

HAZARDOUS WASTE SITUATION IN INDIA - FACTS AND FLAWS

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Introduction

Healthy environment is the need of life. Pollution in environment effects to all the living beings irrespective of the man made boundaries. Man is learning new technologies to facilitate the life. In the process of facilitating the life style the environmental protection has been challenged and the large quantity of Hazardous Wastes has been generated. In India environment became a major issue only after the first United National Conference on the human environment (the Stockholm conference) held at Stockholm in June 1972.

The conference raised the environment consciousness of the nation. As a result comprehensive legislative attempts were made to control environmental pollution in the country. The Water (prevention and control of pollution) act 1974;¹ The Air (prevention and control of pollution) Act 1981,² and the Environment (Protection) Act, 1986,³ came into force to check the environmental pollution. The EPA was followed by the Public Liability Insurance Act, 1991,⁴ and the National Environmental Tribunal Act, 1995,⁵ which were enacted by the parliament to implement the decisions reached at the United Nations Conference on the environment and development ("the UNCED") held at Rio de Janeiro in June 1992. As far as the problem of environmentally safe disposal of hazardous wastes and their trans-boundary movements are concerned, there is no separate Act of parliament on the subject. The issue is mainly addressed by the Hazardous Wastes (Management handling) Rules, 1989 formed under the EPA. The Indian judiciary has also come a long way in protecting the public health environment from legal import of hazardous waste to the country. India also became a party to the 1989 Basel Convention on June 24, 1992. Despite the concern

regarding hazardous waste produce and its management the problem is continue.

Definition of Hazardous Waste

A waste is any substance for which no use can be found by the organism or system that produces it and for which a method of disposal must than normally be devised.⁶ In this sense all of society discards whether they are air emissions, liquid or solid materials are wastes. Waste are considered hazardous when they pose a substantial present potential hazard to human health or living organisms.⁷ Examples of typical hazardous waste include organics, pesticides, herbicide residues, acids, alkalis, heavy metals oils and cyanides. These wastes usually take the forms of solid, liquid, sludge, sludge solid and liquid sludge. However several conceptual and technical difficulties arise in classifying a waste as hazardous; First, unlike a pure substance hazardous waste have no set chemical identity. They may impose the hazardous effect intrinsically or extrinsically.⁸ Second, a decision on whether a waste is hazardous or not does not solely rest on its composition but on its potential to harm the environment.⁹ Therefore, apart from the toxic constituents of a waste, several other factors have to be taken into account in deciding when a waste is hazardous.¹⁰ For eg. in determining a waste's potential to harm the environment, It is critical how a waste is managed. Thirdly, considerable scientific uncertainty surrounds the concepts of a threshold to toxicity itself.¹¹ Finally there are quantitative and qualitative differences which hamper any attempt to reach a universally acceptable definition of hazardous

¹ Act No. 6 of 1974. Came in to force on March 23, 1974

² Act No. 14 of 1981.came into force on May 16,1981.

³ Act No. 29 of 1986. Came into force on November 19, 1986.

⁴ Act No. 6 of 1991. Came into force on April 1, 1991

⁵ Act No. 27 of 1995.

⁶ Louis Theodore, Joseph Reynolds and Kevin Morris (eds), Concise Dictionary of Environmental Law (1997)

⁷Phillip W. Powers, "How to Dispose of Toxic Substances and Industrial Wastes 1(1976)

⁸ W.C Blackman, Jr., "Basic Hazardous Waste Management" pg.no- 29-31 (1995)

⁹ W.F Paderson, Jr. "The Future of Federal Solid Waste Regulation", 16 CJTL 109,115(1991).

¹⁰ W.C Blackman, Jr., "Basic Hazardous Waste Management" pg.no 36 (1995)

¹¹ J.H. Exner, Detoxication of Hazardous Waste, Introduction pg no. 28 (1982)

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wastes. For eg incinerator ash which is classified as a non- hazardous waste in the united states is a potential hazard in other countries.¹² Normally, two methods are used to define hazardous wastes- the “list” and “characteristics” methods. Under the list method, a list of toxic constituents such as lead, cadmium, copper compounds, chromium, zinc, arsenic and their unacceptable levels are drawn. If a waste fits the description of this list, it is classified as a hazardous waste.¹³ Another commonly used method is characteristics based. Under this method a waste is considered hazardous if it exhibits any of the hazardous characteristics. Characteristics generally considered as classifiers of hazardous wastes are toxicity; ignitability; reactivity; corrosivity.¹⁴ However one major shortcoming of these two tests is that they are determinative of the basic toxicity of the waste itself, and not whether that toxicity is likely to lead to actual environmental degradation.¹⁵

Hazardous Waste Management in India Reality behind the Veil

As per the annual report 2004-05 of the ministry of environment and forest (MOEF), 4.4 million tones of hazardous wastes are being generated in the country annually by 13011 industrial units spread over 379 districts of the country. The states of Maharashtra, Gujarat and Tamil Nadu together account for over 63% of the total hazardous wastes produced.¹⁶ India is the favored destination for dumping of hazardous wastes. As the Indian laws currently put strict controls over imports of hazardous wastes into the country, such imports are now taking place illegally and more often in the guise of useful raw materials. 2002 report of the Wadhawan Committee, appointed by the government of India, found that hazardous wastes are imported to the country as “normal import”.¹⁷ In the year 1999, a Greenpeace study revealed that more than 100,887 tones of hazardous wastes reached the country illegally.¹⁸ In November

2000, it was alleged that more than 160 containers of hazardous wastes were illegally imported in India from traders in West Asia¹⁹ further in 2001, the Greenpeace, Toxic link and the Basel Action Network (BAN) in their joint report stated that 118 tones of mercury laden wastes were imported in the country from the United States.²⁰ Hearing a Public Interest Litigation (PIL) in Research Foundation Case²¹ on October 13,1997,the Supreme Court of India, constituted a high powered committee (HPC) headed by professor M.G.K Menon to examine all matters pertaining to hazardous wastes and their trans boundary movements. Its 14- points terms of reference included inter alia the matters pertaining to imports of hazardous wastes as well as their indigenous management. After examining, in depth, the various aspects of hazardous wastes, the HPC, in the year 2001, submitted its report. Describing the hazardous wastes situation in the country as “fairly grim”, the HPC observed that instead of being properly disposed, hazardous wastes are often dumped in the open environments which have been the cause of widespread pollution of ground water. It was also noted by the HPC that the problems raised by indigenous processing of toxic substance such as lead and wastes oil and by industrial processes that generated these substance are much more serious and of far greater magnitude than those associated with the import of such waste. Noting that there was lack of vision at the highest level, the HPC stressed the need to ensure coordination between various ministries and state governments regarding environmental issues, though the key role has to be played by the MOEF, which is the focal point in the government of India for all matters relating to the environment.²² Amidst media report about disappearance of hazardous wastes from authorized ports/Indian Container Depots (ICDs), Container Freight Stations (CFS), the Apex court in the research foundation case directed the government of India vide order dated December 3, 2001 to enquire into the matter. The government appointed a 8 member committee headed by Mr. A. C. Wadhwan. The Wadhawan Committee submitted its report on July 26, 2002. According to the report, the stock of

¹² Lori Gilmore, “The Export of Non- Hazardous Waste ‘, 27 EL 889(1998).

¹³ W.C Blackman, Jr., “Basic Hazardous Waste Management” (1995)

¹⁴ J.H.Exner, Detoxication of Hazardous Waste, Introduction, (1982)

¹⁵ 14W.F Paderson, Jr. “The Future of Federal Solid Waste Regulation”(1991).

¹⁶ Annual Report 2004-2005, Ministry of Environment and Forest, New Delhi.

¹⁷ Dumping Live Ammmo’,Down To Earth, Vol 13, October 31, 2004, p.15.

¹⁸ “A heaven for hazardous waste”, the Hindu (New Delhi), 12 September 1999, p.4

¹⁹ The Times Of India (New Delhi) 6 November 2000, p.1.

²⁰ “Greenpeace sees red in zinc ash import” ,The Hindu (New Delhi), 16 July 1999,p3

²¹ 2003 (9) SCALE 303 Writ Petition No.657 of 1995.

²² Highlights of the Report of the HPC may be found in the judgment of the Supreme Court in Research Foundation Case.

hazardous good lying at various ports /ICDs/CFSSs was as follows :²³

Name of Ports	No. of Containers
ICD, Ludhiana	63+21747 drums
ICD, Tuglakabad	427
ICD, Kandla Port Trust	21
Mumbai Port Trust	34
Jawaharlal Nehru Port Trust	331
Calcutta Port Trust	1
Chennai Port Trust	83+990 drums
ICD, Bangalore	86

The Committee suggested action against the import of illegal consignments.

In September, 2009, customs at Tuticorin port detained nine containers of hazardous waste with a combined weight of 195 metric tones from Spain, Malaysia and Saudi Arabia. A container imported by one Excel Trading Corporation from a Malaysian firm contained around 20 metric tones of waste, including used condoms and surgical gloves.

This is not the first time that containers full of waste have been seized in Tuticorin. In September 2005, 40 containers with a weight of about 1,007 metric tones of “mixed waste paper” were confiscated. Imported by ITC, Secunderabad from the US, they were found to be heavily contaminated with municipal solid waste (waste collected by a municipality, most of which is generated by households). ITC was compelled by a court order to send the containers back to the US in July.²⁴

Environmentalists fear that this policy would open the floodgates of e-waste dumping into India. “India generates nearly 4 lakh metric tones of e-waste. When we are finding it difficult to dispose of our own waste, why import more from foreign countries?” wonders Priti Mahesh, senior programme officer at the New Delhi based environmental group Toxics Link. This is the question every environmentally conscious Indian is asking the government. According to a report of National Green Tribunal on March, 11, 2014, Coal mines and thermal plants in Singrauli and Sonebhadra districts of Madhya Pradesh and Uttar Pradesh are not conforming to waste disposal rules while disposing of

²³ Research Foundation Case, at 321

²⁴ PC VINOJ KUMAR ,WHY DO WE BUY THE WORLD’S TRASH? Tehelka Magazine, Vol 6, Issue 42, Dated October 24, 2009, available at www. Tehlkameg.com, accessed on 20 sep. 2014.

hazardous waste, the National Green Tribunal has been told by a panel set up by it.

A bench headed by NGT Chairperson Justice Swatanter Kumar had set up the five-member panel to inspect industries in the two industrial districts and report their impact on environment on a plea by advocate Ashwani Dubey who opposed the mining and power projects there for allegedly causing pollution and serious ailments to residents.

The panel was directed by NGT to see if the industries, which include Essar, Hindalco and Reliance’ Sasan Ultra Mega Power project, are adhering to prescribed parameters of emissions and also assess their cumulative impact on the environment.

The panel, headed by a member secretary of Central Pollution Control Board (CPCB), visited the districts on February 9 and 10 and found that "procedure being followed by the industries regarding management of hazardous waste do not conform to provisions of Hazardous Waste (management) Rules".

The panel, in its report tabled before the tribunal, has also found lapses in the disposal as well as management of fly ash generated by the power plants in the area.

Dry abandoned ash ponds in the area were found to be left open without provision of proper vegetation cover, the panel has said, adding trucks with excess loads of coal and without proper cover, were found to be spilling coal and fly ash during transportation.²⁵ Many Industries in India do not follow the procedure regarding management of Hazardous Waste but they are behind the veil and doing everything for their profit even at the environmental risk which is going to be very dangerous for India.

Legal Protection against Hazardous Wastes Remedies under Torts and criminal Laws

Common law principals of tort and criminal law may be used against any illegal act associated with improper disposal of hazardous wastes. While tort law is helpful in compensating victims of toxic wastes under the provisions of Nuisance, Trespass, Negligence and the rule of strict liability laid down in

²⁵ Available at www.articles economicstimes.indiatimes.com, accessed on 20 sep. 2014.

Rylands v. Fletcher²⁶ and to deter the pollutants from indulging in improper disposal practices²⁷, Criminal Law by punishing wrongdoers fulfils deterrence goal. Under section 268 of I.P.C for Public Nuisance, sec. 269 for spreading diseases, sec. 277 and 278 for fouling of water and making atmosphere noxious to health, and under Sec.425 of I.P.C for Mischief.²⁸

Constitutional mandate

The constitution of India is among a few constitution of the world which contains specific provisions on environmental protection.

Originally, the constitution did not contain any specific provision on environmental protection. However, by 1976 constitution (Forty-second Amendment) Act 1976,²⁹ Articles 48 A and 51A were inserted in chapter IV on "Directive principles of state policy". Article 48 A states:

The state shall endeavor to protect and improve the environment and to safeguard the forests and wild life of the country.

Similarly, Article 51A(g) makes it the fundamental duty of every citizen of India "to protect and improve the natural environment including forest, lakes, rivers and wild life, and to have compassion for living creatures".

Significantly, the Forty-second Amendment also brought changes in the seventh schedule of the constitution. Seventh schedule contains three lists- List I (the union List) containing 97 items on which only one parliament can legislate; List II (the state List) containing 66 items on which only state legislatures can make laws; and List III (the concurrent List) containing 47 items on which the parliament and state legislatures both can legislate. Further, by the forty-second Amendment Act, the following subjects were transferred from State List to the concurrent List to enable the parliament to legislate on environmental issues.

Forests:17A

Protection of wild animals and birds:17B

In addition, Article 253 of the constitution of the empowers parliament to make laws for giving effect to international agreement. Article 253 reads as follows:

"Notwithstanding anything in the foregoing provisions of this chapter, Parliament has power to make any law for the whole or any part of the territory of India for implementing any treaty, agreement or convention with any other country or countries or any decision made at any international conference, association or other body".

It is in the exercise of the power conferred by Article 253 that the Parliament enacted the Air Act, 1981, The EPA, 1986, The PLIA, 1991 AND The NETA, 1995.

Environmental statutes

The legislature has to develop new rules to keep the law abreast of change. As already hinted, the common law doctrines in the field of the law of torts and general criminal law of the land are no longer effective in a bating toxic waste pollution in the modern era of industrialization. Therefore in order to fill gaps in the earlier laws, new legislations were initiated by the parliament to deal specifically with environmental pollution. The Water Act was the first important statute of the parliament. The Water Act was followed by the Air Act, 1981 and the EPA, 1986. The EPA is an umbrella statute which reflects the environmental policies and principles of the country. In fact, it is a skeletal statute containing only 26 sections.

Environment Protection Act, 1986 (Hazardous wastes rules, 1989 as amended)

In exercise of the rule making power as conferred on it by section 6 of the EPA, the government of India promulgated Hazardous Wastes Rules, 1989 which came into force on July 28 1989.³⁰ These rules were extensively amended by the central government on January 6, 2000,³¹ and may 23, 2003,³² in order to give effect to the legal developments which took place after entry into force of the Basel convention. Based on the experience gained in the implementation of these rules, Hazardous Waste (Management, Handling and Transboundary Movement) Rules

²⁶ (1866) LRI Exch.265.

²⁷ Philip S. James with Latham Brown, General Principles of the Law of Torts (1978) p.177-178

²⁸ J.S. Sarkar, Indian Penal Code, 1860, Vol.1 654 (2001)

²⁹ Came into force on January 3, 1977.

³⁰ Hazardous Waste (Management and Handling) Rules, 1989 (w.e.f. July 1989)

³¹ Hazardous Waste (Management and Handling) Amendment Rules, 2000 (w.e.f. January 6, 2000)

³² Hazardous Waste (Management and Handling) Amendment Rules, 2003 (w.e.f. May 23, 2003)

2008,³³ have been notified repealing the earlier Rules with a view to ensuring effective implementation. The Rules were further amended on 21 July, 2009.³⁴ These Rules as amended, prohibit import and export of hazardous waste which include an type of explosive, inflammable liquids, inflammable solids, constituents or wastes liable to spontaneous combustion, constituents or waste which in contact, infectious waste, toxic or eco-toxic.

E. Judicial response

The Supreme Court of India has been quick in tackling the issue of illegal import of hazardous wastes to the country. In the research foundation case, the court directed as far back as on May 5, 1997 that (1) with effect from that date no authorization /permission would be given by any authority for the import which have already been banned by the central government or by an order made by any court or any authority; and (2) with effect from that date no import would be made or permitted by any authority or any person of any hazardous wastes which is already banned under the Basel convention or to be banned hereafter with effect from the date specified therein.³⁵

In view of the serious nature of the problem, the Supreme Court, by order dated October 13, 1997 constituted a High Powered Committee (HPC) to study all the relevant aspects of the hazardous wastes management including import/export of hazardous wastes to or from the country. By its order dated October 14, 2003, the court endorsed the report of the HPC and issued several directions to the ministry of environment and forests and the Central Pollution Control Board (CPCB).

The Supreme Court also constituted a Monitoring Committee (SCMC) which will oversee that the directions of court are timely implemented.³⁶ In its judgment of January 5, 2005 in the research foundation case,³⁷ the Supreme Court has examined

the applicability of the precautionary approach principle to the case of illegal import of hazardous wastes to the country and observed that the ban imposed by Indian laws on the import of hazardous wastes is in conformity with that principle which is now a part of customary International law.

Conclusion

Despite a growing concern on Hazardous Waste management nationally and internationally, the problem of trading in Hazardous waste continues. To protect the basic right to life of its people the international community has to strictly adhere to international norms on waste management. In hazardous waste management states have to think globally and act locally. Though India has brought its national legislation in line with the Basel Convention there is lot of work to be done. There are several cities in India, only a few have a systematic sewage mechanism. Many cities dispose off their domestic and industrial waste in near water bodies. With the countries population at over one billion and the occurrence of unplanned development and rapid urbanization, the generation of waste has also increased phenomenally. A proper, efficient and sustainable waste management system is still uncommon in India. The problem, at present, is that the enforcement mechanism lacks teeth and has failed in curbing the improper handling of hazardous waste. The need of the hour is to have stringent implementation of the Existing rules, which will lead to proper collection mechanism, sound recycling technologies, adequate and scientifically designed disposal sites. Sustainable development concerns or enabling recovery and reuse of useful material from hazardous waste and thereby reducing the waste for final disposal is certainly a welcome thought. But the steps, in fact, seem to be more favorable towards making India a 'Dumping Destination' in garb of 'Recycling Destination'.

³³ Hazardous Waste(Management , Handling and Transboundary Movement) Rules,2008 (w.e.f.October 22, 2008)

³⁴ Hazardous Waste(Management , Handling and Transboundary Movement) Rules,2009 (w.e.f. July 21,2009)

³⁵ Order dated May 5, 1997 in Writ Petition (Civil) No 657 of 1995

³⁶ Order dated October 14, 2003.

³⁷ 2005(1) SCALE 87