 to December 2006. Annan and the UN were the co-recipients of the 2001 Nobel Peace Prize. He is the founder and chairman of the Kofi Annan Foundation, as well as chairman of The Elders, an international organization founded by Nelson Mandela

⁸ The World Summit on Sustainable Development, WSSD or ONG Earth Summit 2002 took place in Johannesburg, South Africa, from 26 August to 4 September 2002. It was convened to discuss sustainable development by the United Nations. WSSD gathered a number of leaders from business and non-governmental organizations, 10 years after the first Earth Summit in Rio de Janeiro. (It was therefore also informally nicknamed "Rio+10"

⁹ Gro Harlem Brundtland was the former Prime Minister of Norway and was chosen due to her strong background in the sciences and public health. The Brundtland Commission officially dissolved in December 1987 after releasing *Our Common Future*, also known as the *Brundtland Report*, in October 1987.

¹⁰ <http://www.un-documents.net/our-common-future.pdf> access on 7.08.2017

¹¹ Yves Chartier et al “Safe management of wastes from health-care activities, Page No-42, 2nd edn., published by World Health Organization-2014, Geneva Switzerland, ISBN 9781548564 online copy available at http://apps.who.int/iris/bitstream/10665/85349/1/9789241548564_eng.pdf?ua=1 visited on 07.08.2017

lack of scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.

- 3) The “one of proof” is on the actor or the developer/industrialist to show that his action is environmentally benign^[12].

In order to protect the environment, the precautionary principle approach shall be widely applied by States according to their capabilities, where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation^[13].

3.2 The Precautionary Principle and the New Burden of Proof

The uncertainty of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and Rio-Conference of 1992 in *Vellore Citizen's Welfare Forum V. Union of India*^[14]. The learned Judges also observed that the new concept, which places the burden of proof^[15] on the developer or industrialist who is proposing to alter the status quo, has also become part of our environmental law^[16]. The legal notion of ecological harm is widened to include the need to allow natural processes to function in such a manner as to maintain the essential support for all life on earth. The application of ecological buffers in future management gives a practical emphasis to the thorny ethical concept of intrinsic natural rights^[17].

3.3 The Polluter Pay's Principle

The countries moving towards the industrial development had to face the serious problems of giving adequate compensation to the victims of pollution and environmental hazards. In *M.C.Mehta v. Union of India*, a petition was filed under Article.32 of the Constitution of India, seeking closure of a factory engaged in manufacturing of hazardous products. While the case was pending, oleum gas leaking out from the factory injured several persons. One of the persons died. Applications were filed for award of compensation. Although the court avoided a decision on these applications by asking the parties to file suits before the subordinate courts; the

¹² P.S Jaswal “*Environmental Law*” page no-110 (Allahabad Law Agency, Faridabad, 2003)

¹³ UNDP, Global Environment Facility Module-3 on International and National HCWM Laws, policy aspect, available at http://www.who.int/water_sanitation_health/healthcare_waste/module3.pdf visited on 7.08.2017

¹⁴ AIR 1995 5 SCC 647, (This is popularly known as Tamil Nadu Tanneries Case)

¹⁵ The Hon'ble Supreme Court of India observed in case P.K. Nayyar &Ors. vs. UOI &Ors. (15.01.2013 - DELHC) : MANU/DE/0130/2013, Disposal of Bio-medical waste being a statutory requirement in terms of BMW Rules, 1998, requirement un-disposed of, is likely to cause, the attempt should be to shift the facility to a site where it is not likely to endanger or otherwise adversely affect the health of the nearby resides.

¹⁶ P.S Jaswal “*Environmental Law*” Allahabad Law Agency, Faridabad, 2003

¹⁷ Timothy O’Riordan and James Cameron “*Interpreting the Precautionary Principle*” 18 (Earthscan Publications Ltd, London, 1st edn., 1994) (ISSN-1853832006) online copy available at <https://goo.gl/EDLwz7> visited on 08.08.2017

significance of the case lies in its formulation of the general principle of liability of industries engaged in hazardous and inherently dangerous activity^[18].

The 'Polluter Pays Principle' was for the first time, applied and defined in the case of *Indian Council for Enviro-Legal Action V. Union of India*^[19]. It was declared by the court that redemption of the damaged environment is a part of the process of sustainable development and as such polluter is liable to pay the cost of the individual sufferers as well as the cost of reversing the damaged ecology. Thus the 'Polluter Pays Principle' means an absolute liability for harm to environment extends, not only to compensate the victims of pollution but also to the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of sustainable development^[20]

3.4 The Public Trust Doctrine/Use and Conservation of Natural Resources

The public trust doctrine was articulated for the first time in India in *M.C. Mehta Vs Kamal Nath*^[21]. This doctrine is now accepted as part of Indian law, and it is actively applied to protect the environment. Under the public trust doctrine, the state, which is the trustee of the environment has the duty to protect the 'trust corpus'. Thus, the 'public trust doctrine' emphasizes the state's 'affirmative duty' to protect the 'environment'^[22].

Three conceptual principles justify the Public Trust Doctrine^[23]. *First*, "certain interests are so intrinsically important to every citizen that their free availability tends to mark the society as one of citizens rather than of serfs. Thus no small subset of individuals should ever be allowed to control these interests. *Second*, "certain interests are so particularly the gifts of nature's bounty that they ought to be reserved for the whole of the populace, *finally*, "certain uses have a peculiarly public nature that makes their adaptation to private use inappropriate^[24]

The Supreme Court adopted Public trust doctrine enforces the performance of statutory duty by public bodies as obligation to rate payers who have a legal right to demand compliance by a local authority with its duty to observe statutory rights alone. The scheme here is for the benefit of the public. There is

special interest in the performance of the duty. All the residents in the area have their personal interest in the performance of the duty. The special and substantial interest of the residents in the area is injured by the illegal construction^[25].

3.5 Intergenerational Equity

The Principle of 'Inter-generational Equity' has also been adopted while determining cases involving environmental issues. The Court in the case of *A.P. Pollution Control Board v. Prof. M.V. Nayudu*^[26] and *Others*, held as under "The principle of Inter-Generational Equity is of recent origin. The 1972 Stockholm Declaration refers to it in principles 1 and 2. In this context, the environment is viewed more as a resource basis for the survival of the present and future generations. Principle 1- Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of quality that permits a life of dignity and wellbeing, and he bears a solemn responsibility to protect and improve the environment for the present and future generations. Principle 2 – The natural resources of the earth, including the air, water, lands, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of the present and future generations through careful planning or management, as appropriate"

Several international conventions and treaties have recognized the above principles and in fact several imaginative proposals have been submitted including the locus standi of individuals or groups to take out actions as representatives of future generations, or appointing an ombudsman to take care of the rights of the future against the present. The principles mentioned above wholly apply for adjudicating matters concerning environment and ecology. These principles must, therefore, be applied in full force for protecting the natural resources of this country^[27]

3.6 Common but differentiate responsibility

The principle of common but differentiated responsibility comprises of two elements, viz., (i) common responsibility of states for the protection of the environment and (ii) differentiating responsibilities of states, depending upon each state's contribution to environmental degradation and its ability to prevent, reduce and control the threat. This principle is reflected in the 1992 Rio Declaration as well as the 1992 Climate Change Convention. Principle 7 of the Rio Declaration provides that^[28]

¹⁸ S Manjula M.L. "Ground water Pollution an analytical study on law and Governance" a Ph.D Thesis submitted to Department of Law, Tamil Nadu Dr. B.R Ambedkar law University, Chennai, May-2015, <https://goo.gl/iwi1CN> visited on 09.08.2017

¹⁹ AIR 1996 SC 1446 (Bichhri Case)

²⁰ Satish C Shastri "The Polluter Pays Principle' and The Supreme Court of India, P-119, (JILI, Indian Institute of Law, New Delhi, Vol-42, Issue-1 2000)

²¹ 1997 (1) S.C.C. 388

²² Rahman Matiur, "Constitutional and Statutory Protection of Ecology and Environment" Page No.75-76, A Ph.D Thesis Submitted to Department of Law, Gauhati University, Assam,- 2003, published thesis copy available at http://shodhganga.inflibnet.ac.in/bitstream/10603/68238/7/07_chapter%202.pdf visited on 10.08.2017

²³ Professor Joseph Sax, "Elucidates the Public Trust Doctrine and lays out a vision for how the doctrine has worked and should work in American jurisprudence"

²⁴ David Takacs, "The Public Trust Doctrine, Environmental Human Rights, and the Future of Private Property", page no. 713, 16 New York University Environmental Law Journal, (N.Y.U). Env'tl. L.J. 711 (2008). Available at: http://repository.uchastings.edu/faculty_scholarship/752 visited on 11.08.2017,

²⁵ M.I. Builders Pvt. Ltd. vs. Radhey Shyam Sahu and Ors. (26.07.1999 - SC) : MANU/SC/0999/1999.

²⁶ AIR 1999 SC 812

²⁷ Apparao "Indian Constitutional Perspective Of Environmental Protection : Judicial And Policy Initiatives" A Ph.d thesis submitted to Dr. B.R. Ambedkar College of Law Andhra University, Visakhapatnam, page 198-199, 2013, http://shodhganga.inflibnet.ac.in/bitstream/10603/14104/13/13_chapter%205.pdf visited on 09.08.2017

²⁸ Rajkumar Deepak Singh "Protecting The Atmosphere: A Study of Legal And Institutional Responses" A Ph.D Thesis Submitted To International Legal Studies, Division Centre For Studies In Diplomacy, International Law And Economics, School Of International Studies, Jawaharlal Nehru University New Delhi, 1998 Page No.66-67 copy available at http://shodhganga.inflibnet.ac.in/bitstream/10603/18131/7/07_chapter%202.pdf visited on 09.08.2017.

Common responsibility applies where states share the obligation to protect a particular resource where the resource does not belong to a single state exclusively. Different attributions of commonality such as "province of all mankind", "part of world heritage of mankind as a whole," "for the good of mankind" "the common heritage of mankind," "a common concern of human kind" have emerged though their legal implications are inconclusive. As regards differentiated responsibility, it reflects application of differing environmental standards under special needs and circumstances. For instance, the developed countries and the developing countries cannot be put under the same environmental yardstick.

4 Others Principles/Doctrines relevant to Environment Protection

4.1 Proximity principle

The Proximity Principle recommends that treatment of disposal of hazardous waste take place at the closest possible location to its source to minimize the risks involved in its transport. Similarly, every community should be encouraged to recycle or dispose of the waste it produces, inside its own territorial limits, unless it is unsafe to do so^[29].

4.2 The "Duty of Care"

The Royal Commission went on the stress the need to pass the responsibility for waste from person to person down the disposal chain, thereby suggesting that, rather than the producer retaining total responsibility for the waste, the duty of care would operate by ensuring that everyone in the chain checks the competence of those with whom they deal with regard to handling the waste safely and without harm to the environment. The main purpose behind the duty of care is thus clear. It is encourage anyone who holds waste to deal with it in a responsible fashion, so that a cradle to grave approach is applied to its management and disposal. It is longer the case that producers and others necessarily lose responsibility for waste thy cease to have possession of it^[30].

4.3 Absolute liability

Absolute or strict liability is one where fault need not be established. It is no-fault liability. Initiatives such as the 1993 Lugano Convention on Civil Liability for Damage Resulting from Activities Dangerous to Environment; the European Commission Green Paper on environmental liability (1993) and the Chapter on liability for contaminated land of the Swedish Environment Code (2000), suggest that the polluter pays principle calls for the establishment of a strict liability regime^[31].

In *Oleum Gas Leak case*^[32], the Supreme Court laid down that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the factory and to those

residing in the surrounding areas, owes an absolute and non delegable duty to the community to ensure that no harm results to any one on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The principles laid down in *Ryland v. Fletcher*, were modified. It is no longer permissible in the case of injury by use of hazardous substances, to prove merely that the injury was not foreseeable or that there was no unnatural use of the land or premises by the factory, as was the position under the law laid down in *Rylands v. Fletcher*. This principle was reiterated in *Indian Council for Environ-Legal Action v. Union of India*^[33]^[34]

4.4 Strict Liability

States shall take all reasonable precautionary measures to limit the risk when carrying out or permitting certain dangerous but beneficial activities and ensure that compensation is provided should substantial transboundary harm occur even when the activities were not known to be harmful at the time they were undertaken^[35]

In *M.C Mehta V. Union of India*^[36], where the Supreme Court held that an enterprise owed an absolute duty to the community, that it shall cause no harm to anyone an account of handling hazardous or inherently dangerous substance. The absolute liability rule, had, according to the court, two propositions; firstly, the enterprise conducting such hazardous activity, and secondly, the industry, it must be presumed, had the resources to discover and guard against such hazard, in this connection victim cannot help to restore damage done to environment, polluter should be made liable to pay the cost to individual sufferers as was as cost restoration of damage done to environment^[37].

4.5 The New Burden of Proof Principle

The UN General Assembly Resolution of 1982 on World Charter for Nature established this principle. EC Law also demonstrates the shift in the burden in the case of use of drugs, pesticides, food products, additives, food stuffs etc. EC's new hazardous wastes list 200 categories of listed wastes. In US, though the Supreme Court in *Industrial Union Department AFL – CIU v. American Petroleum Institute*^[38] put the initial burden on the regulator, several American statutes have shifted the burden of proof. The WTO Appellate body has also applied this principle. Environmental Impact Assessment is intended to reduce the uncertainties attached to potential impacts of a project. In the *Vellore Case*^[39] Kuldeep

²⁹ Supra note-12 page no-43

³⁰ Stuart Bell & Donald McGillivray "Environmental Law" Page No. 513 (Oxford University Press, New Delhi, 1st India edn., 2004) (ISBN 019566907 x)

³¹ www.cetim.ch/en/interventions_details.php?iid=146 also generally www.unhchr.ch/environment/bp1.html

³² *M.C. Mehta v. Union of India* AIR 1987 SC 1086

³³ (1996) 3 SCC 212 at 241-246

³⁴ Chowbe, Vijaykumar Shrikrushna, Legal Analysis of Rights Against the Protection of 'Bio-Medical Waste' and Judicial Reflections in India (March 1, 2011). Page no-10-11, Available at SSRN: <https://ssrn.com/abstract=1773390> or <http://dx.doi.org/10.2139/ssrn.1773390>

³⁵ Narendra Singh "Right to Environment and Sustainable Development as a Principle of International Law" 307, 29JILI(1987), <http://hdl.handle.net/123456789/17053> visited on 20.10.2017

³⁶ AIR 1987 SC 965, 982

³⁷ Vinod Shankar Mishra "Environment Justice Delivery System: An Alternative forum, Page no-71, 44JILI(2002) softcopy available at <http://hdl.handle.net/123456789/12581> visited on 20.10.2017

³⁸ 448 US at 632-635 (1980)

³⁹ 1996(5) SC 647 p 658 para 11

Singh J observed as follows: “*The ‘onus of proof’ is on the actor or the developer/industrialist to show that his action is environmentally benign.*”

4.6 The Proportionality Principle

The recent trend in the judicial decisions observed that the court has developed yet another principle of “proportionality” under in the cases where it has been observed that development is a non-optional process and it cannot be deviated in modern civilized state. However, if the conflict between the environmental safeguards and need for development would arise, the proper balance shall be maintained so as to maintain both without paying the cost of other. The part of sustainable development, the court must observe the ‘balancing’ attitude where the development of the society and environmental safeguards comes face to face. The concept of “balance” under the principle of proportionality applicable in the case of sustainable development is lucidly explained by Pasayat, J. in the judgment of this Court in the case of T.N. Godavarman Thirumalpad^[40]

The above paragraphs indicate that while applying the concept of “sustainable development” one has to keep in mind the “principle of proportionality” based on the concept of balance. It is exercises in which we have to balance the priorities of development on one hand and environmental protection on the other hand^[41]

5 The Constitutional Mandates: Biomedical Waste Management

The Indian Constitution contains several provisions which require the State and the citizens to protect environment. Though in the Constitution as it stood on 26.1.1950, there was no specific provision for environmental protection, there were other significant provisions. The following provisions in the Constitution as it originally stood have a bearing on environment^[42]

5.1 Art-21- Protection of Life and Personal Liberty

No Person shall be deprived of his/her life or personal liberty except according to procedure established by Law. Right to get Pollution Environment is fundamental right which was guaranteed Under Article-21, of Indian Constitution^[43], The “Right to Life” under Article 21 means a life of dignity to be lived in a proper environment free from the dangers of diseases and infection. Maintenance of health, preservation of the sanitation and environment have been held to fall within the purview of Article 21 as it adversely affects the life of the citizens and it amounts to slow poisoning and reducing the life of the citizens because of the hazards created if not checked. The Supreme Court ordered to closure of tanneries which were polluting water. In M.C. Mehta v. Union of India the Supreme Court issued several guideline and directions for the

protection of the *Taj Mahal*^[44], an ancient monument, from environmental degradation. In *Vellore Citizens Welfare Forum v. Union of India*,^[45] the Court took cognizance of the environmental problems being caused by tanneries which were polluting the water resources, rivers, canals, underground water and agricultural land. The Court issued several directions to deal with the problem, In *Murali S. Deora v. Union of India*^[46] the persons not indulging in smoking cannot be compelled to or subjected to passive smoking on account of act of smokers. Right to Life under Article-21, is affected as a non-smoker may become a victim of someone smoking in a public place^[47].

Right to live is a fundamental right under Article 21 of the constitution and it includes the right to enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has right to have recourse to Article 32 of the constitution for removing the pollution of water or air which may be detrimental to the quality of life^[48].

Therefore, there is a constitutional imperative on the state government not only to ensure and safeguard proper environment but also an imperative duty to take adequate measures to promote, protect and improve both man-made and the natural environment. *A.P Pollution Control Board V. Prof. M.V Nayudu*^[49] is another significant decision of the court, where the court has clarified the contours of the right to hygienic environment in the light Article-48A, 51A (g) read with Article 21 of Indian Constitution. To mention one more Supreme Court decision, in *M.C Mehta V. Kamal Nath*^[50], Justice Saghir Ahmed observed, these two Article (Article 48-A and 51-A (g) have to be considered in the light of Article-21 of the constitution.. any disturbance of the basic environment elements, namely, air, water and soil, which are necessary for ‘life’ would be hazardous to life within the meaning of Article 21 of the constitution^[51].

5.2 Fundamental Right against Environmental Pollution under Articles 14, 19

The State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. In *Bangalore Medical Trust V. B.S Muddappa*^[52]. Where the Supreme Court thwarted the attempt to convert a public park site into a nursing home. The court has also struck down the action of the authorities if it was taken arbitrarily, for example, in *Mandu Distilleries Pvt, Ltd., V. M.P Pradushan Niwaran Mandal*^[53] the Pollution Control Board issued

⁴⁰ T.N. Godavarman Thirumalpad v. Union of India and Ors., (2002) 10 SCC 606, 2003 AIR SCW 23, [para 40]

⁴¹ Supra note-35 Page no.33,

⁴² 186th Proposal to constitute Environment Courts in India to Government of India, on 23rd September-2003, complete copy of the report available at <http://lawcommissionofindia.nic.in/reports/186th%20report.pdf> visited on 12.08.2017

⁴³ Subhash Kumar V. State of Bihar, (A.I.R. 1991 S.C. 420)

⁴⁴ AIR 1997SC734, MANU/SC/0175/1997

⁴⁵ AIR 1996 SC 2721 : (1996) 5 SCC 647

⁴⁶ AIR 2002 SC 40 : (2001) 8 SCC 765

⁴⁷ Dr. Jyothi Dharam “*Right to Live in pollution free environment: A Critique*” Page 489-490 IJSR (International Journal of Scientific Research) Vol-IV, Issue-12, Dec-2015, ISSN No. 2277-8179, Electronic copy available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2713690 visit 12.08.2017.

⁴⁸ Aruna Venkat “*Environmental Law and Policy*” p. 58 (PHI Learning Private Limited, New Delhi, 2011) (ISBN 978-81-203-4436-5)

⁴⁹ AIR 1999 SC 812

⁵⁰ AIR 2000 SC 1997

⁵¹ Aruna Venkat “*Environmental Law and Policy*” p. 58 (PHI Learning Private Limited, New Delhi, 2011) (ISBN 978-81-203-4436-5)

⁵² (1991) 4 SCC 54

⁵³ AIR 1995 M.P 57.

direction for stoppage of production by the industry on the ground that it was causing water pollution. However, the court found that there was serious flaw in decision making process. The said decision was taken on extraneous consideration and arbitrarily. Grounds stated in show cause notices and basis for orders were not the same. There was also denial of principles of natural justice and consequent violation of inbuilt procedural safeguards. The court quashed the order passed by the Board as violative of Article 14 of the Constitution^[54]

In *Ablish Textile V/s Rajkot Municipal Corporation*^[55] the petitioners were discharging dirty water from the factory on public road and in public drainage without purifying the same, thereby causing damage to the public health. The court held that one cannot carry on the business in the manner by which the business activity becomes a health hazard to the entire society, Article 19 (1) (g) of the Indian Constitution guaranteed^[56] in *Indian Handicrafts Emporium and Ors. V Union of India and Ors*^[57], whether the Amending Act of 1991 was ultra vires Articles 19(1) (g) and 14 of the Constitution of India, the Court held that dealing in imported ivory so long the law permits may be a fundamental right but if the statute prohibits it, it must be held to be a law within the meaning of Clause (6) of Article 19 of the Constitution of India in terms whereof reasonable restriction is imposed. A trade which is dangerous^[58] to ecology may be regulated or totally prohibited. For the aforementioned purpose, regulation would include prohibition

5.3 The Directive Principles of State Policy Relating To Environmental Protection

Art-42, Provision for just and humane conditions of work and maternity relief, the State shall make provisions for security just and humane conditions of work and for maternity relief

Art. 47: Duty of the State to raise the level of nutritional and the standard of living and to improve public health: The State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties and, in particular, the State shall endeavour to bring about prohibition of the consumption for medicinal purposes of intoxicating drinks and of drugs which are injurious to health.

Art. 48-A. 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”

There was considerable debate in Parliament over the wording of draft of Article-48-A. It uses the word “environment” which means the aggregate of all external conditions and influences affecting life and development of organs of human beings, animals and plants. The various factors affecting the

life of and development of organism are viz., Air, light, climate, culture noise, temperature, soil, water, etc., under the Article the State may not only adopt the protectionist policy but also provide for the improvement of pollution environment. Parliament has imposed a new constitutional obligation on the state by incorporating Article-48-A in the constitution^[59].

Article 48(A) as well as the fundamental rights in Article 21 deal with the substantive and potent content of right to life which includes right to live with human dignity and which also includes right to good health^[60]. In *Consumer Education and Research Centre v. Union of India*^[61] & *Paschim Banga Khet Mazdoor Samiti v. State of West Bengal*^[62] *Murali S. Deora v. Union of India*^[63] *Parmanand Katara v. Union of India*^[64], *M. C. Mehta v. Union of India*^[65], Supreme Court has by a dynamic interpretation of Article 21 expanded the meaning of right to life, to include right to health. This right to health can be guaranteed only if the State provides for adequate measures for treatment and takes care of its citizen by protecting them from persons practicing and professing unauthorized medical practices.

In case of *Rajesh Kumar Srivastava v. A.P. Verma*^[66] by the Supreme Court of India, directed to All the Hospitals, Nursing Homes, Maternity Homes, Medical Clinics, Private Practitioners, practicing medicine and offering medical and health care services. Pathology Labs, Diagnostic Clinics; whether run privately or by Firms, Societies. Trusts, Private limited or Public limited companies, in the State, shall register themselves with Chief Medical Officer of the district where these establishments are situate, giving full details of the medical facilities offered at these establishments, the names of the registered and authorized medical personnel practicing, employed or engaged by them, their qualifications with proof of their registrations.

Art. 49: Protection of monuments and places and objects of national importance: It shall be the obligation of the State to protect every monument or place or object of artistic or historic interest, declared by or under law made by Parliament, to be of national importance, from spoliation, disfigurement, destruction, removal, disposal or export, as the case may be.

5.4 The Fundamental Duties Relating To Environment under Article 51-A (G)

Art. 51-A: Fundamental Duties: It shall be the duty of every citizen of India - 51-A (g)^[67] to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures. Under the same Forty-Second Amendment^[68], Forest and protection

⁵⁴ Supra note-13, page no- 70-71

⁵⁵ AIR 1998 Guj 57

⁵⁶ All citizens of India shall have a right to practice any profession, to carry out on any occupation, trade or business. This right is subject to reasonable restrictions

⁵⁷ AIR 2003 SC 3240

⁵⁸ Parikh Madhuri “Environmental Jurisprudence the role of Indian Judiciary : A Critical Study” Ph.D thesis submitted to School of Law, Gujarat University, Page No.183, published by UGC-Infilib, soft copy available at http://shodhganga.inflibnet.ac.in/bitstream/10603/27937/1/11_chapter6.pdf visited on 20.10.2017

⁵⁹ Dr. I.A Khan “Environmental Law” Page No-36, (Central Law Agency, Allahabad, 2nd edn., 2002)

⁶⁰ Rajesh kumar srivastava v. A.p. Verma (28.01.2004 - ALLHC) : MANU/UP/0021/2004)

⁶¹ (1995) 3 SCC 42 : AIR 1995 SC 922

⁶² (1996) 4 SCC 37 ; AIR 1996 SC 2426

⁶³ (2001) 8 SCC 765 : AIR 2002 SC 40

⁶⁴ (1989) 4 SCC 286 : AIR 1989 SC 2039

⁶⁵ (1999) 6 SCC 9

⁶⁶ (28.01.2004 - ALLHC) : MANU/UP/0021/2004)

⁶⁷ Ins. By the Constitution (Forty-Second Amendment) Act, 1976 (w.e.f. 3-1-1977)

⁶⁸ Constitution (Forty Second Amendment) Act-1976

of wild animals and birds were brought into the Concurrent List as entries 17A and 17B.

The scope of Article 51A (g) was examined by the High Court of Rajasthan in *L.K. Koolwal V. State of Rajasthan* [69], Under the Rajasthan Municipalities Act, 1959 the Municipal Authority is charged with the primary duty "To Clean public streets, sewers and all spaces and places, not being private property, which are open to the enjoyment of public, removing of noxious vegetation and all public nuisances and to remove fifth, rubbish nigh soil, odour or any other noxious or offensive matter [70]. The Court in the Indian Council for *Enviro-Legal Action v. Union of India* [71] observed that to balance economic and social needs on the one hand with environmental considerations on the other. But in a sense all development is an environmental threat. Indeed,

Incidentally, the growth of environmental jurisprudence in India was slow but steady. The pioneer amongst the cases, which is still the *Magnacarta* of the environmental jurisprudence for recognition of public right to decent living was treatise in *Municipal Council, Ratlam v. Vardhichand* [72] where Justice V. R. Krishna Iyer in his inimitable style, affirmed the trial Court's order directing under Sec 133 [73] Cr.P.C 1973, to abate the nuisance of a foul drain flowing in between the city with the filth and stink and discharge from an alcohol plant. The recognition and growth of Public Interest Litigation (PIL) has become a catalyst for environmental justice. While in *Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh* [74] the Supreme Court recognized the imbalance of the ecology and hazard to healthy environment due to working of lime-stone quarries, in *Sachinand Pandey v. State of West Bengal* [75] the court recognized society's interaction with nature and the environmental question affecting humanity. Likewise there are a host of decisions whereby the judiciary [76] has expanded the ambit of Art. 21 [77]

6 Constitutional Remedies for the Protection of Environment under Articles 32 and 226

Article 32 was called the "soul of the constitution and very heart of it [78]" The Constitution of India provides two alternative provisions: article 32, in itself a fundamental right, guarantees the right to directly move the Supreme Court and

⁶⁹ AIR 1988 Raj 2

⁷⁰ Dr. H.N Tiwari "Environmental Law" 80 (Allahabad Law Agency, Faridabad (Harayana) 3rd Edn.,) 2005

⁷¹ AIR 1996 SC 1446

⁷² AIR 1980 SC 1622

⁷³ Conditional order for removal of nuisance.

⁷⁴ AIR 1987 S.C. 1109

⁷⁵ AIR 1987 SC 1109

⁷⁶ *M. C. Mehta v. Union of India* AIR 1987 SC 965 also called the Oleum Gas Leak case; *Vellore Citizens Welfare Forum v. Union of India* AIR 1996 SC 2715, called the Tanneries case where the principle of sustainable development was adopted.

⁷⁷ Da Silva, Saba Vincent Mesquita, "Legal control of bio-medical waste management: the Goan experience" Ph.D Thesis Submitted to Department of Law, Goa University, Goa, Thesis published by UGC soft copy available at http://shodhganga.inflibnet.ac.in/bitstream/10603/6588/9/09_chapter%203.pdf visited on 22.08.2017

⁷⁸ Dr. B R Ambedkar called Article 32 (Right to Constitutional Remedies) as the most important article of the constitution and also said, "An Article without which the constitution will be nullity. It is the very soul of the constitution and very heart of it."

the High Court may be approached under article 226 for enforcement of fundamental rights. These forum will be available in present right as well. The environmental case law shows that in majority of the cases the petitioner approached the Supreme Court. The reasons may be that the environmental pollution travels to a long distance from state to state like it happened in case of Ganga Pollution and in such a matter the individual High Court could not be an appropriate forum; and further the petitioners wanted not only speedy justice but also a final ruling in the matter. In these litigations the public interest litigations dominated the field. Normally there was not much unreasonable delay in the administration of justice but on an average it took two years. But even such a delay may in some cases be too late for the protection of environment and the aftermath of pollution explosion [79].

The waste is hardly subjected to proper treatment. Slaughter house wastes are subjected to very little or no treatment and these pollute and eutrophicate water bodies and pose serious health risks including diseases such as malaria and filariasis. There is no effective collection and disposal method for toxic hospital waste, under Article 32 of the Constitution of India, Honorable Green Tribunal ordering and directing, ensure the exclusion of hospital and nursing home wastes from MSW and monitor or provide safe and sanitary incineration thereof [80].

In case of *Dr. B.L Wadehra V.s Union of India* [81] residents have constitutional as well as statutory right live in clean city-authorities concerned have a mandatory duty to collect and dispose of the garbage/waste generated from various sources in the city, non-availability of funds, inefficiency of staff, insufficiency of machinery etc cannot be pleaded as grounds for non-performance of their statutory obligations court have interpreted the provisions of Article-21, Article-32 and Article-51-A of the Constitution of India, time bound directions issued in the case of *Almitra H Patal V. Union of India* [82] after expressing unhappiness over the high levels of pollution in delhi, over the lack of accountability at all levels of the municipal authorities concerned in the connection with directions issued B.L Wadehra case. The Hon'ble Supreme Court in its Judgment in connection with safe disposal of hospital waste ordered. After the notification of the Bio-Medical Waste (Management and Handling) Rules, 1998, there has been no specific judicial response on the subject from the Supreme Court of India. However there have been directed and orders of different High Court in the country, mainly on the aspect of compliance [83]

⁷⁹ C.M Jariwala "Emerging Right To Environment: An Indian Perspective" *JILI* 73 (1994), online copy available at <http://hdl.handle.net/123456789/1217> visited on 24.08.2017

⁸⁰ *Almitra H. Patel and ors. vs. Union of India and Ors.* (22.12.2016 - NGT) : MANU/GT/0150/2016

⁸¹ AIR (1996) 2 SCC 594

⁸² A.I.R 2000 S.C. 1256

⁸³ Juby Vijay, "Bio Medical Waste Management practices and its impact a study with special reference to multispeciality hospital in south kerala, a Ph.D Thesis submitted to Department of Business Administration, Manonmaniam University, Abishekapatti, Tirunelveli, Tamil Nadu its available UGC-inflib http://shodhganga.inflibnet.ac.in/bitstream/10603/68271/7/07_chapter%202.pdf, visited on 20.10.2017

7 The Public Interest Litigation for the Protection of Environment from Pollution

Public Interest Law has been a uniquely American development and it assumed great importance in the 1960s to describe the activities of lawyers who represented clients and interests till then unrepresented or under-represented in the legal and judicial system. The gap between promise and performance is so big as between people and their courts of law where justice is vitiated by inordinate delays, heavy court fee, lawyer's fees, transportation expenses and recurring expenses of incidental nature and of numerous types. The litigants especially the poor coming from villages and long distances frequently run about fruitlessly in court corridors for justice of which they are not sure. In essence court environment is like a market place where everything is weighed by money consideration of supply and demand and above all where everyone and ever thing is biased against the poor^[84]. In *S.P Gupta V. Union of India*^[85], P.N Bhagwathi J. observed, wherein he had expanded the concept of PIL to include within its sweep even the realization of diffuse, collective and meta individual rights of the public at large. A genuine PIL always remedial in nature and must satisfy all the features noted above. Relaxation of 'Locus Standi' alone will not make a case as PIL^[86]

In *Tarun Bhagat Sangh Case*^[87] the Supreme Court recognized the public interest petition brought by a social action group complaining against the illegal permission of the Rajasthan Government for large scale mining operations causing environmental damage in the protected area. Mining causes air pollution and may disturb the rain water drains which may badly affect the water level and water quality of water bodies, therefore, in order to preserve environment and control pollution within the vicinity of the tourist resorts, the Supreme Court directed to stop mining activity within 2 km radius and construction activities within 5km, radius of the tourist resorts of Badkal and Surajkund and directed to convert all open areas into green belts^[88]. In PIL cases, the court may give any relief, such as, it may direct for an enquiry as in the case of *Bandhu Mukti Morcha V.s Union of India*^[89] or it may issue directions of any nature to meet the problem, or it may award compensation an costs to restore the ecology as in the case of *M.C Mehta and others V. Union of India and others*^[90].

8 The Local Self-Governing Bodies For The Protection Of Environment: 73rd And 74th Amendments To The Constitution Of India Under Part IX – Panchayat And Part IX-A Municipalities

The Local Self Government is entitled to discharge certain compulsory functions like; supplying safe and clean drinking

⁸⁴ Surendra Malik and Sudeep Malik "Environmental Law" 282 (Eastern Book company, Lucknow 2edn, 2015)

⁸⁵ AIR 1982 SC 149

⁸⁶ Parmanand Singh "Public Interest Litigation" Vol. XXXIX JILI 663 200, soft copy available at <http://hdl.handle.net/123456789/3964> visited on 28.08.2017

⁸⁷ AIR 1993 SC 293

⁸⁸ Geetanjali Chandra "Public Interest Litigation and Environmental Protection" P.no. 74 (Deep and Deep Publications, New Delhi, 2005)

⁸⁹ AIR 1984 SC 802

⁹⁰ AIR 1986 SC 1086, AIR 1987 SC 982,

water, imparting and maintaining proper drainage and sewage systems, providing public street lighting, sanitation and hygiene of public places, public building, roads, culverts and bridges maintenance and issuing licenses for trade activities and also issuing and maintaining birth and death records. Apart from these the local self government can deliver some discretionary functions^[91] including education, health, community and recreation services. Regarding the maintenance of the health either the sanitation or environmental degradation it will bring notice to the related authorities of the government, the village schools, temples, tanks, ponds, roads, public places and drainages are covered with dust and mud spreading from ores. A few villages who are working as commission agents for mine owners are obstructing the success of efforts against mining activities^[92]. In *Municipal council, Ratlam V. Vardhichand*^[93] is the first landmark Indian decision where a statutory obligation of civic body towards protection of environment was categorically acknowledged. The Supreme Court compelled the municipality to either fulfill its obligation of providing a clean environment, or face consequence of closure. Rejecting financial inability as a ground for avoiding statutory obligation, the court reprimanded: a responsible municipal council constituted for the precise purpose of preserving public health cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first charge on local self-governing bodies. Since then the Indian judiciary has risen to the occasion^[94].

9 Conclusions

The PILs got constitutional sanction in the 42nd Constitution Amendment Act 1974, which introduced Article 39-A in the Indian Constitution to provide equal justice and free legal aid. The PIL encouraged the affected individuals (affected by any project), public minded individuals, voluntary organizations, NGOs; Judges on their own, to start without paying any court fees. Due to PILs, many landmark judgments are published. Many authorities are observing the works of the Govt., whether court orders of PILs are carrying out or not. PIL of court indicates a person, authorities or Govt., to work morally. The Supreme Court and the High Courts have been entertaining environmental petitions under Articles 32 and 226 of the Indian Constitution as constituting violation of Article 21. While entertaining environmental litigations by environmental NGOs and enlightened public figures like M.C. Mehta, these courts have passed landmark judgments, thereby

⁹¹ The Parliament of India, 73rd and 74th Amendment were passed, inserted parts IX and IX-A in the Constitution, Article 243-243 (O) deals with panchayat, and Article-243 (P)-243 (Za) relates to Municipalities, to strengthening the Local self government towards decentralization of powers.

⁹² Mahesha, A R "Environmental degradation in the context of modernization a study of rural Karnataka" P.no. 205, A Ph.D thesis submitted to Department of Sociology, Bangalore University, Bangalore published by UGC infilib online copy available at <http://shodhganga.inflibnet.ac.in/handle/10603/69372> visited 27.08.2017

⁹³ A.I.R 1980 S.C. 1622

⁹⁴ Published by Indian Institute of Ecology and Environment (IIEE) online information available at <http://www.ecology.edu/environmental-policy.html> visited on 27.08.2017

forcing public bodies to take action on burning environmental issues.

This article has traced the growth of different provisions under the Indian Constitution pertaining to Protection of Environment and Safe Disposal of Bio-medical waste management in India. There is need here, to better implementation of Right to Health is part of Fundamental Rights guaranteed by the Indian Constitution, it is noted that the government (Central & State) brings in policy changes and legal amendments and also commissions and notify such changes to the satisfaction of the court. Apart from the rules, national guidelines have prepared by the MoEF, Govt. of India to enable each hospital to implement the said Rules by developing comprehensive plans.

10. Reference

1. PS Jaswal, Environmental Law
2. Dr. HN Tiwari Environmental Law
3. Yves Chartier *et al.* Safe management of wastes from health-care activities,
4. Stuart Bell & Donald McGillivray Environmental Law
5. Nicolas de Sadeleer, Environmental Principles
6. Aruna Venkat. Environmental Law and Policy
7. Dr. IA Khan. Environmental Law
8. Surendra Malik and Sudeep Malik Environmental Law
9. Dr. N Maheshwara Swamy Textbook on Environmental Law
10. Timothy O’Riordan and James Cameron Interpreting the Precautionary Principle
11. The World Journal on Juristic Polity
12. Journal of Indian Institute of Law
13. New York University Environmental Law Journal,
14. International Journal of Scientific Research IJSR
15. Bangalore University Law Journal
16. <http://www.un-documents.net/our-common-future>.
17. http://www.who.int/water_sanitation_health/healthcare_waste/module3
18. <http://www.legaldesire.com>
19. <http://shodhganga.inflibnet.ac.in/handle/10603>
20. <http://lawcommissionofindia.nic.in/reports/186th%20report>.
21. <https://ssrn.com/abstract=1773390>