Chapter – 4

CONSTITUTIONAL DIMENSIONS
AND BIO-MEDICAL WASTE
4.1 INTRODUCTION

In the present world good life is measured in the terms of “sound health”. This is the truth of the day because it has become very difficult to find a ‘single’ person who can daringly say that ‘he has perfect and sound health’. And moreover everybody is conscious about health and cannot spare lots of time on being ill because of the life style that what we have adopted. Therefore, lots of facilities are required to keep energetic life. But this is not going accordingly to the wishes of a man because of the pollution and its effects on health of human and whole of the environment. Therefore, it has become necessary to combat the causes of the pollution and suitably control the adverse causes of the pollution as for as possible. One of such causes of the pollution is the ‘biomedical waste’ generated in the various health care institutions, Research Centers and so on. This production of waste eventually, made the point of major concern in today’s scenario because of the spread of diseases which are incurable in nature like AIDS, Hepatitis B&C through improper handling and management of biomedical wastes. Many Case laws, case studies, Reports etc., have sensitized the issues to the general public but still the core responsibility on the part of proper disposal of biomedical wastes are failed and therefore, this present study notifies the Constitutional provisions that strictly focuses on the protection of the environment through Fundamental Rights, Fundamental Duties, Judicial Remedies, Directive Principles of State Policies, Preambular Objectives, different levels of Governmental bodies etc., to combat pollution and to bring about the solution to the emerging problem and give the healthy environment and meaningful life to the human beings. Totality of the present study is

---

1 Citizens Action Committee v. Civil Surgeon, Mayo (General) Hospital AIR 1986 BOM 136. The Bombay High Court directed specific remedial measures relating to de-congestion of crowded markets, road maintenance, sewage, hospital waste maintenance, and sanitation infrastructure.

2 (Inserted by the Constitution (Forty Second Amendment) Act, 1976, Section.11 (w.e.f.3-1-1977) 51A. Fundamental duties- It shall be the duty of every citizen of India.

3 (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;

4 Indian Council for Environ-Legal Action v. Union of India (Bichhri Case) AIR 1996 Sc1446, 1466 The ‘polluter pays’ principle which is a part of the basic environmental law of the land requires that a polluter bear the remedial or clean up costs as well as the amounts payable to compensate the victims of pollution.

5 Virender Gaur v. State of Haryana 1995 (2) Sc 577. Article 21 protects the right to life as a fundamental right. Enjoyment of life…. Including (the right to live) with human dignity encompasses within its ambit the protection and preservation of environment, ecological balance from pollution of air and water, sanitation, without which life cannot be enjoyed. Therefore hygienic environment is an integral facet of right to healthy health and it would be impossible to live with human dignity without a human and healthy environment. Thus there is imperative duty on State
to convey safe and healthy environment that has to be respected by the man through his own sense for all the activities that he undertakes. Eg. Production, generation, handling, disposal of biomedical waste etc.

A hospital or healthcare institution is a place of almighty, a place to serve the patient. Since beginning, the hospitals are known for the treatment of sick persons but we are unaware about the adverse effects of the garbage and filth generated by them on human body and environment\(^1\).

Now, it is a well established fact that there are many adverse and harmful effects to the environment including human beings which are caused by the “Hospital waste” generated during the patient care. Hospital waste is a potential health hazard to the health care workers, public and flora and fauna of the area. Hospital wastes are responsible for the hospital acquired infections, transfusion transmitted diseases, rising incidence of the Hepatitis B, and HIV, increasing land and water pollution lead to increasing possibility of catching many diseases. Whereas the surrounding is also affected due to disposal of biomedical wastes haphazardly, scattered and unhygenically dumped all leading to improper management of biomedical wastes. This leads to air, water and land pollution as already emphasized in the early chapter such as air pollution due to emission of hazardous gases by incinerator such as Furans, Dioxins, Hydrochloric acid etc. Water pollution due to untreated liquid waste let into water bodies, untreated wastes dumped nearby water bodies etc. and land pollution due to leachates, open dumps etc. all these have made the environment disastrous and has led to the public consciousness ultimately compelling the authorities to think seriously about the matter and thus brought about in July 1998 Biomedical Waste (handling and management) Rule by the Central Government.

The Rule was brought about by the Central Government under the sensitive and judicious judgements that the Judges came out with the effective Constitutional

---

provisions like Article 21, 48A, 51A(g) and rendered landmark judgements in various case and changed the current scenario undisputedly\(^1\).

The health status of an individual, a community or a nation is determined by interplay and integration of two ecological factors i.e. the internal environment of man himself and the external environment of man which surrounds him. Disease spreads due to the disturbance in the delicate balance between man and his environment. The science of safeguarding health is known to people as ‘Sanitation’ and it covers the whole field of controlling the environment with a view to prevent disease and promote health.

The problem of environmental pollution started with the advent of men on earth and now has become extremely acute both in developed and developing places. Due to loss of self-cleaning capacity of the air, developed countries have laid down stringent safety standards and measures particularly in the area of bio-medical waste management. But the developing countries have either delayed or ignored such pollution problems, which are more harmful, detrimental or injurious to the public health, safety and welfare of the public. Paul Harrison in his book has stated “The Third World Tomorrow, at [pp 38-40] has warned that there would be no tomorrow for the third world countries to remain in the society for no- adoption of anti-pollution strategies”. Therefore, it can be emphasized that Eco-development is one of the sensible precondition of sustainable development and for that matter immediate measures are required to be taken to snatch the terrible implication of nature resulting from non-scientific disposal of bio-medical wastes\(^2\).

The above stated Para has been rightly pointed out by Dr. Patnaik, that pollution has its adverse effect on the environment and one of such contributories is bio-medical wastes. Because indiscriminate disposal of infected and hazardous waste from hospitals, nursing homes and pathological laboratories has led to significant degradation of the environment, leading to spread of diseases and putting to great risk from certain highly contagious and transmission prone disease vectors. This has given rise to considerable environmental concern\(^3\).

\(^1\) Almitra H. Patel v. Union of India AIR 2000 SC 1256, Citizens Action Committee v. Civil Surgeon, Mayo (General) Hospital AIR 1986 BOM 136, Dr.B.L.Wadhera v. Union of India (1996)2 SCC 594

\(^2\) Dr. Raghunath Patnaik, P.G. Department of Law, Utkal University, Vani Vihar, Bhubaneswar, Biomedical Waste Management with the Process of Environmental Governance.

\(^3\) http://www.urbanindia.nic.in/publicinfo/swn/chap7.pdf last visit April 13, 2011.
Where as in the Indian scenario, ancient period glorifies the concern to the environment and its protection discernibly. The pronouncement of Chanakya during 4th Century B.C testify that the rulers, then, were keen on maintaining hygiene and cleanliness as they believed that ‘Cleanliness is Godliness’. This brave art of administration kept the whole environment neat and clean and disease free. It also showed the strict and loyal administration. This was evident through the deeds of the community. Another such successful administration and society was at the time of Kautilya (300 B.C) who in his book “Kautilya Arthashastra” exhaustively dealt with the question of environment protection and importance of life of a human being. He has also elaborately discussed and focused to implement the rules from Sections 26 to 30 of the said Arthashastra that provided also penalties against the citizen for making the city dirty or for the act disturbing water sources, defiling a tank, garden, forest, highways, roads, footpaths, grounds, open space etc.

By this ancient views it is very clear that the importance of the environment was well recognize, respected and protected. This also could be the reason for such stringent laws to protect wholesome environment against pollution. When the Indian history is studied the environmental law was existed during British Raj undoubtedly. The year 1860 was the landmark period in the history of the legal control of environmental pollution during British Raj as an attempt was made for the first time to control environmental pollution, in particular, water and atmosphere through criminal sanction. The Indian Penal code, 1860 dealt with water and atmosphere pollution.

For the purpose of the present study Indian Penal Code, 1860 has greater contribution towards combating pollution through bio-medical wastes as it has Penal

---

2 Section-26 for throwing dirt on the road, the fine shall be one-eighth of a Pana and for locking the same with muddy water and fine shall be one quarter of a Pana, Section-27 for the same cause, on the royal highway, such fine shall be double, Section-28 for voiding faeces in a holy place as for a water, in a temple and in a royal property, the fine shall be one Pana and rises successively by one Pana for subsequent offences for passing urine, the punishment is half of the above, Section-29 where as it is an exceptional provision and exempts punishment on the people if such pollution was due to illness of the persons and Section-30 for throwing dead bodies of animals like cats, dogs or serpent inside the city, the fine imposed is 3 Panas, and for other animals like donkey, camel, mule, horse or cattle the fine imposed was 6 panas and for human dead bodies the fine imposed was 50 panas.
provisions\textsuperscript{1} that would rather extend the protection and safety of the wholesome environment. In case of bio-medical waste these provisions of law have paid or set good examples for future polluters of environment from bio-medical wastes\textsuperscript{2}.

After Independence, at the commencement of Indian Constitution, the Constituent Assembly did not pay any specific attention towards the protection of the Environment. It only focused on relative aspects by mentioning the fundamental right to carry on any trade or business or to hold property or the right to property which seem to be an antithesis to maintain the natural environment. But this State had the power to balance them in the public interest\textsuperscript{3}.

The issue of environment and development did not receive any significant recognition in the planning process until 1968. The year 1972, marks a watershed in the history of environmental management in India. Prior to 1972, environmental concern such as sewage disposal, sanitation and public health were dealt with by different ministers of the Government of India and each pursued these objectives without any proper co-ordination system established at the federal or the inter-governmental level.

In 1972 the value for environment was started to mark under the Chairmanship of Pitambar Pant and a committee was set up for the purpose. This was in pursuance of 24\textsuperscript{th} U.N. General Assembly on Human Environment in 1972. The committee was informed to prepare a report on whole state environmental position in India and it led to the establishment of a National Committee on Environmental Planning Commission (NCEPC) in the Department of Science and Technology. It was

\textsuperscript{1} See Section-277 of IPC is confined to voluntary act and acts without any knowledge or accidentally would not be covered under the present law. More over it has limited operation to the water of public spring or reservoir, Section- 269 of IPC also could be invoked against a water polluter. The Section provides “whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both”, Section-270 which provides punishment for malignant act likely to spread infection of disease dangerous to life, Section-425 of IPC could also be invoked to punish the water polluter for mischief if his act causes wrongful loss or damage to public or to any person or if his act causes the destruction of any property or diminishes its value or utility, Section-511 of IPC focuses on the attempt to commit act of water pollution and Section -290 of IPC provides punishment for public nuisance (which includes pollution cases also) in cases not otherwise provided for.

\textsuperscript{2} “Dumping of Bio-Medical Waste”, Star of Mysore, page 1, Monday, 18\textsuperscript{th} December, 2006. In this report a case was also registered under Sections- 269 and 270 respectively under Indian Penal Code, 1860.

suggested because of the lacunae found in the report about the state of environment and it was badly felt that committee was the necessary aspect to have over all view of the environment in the country. Thus this committee functioned as the apex advisory body in all matters relating to environmental protection and improvement.

This was the major attempt that one could find in Indian Legal history regarding concern to the environment and its protection in the “Fourth Five Year Plan” (1968-1972) and that could be keenly observed as it stated as follows: - “Planning for harmonious development.... Is possible only on the basis of comprehensive appraisal of environmental issues.... It is necessary therefore to introduce the environmental aspects into our Planning and Development.”

Where as this remarkable flowed to next Five Year Plan with lots of improvement by implementing policies and programs and it was also stressed all major industrial decisions to adhere to the same since(1974-79) Fifth Year Plan. Later the Sixth Five Year Plan (1980-85) included an entire chapter on 'Environment and Development’ which emphasized on sound environmental and ecological principles in land use, agriculture, forestry, wildlife, water, air and marine development.

Another committee was set up which was chaired by N.D.Tiwari in 1980 to recommend legislative measures and administrative machinery to ensure environmental protection. And it also recommended the creation of a Department of Environment at the Center that could explicitly recognize pivotal role environmental conservation in sustainable national development and it was executed in 1980 and another recommendation was replacement NCEPC to NCEP. And this committee played a subsequent role by arranging a report on public hearing, media as awareness source and held conferences throughout India to create national wide awareness.

It could also be noted that along with such long journey of environmental concern issues many public concerns on various controversies, viz. Silicon Valley case, Mathura Refinery and Taj Mahal (acid rain) cases have raised and simultaneously Environmental legislation started to emerge on pollution control systematically and effectively such as Central legislation on water and air namely, Water (Prevention and control Pollution) Act, 1974 and Air (Prevention and control Pollution) Act, 1981 and major attempt was made to bring up whole environmental
protection under an umbrella legislation as “Environment (Protection) Act, 1986” which now is the “mother” legislation to the environmental protection.

In this chapter, therefore, it highlights on the importance of Environment so that it would make clearer that bio-medical wastes should be properly managed and carefully disposed of all wastes and not letting it into clean water, air, land, underground etc. Next the study pursues on the Environmental related provision of the Constitution after Preambular Objectives- ….. justice and equity and sustainable development of Environment. Then the other important matter to be discussed is Constitutional Rights, Fundamental Rights under Article 21 etc. following Directive Principles of State Policy and then the Judicial Remedies (Write Jurisdiction) Article 32 and 226. And of course Panchayat Raj Act, Municipal and Local self Government cannot be neglected at all.

These aspects would notify the importance of the Environment, protection to the same, creation of awareness against pollution through bio-medical wastes, Rights and duties of the people in toto (waste producers, handlers and general public) prevention, punishment and remedies through judiciary is attempted carefully.

4.2 IMPORTANCE OF THE ENVIRONMENT

The word environment seems to be very simple but it means a lot because it consists of living and non-living things which never can be separated. It has been also noted that during ancient period human beings and environment were regarded inseparable. This itself notifies that there is a great importance to the environment. The environment consists of water, air, land, biotic (living) & abiotic (non-living) factors in general. All these have their natural essence of existence with special characteristic that has been formatted by the super natural power or divine power.

According to ancient beliefs man was afraid of polluting the environmental factors indiscriminately. The man believed that the super power or divine power would punish him. But this concept is been now only in books because there is hardly a clean environment in this present world and it is undoubtedly witnessed by every human-being.

As per the mental and physical growth of human being there is necessity of clean, unpolluted and hygienic environment. This is the true fact for ever because
health is the prime concern of life of human being. The inner concept is very clear that “health is wealth” this dictum that can be never disproved. For this healthy concept clean air, unpolluted water, spacious fertile land, healthy animals, birds, vegetations, quality crops etc. is considered to be of utmost important factors. When any one of it is polluted the whole environmental factor or call it as ecosystem get changed to adverse extent and naturally, diseases (chemicalized food, water, vegetations etc.) disorders (genetics), smoky air etc. is witnessed which is the situation of today. And therefore the very purpose of this study is to show importance to the environment, its protection, preservation and last but not the least sustainability of the environment and that to a serious obligation on the every human being of the world.

Generally speaking, environment existed since the beginning of Earth. All scholars and scientists say that environment is very important. What are the possible reasons that make them say it is that important? Literally, environment means everything around us such as lakes, seas, air, water, land, birds, animals, mountains etc. The environment is divided into three different parts which include Natural Environment, Social Environment and Human Environment. These three parts are very necessary for human lives. If one of them is damaged, we will face a terrible crisis that may push us to the brink of extinction. For instance, even before the human race, Natural Environment has taken a major role in creating and supporting as well as reforming all kinds of species on Earth. If it hadn’t been it, Earth would be nothing but a piece of dirt in space, and the other two parts of environment would be nowhere to be seen these days. After Natural Environment, another kind of environment started up. It is called the Social Environment, that focus mainly on artificial or man made products, including cars, roads, cities, houses and so on. These are necessary for sustenance of human beings. People created this environment in order to battle against the force of nature. For example, houses are built as shelters which protect us from wild beasts and other natural disasters like rain, heat, storms, hurricanes, flood, etc. In addition to that, technologies have developed rapidly in these centuries thanks to Social Environment. For instance, the discovery of telephones made it possible for people to communicate with each other easily across continents and the invention of Computer even further the dreams of humanity that were once thought to be impossible. Otherwise, nowadays people would have probably lived like in the
prehistoric time. And last but not the least, Human Environment is also considered to be a vital factor which is needed by everybody, especially humans. As a matter of fact, this environment is roughly a part of Social Environment as well, but it usually refers to much more complicated creations, including medical, chemistry, etc. Take medical for an example. Due to advancement in medical research, humans have been cured and saved from many fatal maladies such as cholera and tuberculosis and human’s health has improved remarkably. Also, other chemical discoveries have, more or less, helped ease over everyday lives as a whole.

Accordingly, the three factors which make up what we call the Environment are undeniably essential to us.

Our mother Earth is the most precious gift of the Universe. It is the sustenance of nature that is a key to the development of the future of mankind. It is the duty and responsibility of each one of us to protect “Nature”. The degradation of our environment is linked with the development process and the ignorance of the people about retaining the ecological balance. It is very importance for every individual in this world to understand that clean environment is very important for health of all human beings. Any kind of pollution which is causing damage to environment is equally bad for whole humanity.

Under the importance of environmental concept it is also necessary to study the importance of the healthy environment. Of Course, we need a healthy environment because if it gets worse enough it will start effecting our health. Humans interact with the environment constantly. These interactions affect quality of life, years of healthy life lived and health disparities. The World Health Organization (WHO) defines environment, as it relates to health, as “all the physical, chemical and biological factors external to a person and all the related behaviors.1”

Environmental health consists of preventing or controlling disease, injury and disability related to the interactions between people and their environment. Maintaining a healthy environment is necessary to increase quality of life and years of

---

1World Health Organization (WHO), Preventing disease through healthy environments, Geneva, Switzerland:WHO;2006
healthy life. Globally, nearly 25 percent of all deaths and the total disease burden can be attributed to environmental factors\(^1\).

Generally, importance of the environment has even legal implication shown judiciously by the dynamic work of the Judges while deciding cases on environmental issues. The legal attention has simultaneously flown throughout the legal system in order to presence, protect, conserve and create awareness among every person of the country towards environmental sustenance.


It should be noticed very cautiously about the importance of the environment under the Constitution of India in its several provisions of law like *Article 21, Article 48A, 51(A)(g), Directive Principles of State policy* etc and suitable remedies under *Article 226 & 32* etc. In the case of Indian Penal Code 1860, it has also paid attention towards environmental aspects attracting several provisions for penalizing for the wrong doer like *Section 268, 269, 270* etc.

Undoubtedly National and State Environmental Tribunals are also created for the protection of the environment. These are the very few provisions of law just to realize the importance given to the environment by the legal system. The Administrative section of law has also played a great role like Central and State Pollution Control Boards implementing their bye-laws, Orders & Notices etc.

### 4.3 PREAMBULAR OBJECTIVES

The Indian Constitution is perhaps the first Constitution in the world which contains specific provisions for the protection and improvement of the environment. Hence, Constitutional approach leads to important dynamic solutions towards protection of environment.

At the very outset, the preamble of the Constitution of India provides that our Country is based on “*Sovereign*” concept and this naturally focuses on strict
implementation of laws that are now questioning the entry of dumping of biomedical wastes\(^1\) (discarded medicines) into land of India by any other country (e.g. U.S, U.K, Germany etc).

India is no doubt a “Socialistic”\(^2\) nation and has great influence on this pattern of society where the State pays more attention to the social problems than on any individual problems. The basic aim of socialism is to provide “decent standard of life to all”, which can be possible only in a pollution free environment.

Pollution is one of the social problems and the “State” is required under the Supreme Law to pay more attention to this social problem and march towards the avowed aim of just Social Order\(^3\).

If such care is not taken then the improper management of biomedical waste cannot be curbed. The effect on the society would rise to a greater extent because biomedical waste is one of the major polluter and its influence also attracts social problems. Therefore throwing away the biomedical waste would cause serious health problems. For example, persons with HIV/AIDS are ostracized class of society due to infectious, dreadful and incurable nature of the disease. They are solely identified and subjected to torture by stigmatizing in public. They are also deprived of care, medical assistance, education, employment opportunities and other accessible rights. Therefore preambular objective of “Socialism” is also subjected to question that how far the biomedical waste and its impact are looked upon by the judicial system to secure constitutional rights of such persons.

In *Smt. Vijaya*\(^4\) case many questions emerged as it was not only looked as a case law but the example to the society that any negligence of handling of biomedical

---

\(^1\) It has been reported in *Sakaal Times News paper*, page 16, Monday, May 26, 2008 that the medicines which are commonly used in India namely, Nimulid by Panacea Biotech, New Delhi (U.S.Company), D-cold, Novalgin, Vicks Action 500 etc familiarly known to fight a fever or subdue a Cold are banned in other Countries especially exporting Countries as they listed under hazardous chemicals that have side effects causing damage to kidney or a liver or even might cause fatal due to long use. And these chemical preparations are categorized as ‘chemical wastes’ under the Biomedical waste (Handling and Management) Rules 1998.

\(^2\) The word “Socialist” was added to the preamble by the Constitution (Forty-Second Amendment) Act, 1976, vide Section 2(w.e.f. 3-01-1977)

\(^3\) Article 38 of the Constitution mandates the State to secure a social order for the promotion of welfare of the people.

\(^4\) *M.Vijaya v. Chairman and Managing Director, Singareni Collieries Company Ltd and others* AIR 2001 Andhra Pradesh 502 Judges: S.B.Sinha, C.J, B. Subhashan Reddy, Dr. Motilal B. Naik, Bilal Nazki and V.V.S. Rao, in this case the Petitioner had a blood transfusion on account of surgery from her brother who was not tested for HIV before transfusion and she was infected with HIV. Later, it was discovered that, her donor was infected with HIV and that was not detected while transfusion.
waste by medical and paramedical staff causes or reflects hazardous effect on the health and environment. Simultaneously, the queries were on Constitutional rights as it would violate right to life Article 21. State responsibility towards the society Article 47, Public Remedy Article 226 and also question relating to degrading once dignity and reputation in the society whether is justified in critical situations etc. In this case the most difficult situations which went unsolved and probably cannot be solved was mental status of the petitioner who came to know the infection spread within her for no fault of hers and physical sufferance, reaction of husband, children, family members and friends. And the whole society towards her, disturbances in her family, the known death in front of her eyes and craving for want of a life to live a minute more…… though petitioner holds entitled to some reasonable amount of compensation of Rs. One lakh.

The Objective of the preamble is reflected clearly and in specific terms in Part IV of the Constitution, dealing with directive principles of state policy and has been discussed later in this chapter.

The other preambular objectives of the Constitution which focuses on Environment and its protection is being declared as a “Democratic” and “Republic” to ensure all the citizens right to participate in government decisions and also people have the right to know and access to information of government policies which is very important for the success of environmental policies.

In this study point of view, other objectives that finds necessary place in combating environmental issues especially regarding proper biomedical waste management would be rather ‘fundamental Justice’ and ‘Sustainable development’ which are equally balanced concepts to analyze the previous, present and future problems due to pollution/environmental degradation in every sense from improper management of biomedical waste. No doubt that, the Constitutional perspective of preamble enshrines other factors like equality, liberty and fraternity. These preambular objectives are also necessary when environmental pollution through biomedical waste is studied. The very reason is bio-medical waste if not taken seriously

The Court held that the right to life under Article 21 included the right to health and thus was violated. It also held that medical and paramedical staffs were responsible for the medical negligence and improper management of biomedical waste. The Court thus awarded one lakh rupees of compensation to the Petitioner. But Supreme Court has also upheld public morality to be more important than right to privacy with regard to HIV/AIDS in certain circumstance and that could be never reversible.
from the place of generation to disposal it would stand disastrous to the health and well-being of the life forms abiotic factors by its hazardous physical, chemical and biological changes. It affects healthcare workers, doctors, nurses and who ever come in contact with the waste so produced, the waste handlers, transporters and finally the waste treaters (if wastes (BMW) are disposed according to the BMW 1998 Rules). Otherwise, BMWs are proved to be still more dangerous if dumped on an open ground 1 because it attract rag pickers 2, passer-by, general public, stray dogs, cattle, pigs, birds, rodents rummaging over the wastes and so on.

The occupational health hazard 3 is one of the major concern and “equality” objective would naturally attract because every healthcare personnel is equal to get safety measures while treating, handling till disposal. All these series of people should not be neglected at any stage or delete any one group from safety measures. Every precautionary measure should be given and taken very seriously. The concept of “Fraternity” shall also be adjoined here because whole of the health care community must be co-operative to each other in taking all the necessary measures so that it would not prove fatal to other co-worker at all. For example, when a doctor administers injection to the patient or for immunization, after the use the sharps 4 should be thrown into the specified bin 5 or immediately burn in a needle destroyers which ever facility is available.

And when it is the concept of “liberty” it totally justifies by stating that by taking utmost care by the generators to disposers abiding the rules and complying

---

1 “Dumping of Bio-medical waste” Star of Mysore, Page 1, Monday 18th December 2006. Already discussed in chapter II.
2 “Biomedical Waste not being disposed Off properly” July 2nd 2012, http:// www.thehindu.com. It has been stated the Biomedical wastes are dumped improperly in Mavallipura some 35 km from the Bangalore City and also stated Rag pickers who loiter on those waste segregate plastic from the waste, often pick up saline bottle, rubber gloves and syringes. Their work makes them susceptible to contracting dangerous diseases, since they work with no protection what so ever Shukar Ali and his family earn a meager livelihood by collecting plastic waste. They have no idea what biomedical waste is or one risk they are taking by collecting it.
3 “A case study on the status of Hospital Solid Waste Disposal in Guwahati City” See Poll Res.27(2):335-338 (2008) it has mentioned in the study after studying 58 health units in Guwahati that improper practice of hospital waste disposal still exists and it affected medical people, paramedical staff, labour staff, rag-pickers and citizens at large.
4 Sharps from immunization injections are found to be unsafe Simonsen L, Kane A, Lloyd J. Unsafe injections in the developing world and transmission of blood borne pathogens: a review. Bulletin of the World Health Organization 1999;77(10): 789-800
5 Schedule I categorized of Bio-medical waste and Schedule II Colour Coding and Type of Container for Disposal of Bio-medical wastes BMW (Handling and Management) Rules 1998. Sharps are placed under Category 4 shall be placed in Blue/White translucent Plastic Bag puncture proof container.
with the provisions of law, they would be the contributor to the clean and healthy environment and of course “liberalizing” everyone from environmental pollution caused by the biomedical wastes.

4.4 PRINCIPLES OF SUSTAINABLE DEVELOPMENT AND OTHER RELEVANT PRINCIPLES

One of the very issues in the lime light regarding environment is the “Sustainable Development”. Sustainable development has been accepted as global policy. The concept appears, often as an objective or preambular reference, in most of the national and international statements and declarations related to environmental, social and economic issues.

Our judicial system has paid attention towards the concept of 'sustainable development' through various case laws and necessarily acting positively through judicial activism upholding few principles like ‘Polluter Pays Principle’ and ‘Precautionary Principle’ and so on marking it to be essential features of sustainable development.

Every case has been focused on the importance of the environment and solution to protect, preserve and conserve through the balancing concept of sustainable development. This equally applies to the present study regarding proper management of biomedical waste as new advancement and development in the field of medicine, diagnosis and treatment. Thus, the production of waste hazards from such waste from it is prominent feature which should be taken care of from the point of generation to its safe disposal without deteriorating the wholesome health and environment. Pollution is also caused by biomedical waste if proper care / treatment are not given to the hazardous infectious waste initially and improperly treated while disposing of the waste (incineration) using unscientific method etc. Therefore important aspects regarding protection of health and environment in every case is also applicable to biomedical waste management. Thus, it can be observed that the judiciary has played a predominant role in comprising equilibrium between developmental advancement and sustainable development forming an environmental “justice” which again is a prominent/primary feature of preambular objective of our Constitution.
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” in 19871.

Some of the expert’s views are expressed below regarding sustainable development: According to Schneider:2

“Although the term has assumed a guiding function since “Our Common Future” in 1987, almost everything about it is unclear, from its translation through to its political consequences”.

In the opinion of Roe3:

“………. sustainable development is an Oxymoronnot, however because “development” is always unsustainable, but because sustainability cannot be “developed” the way many of its advocate suppose”.

Ecologist Prof. P.S. Ramakrishnan, is of the opinion that the best way to approach sustainable development is through a thorough understanding of the linkages between the ecological and social processes at different scalar dimensions at which one could look at the issues involved:

A chart prepared in the office of the under Secretary-General for Policy Coordination and Sustainable Development interlinking in a logical manner various components such as driving forces, intermediate elements and eventual impact on health and welfare of current and future generations tries to explain the concept of sustainable development4.

The term ‘Sustainable Development’ was first used in 1987 by the World Commission on Environment and Development (Popularly known as the Brundtland Commission). The report described the term in the following manner: ‘Humanity has

---

1 Dr. H. N. Tiwari, Environmental Law, 3rd Edition 2007, Allahabad Law Agency, P.No 52
2 Schneider, K. Sustainable Development (1999) P.102
the needs of the present without compromising the ability of future generations, to
meet their own needs. The concept of sustainable development does imply limits—not
absolute limits but limitations imposed by the present state of technology and social
organization on environmental resources and by the ability of the biosphere to absorb
the effect of human activities. But technology and social organization can be both
managed and improved to make way for a new era of economic growth.\textsuperscript{1}

The cardinal features of this report were that, on one hand, there is a need for
industrial and technological growth, which is opposed to environmental preservation,
while on the other; it should be organized in such a way that the biosphere can tolerate
such activity. Precisely, it mandated in favour of a balanced approach and
recommended the adoption of an eco-friendly technology. Some principles have to be
discussed to meet this end. The very important few principles are of ‘Preventive’
character while others are of different nature. The preventive approach was needed to
curtail pollution at grass root level, because, if any harm is committed on the
environment, it is irretrievable and long lasting. On the contrary, it is not possible to
have an absolute pollution free, clean society. So the aim was to keep the pollution
under control. Principles like ‘Polluter pays’, served this purpose. This principle
incorporated two aspects; first the offender should be held absolutely liable to make
good the harm committed by him and secondly, to deter the potential offenders. The
quantification of punishment and imposition of Criminal liability are also significant
in this context. For adequate implementation of criminal laws punishments are
required. The strong action against the offender may be also strongly recommended.
The strong action of implies the closure of the polluting industry and further, the
winding up of the corporation, which has failed to follow the legal provision.
Imposition of proportionate liability on the basis of the economic condition of the
Corporation or the imposition of absolute liability upon the polluter industry will be
the appropriate steps to fight the problem. It is well settled that only the incorporation
of the strict principles of criminal law will be an effective tool in the hands of the state
to combat the ever increasing problem of industrial pollution, as is affirmed and

\textsuperscript{1} World Commission on Environment and Development, Our Common Future, Oxford University
reaffirmed by the eighth and Ninth United Nations Congress on the Prevention of Crime\textsuperscript{1}.

Under the concept of sustainable development, biomedical waste management would come under the purview of it. Hence, it is always the hue and cry of the policy makers and implementers to that particular part of the section or group of the society (health care personnel/workers) to manage the bio-medical wastes properly and dispose of in appropriate way. This kind of systematic approach of proper management of bio-medical waste would rather help to maintain equilibrium between advanced technology, new research, inventions and innovations in the field of management of biomedical waste for the present and future generation and also preservation of natural and clean environment.

In an article on sustainable development\textsuperscript{2}, it is pointed out that, India’s model of development focusing heavily on certain material goods and services is profoundly unsustainable. Natural resources are extracted at a rate far greater than their capacity to regenerate. Pollutants are pumped back into natural ecosystems at rates far higher than they can be absorbed or cleaned up. Of course, its true in case of biomedical waste because many health care institutions and health care establishments improperly manage the biomedical waste by dumping on land (either fertile or biodiversified or barren land) which leads to ecological destruction and a big threat to sustainable development. Though there are so called dump yard / land fill managed by waste handlers, yet the proper handling is still in absentia as on today\textsuperscript{3}.

This clearly shows the unsustainable attitude of the biomedical waste handlers.

In an another report it has been stated that as per the Central Pollution Control Board Evaluation Report around 50 to 55 percent of Biomedical waste is collected

\textsuperscript{1} Indrajit Dube, ‘Environmental Jurisprudence Polluter’s Liability’ 2007, New Delhi P.No 85-86)
\textsuperscript{3} “Biomedical waste not being disposed of properly” posted on July 2\textsuperscript{nd} 2012, http://www.thehindu.com/news/cities/Bangalore. Where in this news it is stated that syringes, needles, saline bottles, used bandages and dump yard at Mavallipura, some 35km from the Bangalore city. Though there are water tight rules for the safe disposal of biomedical waste, it is obvious that this is not followed. The dump yard landfill at Mavallipura is managed by Ramky Enviro Engineers Ltd. The Mavallipura villagers claimed that biomedical waste was not properly disposed. “Sometimes, they found huge bags of blood gauzes and bandages just dumped along with the other waste. The bags at the dump yard rip this apart. This is a serious issue, as infectious and other diseases can spread unchecked”, said B.Srinivas, member of Dalit Sangharsha Samiti, Bangalore district Committee. Even the Ramky officials at the site, on condition of anonymity, said that the biomedical waste (often bundled in block plastic bags) is dumped with other waste at the site. “Around 10 percent of the waste dumped here every day is biomedical waste”, he admitted. Last visited on Oct 15, 2012.
segregated and treated as per the Bio-Medical Waste Management Rules. The rest of the BMW wastes are dumped with the municipal Solid Waste. This evaluation report was submitted in February 2010\(^1\).

Therefore, with these live reports it becomes difficult for sustenance of proximity of good health and environment and highly difficult even to maintain ecological balance and sustainable development. There are many such hospitals and cancer institutes which give hi-tech advanced treatments using radioactive elements which give a clear picture of technological advancement and development in medical history and provide life to the people as a result of it. But the end part of it is not taken care properly that means generation of the waste after treatment and the disposal of such wastes are completely neglected by either dumping in open, municipal bins and so on without treatment for such hazardous wastes. This naturally destroys the concept of sustainable development. But it is also true that Bio-Medical Waste Rules 1998 takes care and concern towards sustainable development to a greater extent and the Rules regarding proper systematic regulatory framework is suggested for the proper disposal of BMW which then helps in protecting the environment. And when it comes to sustainable development, then disposal of the wastes \(^2\) is not the only concern, it circumferences many other things such as, proper handling, storage, disposal etc. Besides developing new methods for recycling and reusing of the wastes, the immediate focus should be on making the hospital authorities aware of the need of the Bio-medical Waste Management and the risk prevailing with it, they should also be given an insight of the Act and the legal consequences attached to it.

The World Summit on ‘Sustainable Development’ was held in Johannesburg in 2002. The purpose of the same was to evaluate the obstacles to progress and the results achieved since the 1992 World Summit at Rio de Janerio. The same was expected to present “an opportunity to build on the knowledge gained over the past

---

\(^1\) It was carried out by Indian Institute of Management, Lucknow and Commissioned by the Union Ministry of Environment and Forests. It was suspected that radioactive cobalt-60 isotope which was found in the Mayapuri scrap yard of New Delhi had came from hospital waste. The isotope cobalt-60 has left 6 people battling for their lives in scrap yard area. About 50percent of the biomedical waste generated in India’s hospitals is dumped with municipal garbage without any treatment revealed the recent study evaluating CPCB. A total of 15,000 hospitals in the country have been served show-cause notices for not following waste management rules.

decade and provides a new impetus for commitments of resources and specific action towards global sustainability”.

It is true that to make development sustainable the human-being is sole responsible for it that is to say, seek to meet the needs and aspirations of the present without compromising the ability of future generations to meet their own. The concept of sustainable development implies limits—not absolute limits, but limitations that the present state of technology or social organization and the capacity of the biosphere to absorb the effects of human activities impose on the resources of the environment, but both technology and social organization can be organized and improved so that they will open the way to a new era of economic growth. This totally applies to biomedical waste management because as new diseases appear equalent treatment is researched and various technological inventions and innovations in medicine and treatment takes place and thereafter BMW waste is naturally produced in the procedure and from generation to the disposal of it is to be done safely and systematically according to the law keeping in view sustainable development.

Even the ‘World Conservation Union’ and ‘The World Wide Fund for Nature’ prepared jointly by UNEP described that “Sustainable development, therefore, depends upon accepting a duty to seek harmony with other people and with nature”. A strategy for Sustainable Living and the guiding rules are:

i. People must share with each other and care for the earth.

ii. Humanity must take no more from nature than man can replenish. and

iii. People must adopt life styles and development paths that respect and work within nature’s limits¹.

It is also clear that sustainable development stands within the parameters of limitations of natural use and conservation. When it the management of biomedical waste this indeed applies to it as bio-medical wastes are to be treated and let into the nature (air, water and land). Only then this objective is meaningful as it (sustainable development) requires positive action on the part of government. It requires the States

¹ Karnataka Industrial Areas Development Board v. Sri. C. Kenchappa and Ors. AIR 2006 SC 2038, [Para 26]
to ensure that they develop and use their natural resources in a sustainable manner. There are four objectives of ‘Sustainable Development’ are as follows:

i. First, it refers to a commitment to preserve natural resources for the benefit of present and future generations.

ii. Second sustainable development refers to appropriate standards for the exploitation of natural resources based upon harvests or use (examples include use which is “sustainable”, “prudent”, or “Rational”, or “wise” or “appropriate”).

iii. Third, yet other agreements require an “equitable” use of natural resources, suggesting that the use by any State must take account of the needs of other States and people.

iv. And a fourth category of agreements require that, environmental considerations be integrated into economic and other development plans, programmes and projects that the development needs are taken into account in applying environmental objectives.

4.5 SOME IMPORTANT CASE LAWS WITH APPLICATION OF THE PRINCIPLE OF SUSTAINABLE DEVELOPMENT HIGHLIGHTING ENVIRONMENTAL JUSTICE

The below important case laws with landmark judgements are referred in this present study to notify that it equally applies to bio-medical waste management cases too. These case laws has focused on sustainable development and supporting principles to get environmental justice like ‘polluter pays principle’, ‘precautionary principle’, ‘public trust doctrine’, ‘preventive principle’, ‘principle of New Burden of proof’, ‘principle of proportionality’, ‘absolute liability’, ‘principles of common Law’ to discuss a few. In one or the other way these relate to each other for bringing a great cause to protect health and environment. The danger that posed by the Bio-medical waste also causes irreversible harm/damage to environment and public health.

1 P.Sands, International Law in the field of Sustainable Development.
2 Karnataka Industrial Areas Development Board v. Sri.C.Kenchappa and Ors. AIR 2006 SC 2038, [Para 28].
Therefore, these principles are necessary to combat the problem of environmental destruction from improper management of biomedical waste.

In the modern environmental jurisprudence probably the most important judgement is the *Karnataka Industrial Areas Development Board (KIADB) v. Sri. C. Kenchappa and Ors*¹. This judgement try to bring consonance with the principle of ‘*Sustainable Development*’, a serious endevour has been made in the impugned judgement to strike a golden balance between the industrial development and ecological preservation.

The case came before the court because the respondent agriculturists, who were affected by the acquisition of lands of different villages, filed a writ petition under Article 226 of the Constitution with a prayer that the appellant Karnataka Industrial Areas Development Board be directed to refrain from converting the lands of the respondents for any industrial or other purposes and to retain the lands for use by the respondents for grazing their cattle.

Therefore, it is essential to consider that, before taking out any developmental project the necessary exercise regarding the impact of development on ecology and environment should be considered. The both development and ecology must go hand in hand and that is the very upholding concept of sustainable development.

### 4.5.1 The Polluter Pay’s Principle:

This principle has well acceptance in international law and in municipal legal system. Two aspects are highlighted in this principle; on one side, it is used as compensatory mechanism, on the other, and it is used as a preventive mechanism. Compensatory, because the polluter should pay for the harm inflicted by him on the health and environment and preventive, in the sense, that heavy penalty may be imposed upon the polluters², so that it creates the deterrence in the minds of other occupiers.

This principle entails four different perspectives:

a) First, criminal responsibility may be imposed upon the polluter;

---

¹ AIR 2006 SC 2038  
² Indrajit Dube, Environmental Jurisprudence Polluter’s Liability, 2007, Lexis Nexis, NewDelhi, Page no. 64.
b) Secondly, the polluter may be held responsible to make good the harm
inflicted by him;

c) Thirdly, eco-tax or carbon tax may be imposed upon him;

d) Finally, law of the land may compel the polluter to participate in preservation
of environment.

It may be mentioned here, that the United States adopted this principle through
The council of European Communities adopted this principle as a potential instrument
for preservation of Environment. The Rio Declaration also emphasized upon the
incorporation of this principle in Municipal Laws.

The Supreme Court of India and the High Courts have relied on this principle
in different pronouncements. The court has given the meaning of this principle as:

‘....... the absolute liability for harm to the environment extends not only to
compensate the victim of pollution but also the cost of restoring the environmental
degradation’.

This above study of principle reveals the following propositions in the
contexts of preservation of environment:

a) It is a mere dream to set up a complete pollution free environment; but the pollution
should be at such a level that could easily be assimilated by the environment and the
laws must ensure to that effect.

---

1 Ibid P.no. 65.
2 'The Council stresses that in the interest of more efficient environment protection in the context of
effectively integrated environment and economic policy and meeting the fundamental objective of
sustainable development, in particular which comply with the 'polluter pays principle', it is
necessary to back up current, direct environmental regulations based on command and control
approach with economic and fiscal instruments aimed at influencing the reason and behavior of
producers and consumers, to discharge wasteful and polluting process and product and to promote
technologies and productive processes which are consistent with resource conservation'.
3 Principle 13, ‘State shall develop national law regarding liability and compensation for the victims of
pollution and other environment damage. States shall also cooperate in an expeditions and more
determined manner to develop further international law regarding liability and compensation for
adverse effects of environmental damage caused by activities within this jurisdiction or control to
area beyond their jurisdiction’. Principle 16, ‘National authorities should endeavour to promote the
internalization of environmental costs and the use of economic instruments, taking into account the
approach that the polluter should in principle, bear the cost of pollution, with due regard to the public
interest and without disturbing international trade and investment.
4 See Vellore Citizen Welfare Forum V Union of India 1996 AIR SC 2715, per KulldipSingh J. See also
Indian Council for Enviro-Legal Action v. Union of India 1996 AIR SCW 1069; MC Mehta V
5 Ibid
b) Industrial advancement is inevitable for fulfillment of the basic needs of the society on the other hand; it is a potential threat to environment; so the state has to strike a balance between the two.

c) The state should stop the spread of pollution from its source and restrictions should be imposed upon transportation of hazardous substances.

d) Trans-boundary pollution has been a major threat to the neighboring countries. Responsibility should be imposed on the political leaders to arrest these tendencies.

e) If any mischief is done by industrial corporations, civil as well as criminal liability should be imposed upon it by the laws of the land.

f) To formulate a comprehensive environmental regulation, the incorporation of these principles is indispensible.

Therefore, with the above noted points it could be analyzed that biomedical waste being one of the very hazardous waste would also come under the same purview and then only waste management and sustainable development can go hand in hand1.

The Polluter Pays Principle first appeared on the scene at international level OECD Council in 1972 as a guiding principle concerning the International Aspects of Environmental Policies. The gist lies in fixing the responsibility of compensating the environmental pollution on the person or body responsibility for pollution.

Carolyn Shelbourn2 mentioned that the question of liability of the respondents to defray the costs of remedial measures can be looked into from another angle, which has come to be accepted universally as a sound principle, viz., the “Polluter Pays” principle.

The ‘polluter pays’ principle implies that all producers of waste are legally and financially responsible for the safe and environmentally sound disposal of the waste they produce. This principle also attempts to assign liability to the party that causes damage. Thus, the person who pollutes the environmental principally shall be held responsible and shall pay for its removal of effect3. This principle was officially

---

3 See for detail WWW.oecd.org last visited on Sep 17, 2007.
stated in the Bruntland Report in 1987 and thereafter law of European Countries and international law have adopted and applied in many conventions and protocols.

The principles were partly adopted in *Bhopal Gas case* in which the Supreme Court overruled to accept any of the defence of *Rylands v. Fletcher* and while deciding the case, enunciated the principles of Polluter Pays Principle. The Court had further reiterated this principle in *Indian Council for Enviro-legal Action* case. Once any activity is inherently dangerous, or hazardous dangerous, the person responsible for carrying on such activity must be held liable to make good the loss caused by him to any other person or property by his activity irrespective of the fact whether he took reasonable care while carrying on his activity. Consequently, the polluting industries are “absolutely liable to compensate for the harm caused by them to villagers in the affected areas, to the soil and to the underground water and hence they are bound to take all necessary measures to remove sludge and other pollutants lying in the affected areas.” Thus, the “Polluter Pays” principle has been held to be a sound principle by the Supreme Court itself in this case. It has also interpreted by the Court means that the absolute liability for harm to the environment extends not only to compensate the victims of pollution but also the cost of restoring the environmental degradation. Remediation of the damaged environment is part of the process of “*Sustainable Development*” and as such polluter is liable to pay the cost to the individual sufferer as well as the cost of reversing the damaged ecology. This was held to be a part of the environmental law of the country.

Polluter Pays Principle is also well recognized in *Vellore Citizens Welfare Forum v. Union of India*\(^1\). This case also dealt with “*sustainable development*” rather than “*absolute development*” or “*development at all costs*”.

In this case a Writ Petition was filed under Article 32 of the Constitution of India by Vellore Citizens Welfare Forum against the large scale pollution which was being caused due to the enormous discharge of untreated effluent by the tanneries and other industries in the State of Tamil Nadu. The allegation was that the tanneries discharged untreated effluent into agricultural fields, road-sides, water ways and open lands which ultimately reached into river polar, which is the main source of water for the residents of the area.

\(^1\) AIR 1996 SC 2115
The Supreme Court in its judgement striked a balance between economic development on one hand and welfare of the people on the other. The court held that it is true to state that leather industry in India has become a major foreign exchange earner and it provides employment to a good number of persons, it has no right to destroy the ecology, degrade the environment and pose a health hazard. It cannot be permitted or even to continue with the present production unless it tackles by itself the problem of pollution created by the tannery industries. The court was not satisfied with this. It authorized the Authority to Order closure of the industry which evades or refuses to pay the compensation awarded against it. If an industry has set up necessary pollution control device at present, it shall be liable to pay for the past pollution generated by the said industry which has resulted in the environmental degradation and suffering to the people. This full bench judgement of the Supreme Court comprising of Justice Kuldip Singh, Faizanuddia and K. Venkatswamy has given long lasting contribution to environmental law and its effect would feel in all future planning for development. Thus, the polluters pays principle was significantly enunciated in this case law and set a great example in protecting the environment by combating problems of pollution and upholding the concept of sustainable development.

In another case, In Indian Council for Enviro-Legal Action V. Union of India1 some chemical industries were producing certain hazardous chemicals like Oleum, Single Super Phosphate, Fertilizers and also the production of ‘H’ acid in an industrial complex in Village Bichhari in Udaipur (Rajasthan). The respondents had not obtained the requisite clearances / consents / licenses nor did they install any equipment for treatment of highly toxic effluents discharged by them. ‘H’ acid was meant for export exclusively. Its manufacture gives rise to enormous quantities of highly toxic effluents, in particular, iron-based and gypsum –based sludge, which if not properly treated, pose grave threat to Mother Earth. Since the toxic untreated waste waters were allowed to flow out freely and because of this untreated toxic sludge was thrown in the open in and around the complex, the toxic substances percolated deep into the bowels of the earth polluting the aquifers and the subterranean supply of water. The water in the wells and the streams turned dark and dirty rendering it unfit for human consumption, unfit for cattle to drink and for

1 (1996) 3 SCC 212.
irrigating the land. The soil became polluted rendering it unfit for cultivation, the
mainstay of the villagers. It spread diseases, death and disaster in the village and the
surrounding areas. An Environmentalist Organization filed the present Writ Petition
before the Supreme Court by way of Social Action Litigation, complaining precisely
of the above situation and requesting for appropriate remedial action.

The Supreme held that the respondents alone were responsible for all the
damage to the soil, the underground water and to the Village in general.

Accordingly, the rule laid down by the Constitution Bench of the Supreme
Court in Oleum Gas Leak case, “Once the activity carried on is hazardous or
inherently dangerous, the person carrying on such activity is liable to make good the
loss caused to any other person by his activity irrespective of the fact whether he took
reasonable care while carrying on his activity” was stated to be polluter pays
principle and it was reiterated in the above case. Thus, ‘Polluter pays principle’ was
applied and held that the respondents shall hold the responsibility for repairing for the
damage caused by the offending industry.

4.5.2 The Precautionary Principle:

The precautionary principle is one of the most recognized principles in mid-
1980s. It was recognized in international law and it had originated from Germany. It
was expanded in the field of marine pollution since 1980 and came to be set out in the
1990 OPRC Convention and various other conventions. It was then extended to
protection of coastal areas and fisheries sector and also applied to the atmospheric
pollution. It soon came to be included as a general principle of environmental
policy.

It was accorded universal recognition in Principle 15 at Rio in the 1992 UN
Conference on environment and Development which resulted in the Declaration on
Environment and Development enunciated under Principle 15. Similarly, the 1992
UN Framework Convention on Climate Change (UNFCC) also referred to it. So does
the preamble to the 1992 Convention on Biological Diversity (CBD). Various foreign

---

2 U.N. Economic Commission of Europe in 1990 (UNECE) in Bergen; in 1989 by the Governing
Council of the UN Environment Programme (UNEP); in 1990 by the Council of Ministers of the
Organization of African Unity (OAU); and of the 1990 Ministerial Conference on the Environment
of the UN Economic Commission for Asia and Pacific (ESCAP) and finally in January 1991 in the
Environment Ministers of the Organization for Economic Co-operation and Development (OECD).
courts have accepted this principle and have been incorporated in their statutes\(^1\). The Supreme Court of India, in the case of *Vellore Citizens Welfare Forum V. Union of India*\(^2\) referred to the precautionary principle and declared it to be part of the customary law in our country. The same was reiterated in the *A.P. Pollution Control Board case*\(^3\). The precautionary principle emphasizes upon the preventive aspects of environmental laws. The necessary basis of this principle lies on the scientific innovation.

The Court categorized the salient features of this principle into three broad statutory authorities have to play a significant role in the implementation of the principle. It is the primary responsibility of the state to protect the country’s ecology and health standards of its citizens from harmful effects of environmental pollution. To that effect, the state should ensure that any proposed developmental activity must be eco-friendly. It should try to ascertain its harmful nature through ‘impact assessment’. Secondly, the court pointed out that this principle lies on scientific opinion; no enterprise should be allowed to operate so as to cause irretrievable damage to environment.

The third aspect of this principle advocated for the shifting of ‘onus of proof’ to the actor or developers / industrialists. The Court said that this principle will contribute in the formation of a new rule of burden of proof, in case of environmental law. The burden is, therefore, on the industries, which primarily showed its inherent pollution characteristics to prove that its activities were sustainable with the environment.

Precautionary principle has been adopted in both *Vellore case* and *Andhra Pradesh Pollution Control Board case*. The ‘uncertainty’ of scientific proof and its changing frontiers from time to time have led to great changes in environmental concepts during the period between the Stockholm Conferences of 1972 and the Rio Declaration.

---

\(^1\) It is applied in U.K because of Article 174(2) of E C Treaty. It is also applied by U.S Courts and in Australia.

\(^2\) 1996 (5) SCC 647

\(^3\) 1999(2) SCC 718
In *Vellore case*¹, a three-Judge Bench of the Court referred to these changes, the ‘*precautionary principle*’ and the new concept of burden of proof in environmental matters.

The Supreme Court in this case was apprised of the pollution caused by the enormous discharge of untreated effluent by tanneries and other industries in the state of Tamil Nadu. The petitioner highlighted the evil on the strength of reports from Tamil Nadu Agricultural University Research Centre, an independent survey conducted by non-government organizations and a study by two lawyers deputed by the Legal Aid and Advice Board of Tamil Nadu. The main allegation was that the untreated effluents contaminated the underground water resulting in non-availability of potable water, thereby causing immense harm to agriculture. Despite the persuasion of the Tamil Nadu Government and the Board, and despite the Central Government’s offer of subsidy to construct common treatment plant, most of the tanneries hardly take any steps to control the pollution. The court referred to its earlier Orders. It also quoted extensively from the report of NEERI to bring to light the seriousness of the problem.

The court observed that the *precautionary principle* and *polluter pays principle* have been accepted as part of the law of the land. It quoted Articles 21, 47, 48A and 51A(g) of the constitution of India, and referred to Water Act, Air Act, and EPA². The court directed to close down only those tanneries to which consent was refused³ because the court had already directed to set up common effluent treatment plants or other industrial pollution control devices before they tried to obtain consent.

The judgement in this case law could be considered as powerful judgement against pollution. The biomedical wastes because biomedical wastes are equally responsible for underground water pollution if not treated and disposed of properly. Therefore this case shall stand as a precaution to the pollution aspect of biomedical waste if intended to commit by negligence. The result would naturally be the closure of the place of generation or the place of disposal whichever would be held responsible for such pollution.

---

³ Ibid P. No. 363
The precautionary principle has been elevated its weight in one of the very important case law as eagerly state in this study is the *Vijaynagar Education Trust v. Karnataka State Pollution Control Board, Bangalore*. Because this case law is one or the other way connected to the proper management of biomedical waste as this case highlights on the precaution that has to be taken by the hospital authorities or (for that matter any generator of bio-medical waste) dispensaries etc to manage the waste and looked into the major aspects to control pollution of natural resources like water, Air and land.

In the facts of the case of the aforementioned case law, the petitioner, a registered trust constituted with the object of imparting education, approached the state government for issuance of essentiality certificate for establishing a medical college. In pursuance of the sanction from Bangalore Metropolitan Development Authority (BMRDA), the petitioner had begun construction of the hospital and college. When the construction was half way through and an amount of rupees five crores spent already, a news item appeared in the press that the construction is likely to pollute Kumudavathi River which is located near the proposed construction. The river flows into Thippagondanahalli reservoir, and there is every likelihood of pollution of the said reservoir which is one of the major sources of drinking water to Bangalore city. As a result of the news item, a public interest Writ Petition was filed.

The petitioner claimed that there was ‘deemed consent’ based on the provision in sub-section (7) of S 25 of the Water Act which runs:

(7) The consent referred to in sub section (1) shall, unless given or refused earlier, be deemed to have been given unconditionally on the expiry of the period of four months of the making of an application in this behalf complete in all respects of the Board.

The Court held that there was ‘deemed consent’ and remarked that the case does not so much involve the ‘polluter pays principle’ as the hospital still is in the stage of inception. As the hospital did not commence operations, this issue can be gone into and determined only with reference to the ‘precautionary principle’ which as a legal concept has evolved from various international conferences on environment

---

1 AIR 2002 Kant 123.
and has now emerged as the law governing matters of environment and finds expression in Arts 47, 48-A and 51-A(g) of the Constitution.

The new concept places the burden of proof on the developer to show that establishment of an industry would not expose the environment to serious or irreversible damage. In this case even *AP Pollution Control Board v. MV Nayudu*\(^1\) was referred to the present context because the court held that if an industry poses ‘uncertain but non-negligible’ risks, then regulatory action is justified.

And the judge decided the present case stating very clearly that the principle of ‘sustained development’ would come into play. Hospital, being an institution that is essential to improve the quality of human life, its establishment subject to ensuring the carrying capacity of the supporting ecosystems, its right to state that the area concerned is not declared as a sensitive area by publication of the required notification, the petitioner has the benefit of “deemed consent” and it is not possible to ascertain any potential non-negligible danger to environment which would call for adopting the ‘precautionary principle’ and lastly the Board is not powerless in the matter in that it could always resort to sub –section (7) of S 25 to ensure that ‘non-negligible’ danger is caused to the environment by the establishment of the college and hospital\(^2\).

4.5.3 The Public Trust Doctrine:

The ancient Roman Empire developed a legal theory known as the doctrine of the public trust. It was founded on the ideas that certain common properties such as rivers, seashore, forests and the air were held by government in trusteeship for the free and unimpeded use of the general public. Under the Roman law, these resources were either owned by no one (*res nullius*) or by everyone in common (*res communions*).

Under the English common law, however, the sovereign could own these resources but the ownership was limited in nature, the crown could not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the crown for the benefits of the public.

---

1. AIR 1999 SC 812
2. AIR 2002 Kant 123, PP 132,133.
Professor Jaffe says: According to this doctrine, public lands dedicated to certain uses (for example, use as a park, a recreation ground, or a forest preserve) cannot be diverted by a public authority (such as a highway commission) to other uses less environmentally worthy, unless the diversion is inconsequential and does not seriously disturb the dedicated use.

Likewise, Joseph L Sax, Professor of Law, University of Michigan-proponent of the Modern Public Trust Doctrine- in an erudite article ‘Public Trust Doctrine in natural resources law: effect judicial intervention’, has given the historical background of the public trust doctrine as under:

“The source of modern public trust law is found in a concept that received much attention in Roman and English law – the nature of property rights in rivers, sea and the seashore. That history has been given considerable attention in the legal literature need not be repeated in detail here. But two points should be emphasized. First, certain interests, such as navigation and fishing, were sought to be preserved for the benefit of the public; accordingly, property used for those purposes was distinguished from general public property which the sovereign could routinely grant to private owners. Second, while it was understood that in certain common properties such as the seashore, highways and running water- ‘perpetual use was dedicated to the public’, it was never been clear whether the public had an enforceable right to prevent infringement of those interests. Although the state apparently did protect public uses, no evidence is available that public rights could be legally asserted against a recalcitrant government.”

In English law the public-trust doctrine under English Common Law extended only to certain traditional uses such as navigation, commerce and fishing but American courts in recent cases have expanded the concept of the public trust doctrine. The observations of the Supreme Court of California in Mono Lake case showed the judicial concern to protect all ecologically important lands, for instant fresh water, wetlands or riparian interests. The observations to the effect that the protection of ecological values is among the purposes of public trust, may give rise to

3 National Audubon Society V Superior Court of Alpine County 33 CAL 3d 419.
an argument that the ecology and the environment protection is a relevant factor to
determine which lands, water or airs are protected by the public trust doctrine.

In India public trust doctrine is based on English Common law. The state is
the trustee of all natural resources, which are by nature meant for public use and
enjoyment. Public at large is the beneficiary of seashore, running waters, airs, forests
and ecologically fragile lands. These resources meant for public use cannot be
converted into private ownership.

In *MC Mehta v, Kamal Nath*¹, the Supreme Court applied this doctrine for the
first time in India to an environmental problem. It took notice of a news item in the
Indian Express newspaper dated 2 February 1996. The respondent’s family had direct
links with Span Motel, which owned a resort, Span Resorts. The family floated
another venture, span club, encroaching upon a land, including forestland. It was
reported that regularization of this encroachment was made when the first respondent
was the Minister for Environment and Forests in the Central Government. Span
Resorts Management used bulldozers and earthmovers to control the course of river
Beas and to keep the high intensity of flow away from the motel. It was feared that
this change caused landslides and floods. Once the diversion of the river was
complete, the Span Motel management had plans to go in for landscaping. The
observed that Kamalnath case reflected the classic struggle between those members of
the public who would pressure our rivers, forests, parks and open lands in their
pristine purity and those charged with administrative responsibilities who, under the
pressures of the changing needs of an increasing complex society, find it necessary to
encroach to some extent open lands and considered inviolate to change. In the absence
of any legislation, the executive acting under doctrine of public trust cannot abdicate
the natural resources and convert them into private ownership or for commercial use.
The court held that Himachal Pradesh Government committed patent breach of public
trust by leasing the ecologically fragile land to the motel management².

The court in this seriously dealt with restoration of original environment rather
than punishing with fine or damages. The court elaborately reiterated the principle
that one who pollutes the environment must pay to reverse the damage caused by his
acts. The court directed that the motel shall pay compensation by way of cost for the

¹ (1997) SCC 388, P 412
² (1997) SCC 388, P 413
restitution of the environment and ecology of the area. The pollution caused by various constructions made by the motel in the riverbed and the banks of the river Beas has to be removed and reversed. It was also directed that the motel shall neither discharge untreated effluents into the river, nor shall it encroach / cover / utilize any part of the river basin.

Therefore, this doctrine also targets to the protection of ecology and the environment in toto. And this case sets a wider range of caution regarding commission of pollution and punishment of restoration of the original environment which was due to pollution. This is highly impossible to restore damaged environment and therefore it creates sense of fear before committing any such act. This genuinely applies to the biomedical waste management too. Biomedical wastes are generally hazardous with their infectious nature and once improperly managed and exposed to the nature it is highly difficult to restore the damage caused to human and ecology therefore public trust doctrine should be respected and shall be applied in case of improper management of biomedical waste creating awareness of precaution before generating, handling and disposing of biomedical wastes.

In other interesting case that is MP Rambabu v. Divisional Forest Officer, in this case, Andhra Pradesh High Court had to deal with the problem of salinity of underground water. It was feared that digging bore wells and excessive usage of agricultural lands for aquaculture caused salinity.

The court said that deep underground soil and water belong to the state in the sense that the doctrine of public trust extends to them. Manifestly, their use is subject to the state regulation even in the absence of a specific law. The underground water can be used only for a purpose for which the superjacent land is held. If it is used for a different purpose and causes pollution of underground water or soil, the state can interfere and prevent contamination.

According to the court, not only the owner or occupier, but also anybody who makes the adjoining property defective can be proceeded against in an action for nuisance. The court observed that in case of tort by way of trespass a private law remedy is available to a neighbor but it is another thing to say that the court in a public law remedy can issue an appropriate direction to the concerned authorities to

1 (1997) SCC 388, P 415
2 AIR 2002 AP 256
see that the right of other person is not violated by reason of breach of statutory duties. In any event, such a direction can always be issued to the authorities who are statutorily obligated to enforce the law1.

This case law also portrays an impressive picture of strict implementation of laws against the wrong doer. It clearly shows that the waste arising out of hospitals, clinics, Veterinary and pharmaceuticals etc would need to be handled in a very proper manner as these wastes which are hazardous would cause serious damage to the health and environment if those wastes are dumped on open ground, seeped into underground water and neighboring lands, etc. Thus, leachates are highlighted to form if proper biomedical waste management is not taken at all. It is also mentioned that even after the proper treatment according to the rules the residues and further wastes like incineration –ash should be treated and neutralized its concentration before disposing on ground or water bodies or atmosphere.

4.5.4 The Preventive Principle:

The title itself suggests the core objective of the principle. It stands on the very basic maxim/dictum ‘prevention is better than cure’. It is also true that complete prevention of environmental pollution is not possible; if any industry pollutes (includes hospitals etc) a river by waste (discard dead bodies, infectious liquid waste etc) or emission in air (furans and dioxins etc) the possibility of restoring the previous condition is impossible. If pollution is to be controlled it should be therefore, controlled at the very basic/primary level. Therefore before establishment of any industry, if it is possible to assess (Environment Impact Assessment) the harm that it may inflict on the environment, then, in such a case, restriction should be imposed upon the operation of that industry or insistence should be imposed upon the use of more sophisticated and eco-friendly technology. (Eg: incineration of infectious human tissues at specified temperature for complete combustion and the incineration ash to be disposed only through deep burial)

The concept of ‘environment impact assessment’ is a part of the above principle. It involves the assessment of the adverse effects upon the environment, of an industry, which is a hazardous one. Herein, it is also necessary to test the impact of industrial chemicals (Waste) on the health of surrounding inhabitants. The other

---

1 Ibid, pp 268, 269
dimension of this principle is to keep the pollution under limit. It has been stated that a complete pollution free environment is not possible, so, it is essential to fix the level of pollution that would be sustainable to environment. For Eg: the limitation under Section 17 of The Environment (Protection) Act 1986, is more comprehensive and states that ‘No person carrying on any industry operation or process shall discharge or emitted any environmental pollutant in excess of such standards as may be prescribed’. Whereas under Biomedical Waste Rules 1998 it has made clear that all sorts of precaution should be taken to prevent any kind of damage to the health and environment and it is highlighted thoroughly under Rule 5 standards for Treatment and Disposal of Bio-medical waste and Disposal of Bio-medical waste\(^1\) and Rule 6 Segregation, Packaging, Transportation and storage\(^2\). Thus the Rule clearly specifies the preventive principle imbibed in the bio-medical waste rules.

Highlighting preventive principle the Division Bench of Andhra Pradesh High Court in *C.S. Prakash v. The Huda*\(^3\) held, inter alia, as follows:

“It may be that hospitals can be constructed in a residential area in terms of Regulation 6.1.2 of the 1981 Zoning Regulations and Appendix-C made in terms of the provisions of 1955 Act. There cannot further be any doubt that before construction of a big hospital is permitted not only care has to be taken about the convenience of the residents of the locality but also as to whether the permission from the competent authority had been taken for disposal of bio-medical wastage. Prevention of ecology and health of the populace come within the purview of Article 21 of the Constitution

---

\(^1\) Refer Rule 5 Treatment and Disposal under Bio-medical Waste (Management and Handling) Rules 1998.

\(^2\) Rule 6 of Bio-medical waste (Management and handling) Rules 1998, Segregation, Packaging Transportation and Storage:

1. Bio-medical waste shall not be mixed with other wastes.
2. Bio-medical waste shall be segregated into containers / bags at the point of generation in accordance with Schedule II prior to its storage, transportation, treatment and disposal. The containers shall be labeled according to schedule II.
3. If a container is transported from the premises to any waste treatment facility outside the premises, the container shall apart from the label prescribed in schedule III, also carry information prescribed in Schedule IV.
4. Not with standing anything contained in the Motor Vehicles Act, 1988, or rules there under untreated biomedical waste shall be transported only in such vehicle as may be authorized for the purpose by the competent authority as specified by the government.
5. No untreated bio-medical waste shall be kept stored beyond a period of 48 hours.

Provided that if for any reason it becomes necessary to store the waste beyond such period, the authorized person must take measures to ensure that the waste does not adversely affect human health and the environment.

\(^3\) ILR (2001) 2 A.P.323 (DB)
of India. The State Pollution Control Board, must therefore strictly apply the laws governing the field.

It is true as a matter of rule that all the hospitals cannot be directed to be situated outside the municipal limits or the residential zone. It is for the competent authority to consider the efficacy of grant of such permission in that regard. But, while doing so, it must also be borne in mind that by construction of such big hospitals further health hazardous may not be caused. Adequate protection for disposal of bio-medical waste be taken in terms of the Bio-medical waste (Management and Handling) Rules, 1998”. Thus, this case implies the adoption of preventive principle in order to protect the health and environment.

In M. Vijaya v. Singareni Collieries Co. Ltd1, the petitioner contracted HIV due to the negligence of the medical staffs when blood transfusion was administered to her in the above said hospital. It clearly shows that the preventive measures and duty of care was not taken by the hospital authorities. Hence, the Andhra Pradesh High Court issued several directions while considering the question relating to preventive and remedial measures to be taken in relation to AIDS tests of HIV patients. All the concerned authorities must, therefore, also take into consideration the relevant directions issued in the above mentioned direction before granting any permission for transfusion of blood.

4.5.5 The Proximity Principle:

This principle has originated in the recent years within the four walls of the municipal law. It advocates that pollution should be curbed in its source itself. The industrial wastes, these days, are used for filling the low lands, where proposed houses would be built. During transportation and at the time of its use, it causes pollution. So restriction should be imposed upon the exercise of this type of waste disposal practice initially by proper planning and management.

It can be applied in the case of bio-medical wastes too as bio-medical waste Rules implies restrictions on the mixing up of infectious and non-infectious wastes and therefore recommends segregation, packaging and transportation at the primary level at point of generation of the wastes. It also learnt that now-a-days bio-medical wastes after treatment are again used or recycled and also used to form roads etc.

1 ILR (2002)  A.P 108
Therefore this principle hold good for bio-medical waste management too. In this situation Rule 6 of BMW Rule 1998 applies and which has been already discussed under preventive principle.

4.5.6 The Subsidiary Principle:

This concept of ‘Subsidiary’, is found in commercial law, and is also applied in environmental law, with a view to control pollution. It asserts that ‘the primary responsibility and decision-making competence should rest with the lowest level of authority of the political hierarchy’.

The ecology of a continent comprises of the environmental conditions of all the countries within it. In fact, a strong relationship exists between the two; the former entirely depends upon the latter. If any part of a country’s environment is polluted or degraded, it affects the continent’s ecology. This concept of trans-boundary pollution is an integral part of the subsidiary principle.

This principle again holds good in case of bio-medical waste because bio-medical waste has been identified as one of the principal wastes that need to be taken care under Movement of Trans-boundary of Hazardous Waste 1989 and also classified its categories and also it is discussed elaborately under previous chapter. And it also equally restricts the dumping of bio-medical wastes from one country to another and especially transportation of banned drugs and chemicals. And the action is also expected from Drugs Cosmetics Act 1940 to discourage use of banned medicines and drugs and timely list all the banned medicines and drugs without delay for the safety of health and environment.

4.5.7 The Absolute Liability Principle:

The question, regarding the imposition of liability on industries, engaged in hazardous or inherently dangerous activities, was raised before the Supreme Court in M C Mehta v. Union of India. The court was of the view that the common law rule of

---

1 Philippe Sands, ‘European Community Environmental Law: Legislation, the European Court of Justice and Common-Interest Groups’, Modern Law Review, no. 53, 1990, p.685; See also, “The debate on the Maastricht Treaty brought to the forefront the issue of subsidiary. Subsidiary is the principle which states that if something can be carried out more effectively at a level in the hierarchy lower than community level, then that is where it should be effected. It is the principle of the lowest common denominates”, UN Home, ESA Home Search, Agenda 21, ch 2.

2 AIR 1987 SC 1086
*Rylands v. Fletcher*¹, had lost its potentiality in the context of present environmental jurisprudence.

In the above case 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 filled for award of compensation.

The Court held that an enterprise which was engaged in a hazardous or inherently dangerous industry which posed a potential threat to the health and safety of the persons working in the factory and residing in the surrounding area owed an absolute and non-delegable duty to the community to ensure that no harm resulted to anyone an account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should not answer that it had taken all reasonable care and that the harm occurred without any negligence on its part. Thus in the present case the Supreme Court held that the factory was absolutely liable.

This principle is very significant with regard to bio-medical waste management because, one of the final disposals will be to incinerators. The incinerators are installed in a treatment plant under the purview of the industrial setup. It also has a particular method to burn waste with specific temperature and followed by incineration ash. It also emits dangerous gases such as dioxins and furans. In order to have cooling effect, water is also used in several segmented tanks and which also contains toxic materials. Such being the case there is a requirement of a duty of care not to allow toxic materials pass on to neighbor land or area either it might be water or air. The air pollutant also to be treated which means the proper combustion procedure should be adopted and build the chimney to the appropriate height. In case

---

¹ (1866) LREHL 330, pp339, 340. The rule in *Rylands V. Fletcher* was involved in the year 1866. It provided that a person who for his own purpose brings on to his hand and collects and keeps there anything likely to do mischief if it escapes, must keep it at his peril and, if he fails to do so, is prima facie liable for the damage which is the natural consequence of its escape. The liability under this rule is strict. It is no defense if the thing escaped without that person’s… act, default or neglect. If a person who brings on to his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damaged caused.
of waste water from the treatment plant, as far as possible it should be recycled and remaining effluent should be treated within the premises without allowing it to escape into neighbor lands.

4.5.8 The Vicarious Liability Principle:

The liability which arises because of one person’s relationship to another is called vicarious liability. Thus, in tort a master is generally liable for the acts of his servant performed in the course of his employment. In criminal law, sometimes master is held responsible for a servant’s offence. The term “vicarious liability” means the liability of a person for the tort or act of another.

Notably, Section 17 of the Environment (Protection) Act, 1986 deals with the offences committed by the Government department. This says, if the environmental offences are committed by the Government department, the head of such department would be liable for the offence and he shall be deemed guilty of the offence. However, he may plead that the offence was committed without his knowledge or he exercised due diligence to prevent the commission of offence and that offence is not attributable to any neglect on his part.

If the offence regarding the violation or non-compliance of environmental norms is committed by a servant/agent/partner, the master/principal/firm would be held liable and it shall be deemed that the offence is committed by their mentor. In the view of the environmental law if the offence is committed by the Government’s servant the employer i.e., State would be held liable for the same. Thus, it can be said that vicarious liability arises in case of environmental offences.

Thus, any negligence on the part of Municipal Corporation or Pollution Control Board as the case may be regarding management of biomedical waste would certainly attract this principle and State will be held responsible in such cases.

4.5.9 The New Burden of Proof Principle:

The UN General Assembly Resolution of 1982 on World Charter for Nature established this principle. European Commission 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 lists 200 categories of listed wastes. In US, though the Supreme Court in Industrial Union Department AFL – CIU v. American
Petroleum Institute\(^1\) put the initial burden on the regulator, several American statutes have shifted to the burden of proof\(^2\). Environmental Impact Assessment is intended to reduce the uncertainties attached to potential impacts of a project. In the *Vellore Case*\(^3\), Kuldip 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.” In *A.P. Pollution Control Board case*\(^4\) it was explained that the *precautionary principle* has led to the new *burden of proof* principle. In environmental cases where proof of absence of injurious effect of the action is in question, the burden lies on those who want to change the status quo. This is often termed as a reversal of the burden of proof, because otherwise, in environmental cases, those opposing the change could be compelled to shoulder the evidentiary burden, a procedure which is not fair. Therefore, it is necessary that the party attempting to preserve the status quo by maintaining a less polluted state should not carry the burden and the party who wants to alter it, must bear this burden.

Therefore, in case of bio-medical waste management the burden of proof would lie on the health care establishments and waste handlers. They have taken all the necessary measures as required under Law in managing bio-medical waste or else would be held liable.

**4.5.10 The Inter-generational equity Principle:**

Principles 1 and 2 of the 1972 Stockholm Declaration refer to this concept. Principle 1 states that Man bears solemn responsibility to protect and improve the environment for the present and future generations. Principle 2 states that the national resources of the Earth must be safeguarded for the ‘benefit of the present and future generations through careful planning or management, as appropriate’. Principle 3 of the Rio Declaration, 1992 also states that the right to development must be fulfilled so as to equitably meet developmental and environmental needs of present and future generations.

---

1  448 US at 632-635 (1980).
3  1996(5) SC 647 p 658 para 11
4  1999 (2) SCC 718 (at p 734)
The Philippines Supreme Court entertained a case by a group of citizens representing the future generations for preservation of the ecology\(^1\). In this case the then President of the Philippines issued an executive order in 1987 in that behalf which specifically referred to the right so conferred ‘not only for the present generation but for future generation as well’.

In Minors OPOSA, a group of Filipino minors named OPASA, joined by their respective parents, representing their own generation as well as generations yet unborn, urged the Supreme Court to enforce their and their unborn successors’ constitutional right to a balanced and healthful ecology guaranteed under the Philippine Constitution and sought cancellation of all existing logging permits issued by the Dept. of Environment and Natural Resources (DENR) to different companies on the basis of the Timber License Agreements (TLAs) and for restraining the DENR from accepting, processing, reviewing or approving the TLAs. The Supreme Court allowed the applicants to file the case and emphasized the duty of the State as *parens patriae*. The Court observed that the petitioner’s ‘personality to sue on behalf of the succeeding generations can only be based on the concept of intergenerational responsibility’.

Hence these and other principles must be required to be applied to bio-medical waste management by the judiciary and provision must be made so that in the statute enabling the formulation of the effective execution of “right to life” enshrined in the Constitution.

4.5.11 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 as;

"It cannot be disputed that no development is possible without some adverse effect on the ecology and environment, and the projects of public utility cannot be abandoned and it is necessary to adjust the interest of the people as well as the necessity to maintain the environment. A balance has to be struck between the two interests. Where the commercial venture or enterprise would bring in results which are far more useful for the people, difficulty of a small number of people has to be bypassed. The comparative hardships have to be balanced and the convenience and benefit to a larger section of the people has to get primacy over comparatively lesser hardship."

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 an exercise in which we have to balance the priorities of development on one hand and environmental protection on the other hand.

Thus, court has now taken a considered view that environmental protection and sustainable development shall go hand in hand and while dealing with the cases of environment, the concept of sustainable development shall be kept in the focus. Sustainable development does not mean to halt the process of development, nor means scarifying environmental safeguards, but evolving a golden balance between two. While emphasizing this principles court reiterated,

"India after globalization is an emergent economy along with Brazil, Russia and China. India has economic growth of above 9%. However, that growth is lop-sided. A large section of the population lives below poverty line. India has largest number of youth in the world. Unemployment is endemic. Articles 21 and 14 are the heart of the Chapter of fundamental rights. Equality of opportunity is the basic theme of Article 14. In an emergent economy, the principle of proportionality based on the concept of balance is important. It provides level playing field to different stakeholders. When we apply the principle of sustainable development, we need to keep in mind the concept of development on one hand and the concepts like

2 See also, Research Foundation for S. T. and N. R. Policy v. Union of India AIR 2007 SC (Supp) 852
generation of revenue, employment and public interest on the other hand. This is where the principle of proportionality comes in.\textsuperscript{1} Therefore, the point of generation of the bio-medical waste should be balanced with proper treatment and safe disposal of the waste proportionately.

4.5.12 The Common Law Principle and other Statutory Remedies:

**Common Law:**

Modern environmental law has its roots in the Common Law principles on nuisance. In fact, the remedy under the law of tort to abate environmental pollution is the oldest legal remedy. \textit{Tort} is a \textit{civil wrong} other than breach of trust or contract. Any tortuous action results in damage to property, person or reputation of another person and the affect party can claim \textit{damages, compensation or injunction or both.}

The most important liabilities for environmental pollution are \textit{Nuisance, Trespass, Negligence and Strict Liability.}

Under the Common Law Principle, the \textit{nuisance} is concerned with the unlawful interference with the person’s right over wholesomeness of land or of some right over or in connection with it. There are two kinds of nuisance namely; private nuisance and public nuisance. Private nuisance can be defined as an unreasonable interference with a person’s right over wholesomeness of land due to emission of dust, offensive smell, fumes or noise, air or water and effluents whereas the public can be defined as an unreasonable interference with a general right of the by above mentioned methods.

The dumping of bio-medical waste in the municipal bins can be called as \textit{nuisance} and sued for such an act under the law of torts.

Under the Common Law principles \textit{Trespass} means intentional or negligent direct interference with personal or proprietary right without excuse. This is the very important factor to note that dumping of bio-medical waste on B’s land or when the liquid bio-medical waste is discharged from the hospitals intentionally or negligently, it amount to \textit{trespass}.

\textsuperscript{1} Research Foundation for S. T. and N. R. Policy v. Union of India AIR 2007 SC (Supp) 852 [para 11]
Under the Common Law principles it has been clearly stated that when there is a duty to take care and the care is not taken which results in some harm to another person, it amounts to Negligence. The blood transfusion from HIV positive person without prior test (Elisa test) amounts to negligence of the health care personnels which amounts to liability under law\(^1\).

Thus, from the above discussion it is clear the under the common law remedies there is a potential for evolving new principles suiting the present day or emerging new socio-economic conditions. And this naturally applies to improper bio-medical waste management also. Whenever there is a tort action, the plaintiff can sue for either damages or injunction.

**Statutory Remedies:**

There are various statutory provisions in India which plays a very important role in preventing and controlling all kinds of pollution. Thus, this provision of law would helps to combat the pollution caused by bio-medical waste and also gives specific remedy for the victims as well as penalty for the wrong doers. The three main relevant provisions are discussed below:


(ii) Code of Civil Procedure, 1908

(iii) Indian Penal Code, 1860.

**Code of Criminal Procedure, 1973:**

Under this Code (Section 133 to Section 143) it deals with the subject concerning environmental protection. However, Section 133 of the Code of Criminal Procedure, 1973 deals with cases of public nuisance which is relevant to the present context. Wherein, the Magistrate is empowered to pass conditional order for removal of public nuisance.

It also states that such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation or keeping any such goods or merchandise, or owning, possessing or controlling such

---

\(^1\) M.Vijaya v. Chairman and Managing Director, Singareni Collieries Company Ltd and others AIR 2001 Andhra Pradesh 502.
building, tent, structure, tank, well or excavation etc to remove such obstruction or nuisance.

It is well settled legal position that the proceedings under Section 133 of the Code should be taken in case of emergency where the public shall be put to great inconvenience and shall suffer an irreparable injury if the encroachment or nuisance is not removed at once and has been in existence for a long period but there is no legal bar to action being taken in such circumstanc es.

The Apex Court had an occasion to consider the scope and applicability of Section 133 of the Code of Criminal Procedure, 1973 in case of Municipal Council, Ratlam v. Vardhichand\(^1\).

In 1980, the Supreme Court held that clean civic life is the right of the inhabitants who reside within the municipal area. In the above stated case, the petitioner, a municipal council, filed an appeal against the direction of the magistrate under Section 133 of the Code of Criminal Procedure 1973. The judicial magistrate, on application by the people of the area passed certain directions against the civic corporate body to bring cleanliness within the municipal area, as it had been polluted by open drains, human excreta, in absence of proper sanitation and discharges from alcohol factories. The high court affirmed the direction issued. Thereafter, the civic corporation filed a Special Leave Petition before the Supreme Court on the ground that the magistrate had no powers to pass orders against municipality. The Supreme Court took a very note of miserable condition of the municipal area which posed health hazards for the people. Additionally, the discharges from the alcohol plant overflowed the open drains making the condition more miserable. The Apex Court refused to accept the plea of the petitioner that shortage of funds restrained them from taking proper actions.

Furthermore, it also rejected the municipal council’s contention relating to the applicability of the Code of Criminal Procedure 1973, and said, “The Criminal Procedure Code operates against statutory bodies and others, regardless of the cash in their coffers, even as human rights under Part-III of the Constitution have to be respected by the state regardless of budgetary provisions”\(^1\). The Supreme Court issued certain directions, in addition to the magisterial directions, and fixed the time limit

---

within which those were to be implemented. The significant contribution of this judgment, from the point of view of environmental criminal law was that, if any officer of the corporation failed to discharge his duties, then he could be punished under Sec. 188 of the Indian Penal Code 1860.

In the instant case, the Supreme Court had showered its willingness to use vintage legislations as means to protect the environment, and upheld the civic right of individual citizens. This landmark pronouncement marked the beginning of environmental jurisprudence of this country, wherein, under name of public nuisance, the Court awarded remedies to the aggrieved people1.

This above is an evergreen case in history of environmental jurisprudence. It has rightly identified the problem of the society and applied the proper mind to resolve the problem. Such judicial activism is required in case of biomedical waste management also. When the impact of biomedical waste on health and environment is studied then the real picture regarding ongoing situation can be noticed. In day to day life the necessity of strict implementation of rules and regulations is felt due to adverse effect of biomedical wastes scattered an open ground, in Municipal garbage, in forests, water, air etc. The decision of the above case is therefore, appreciated and also is required similar exercise of Sec 133 of Cr PC, 1973 in case of biomedical waste management also.

(ii) **Code of Civil Procedure, 1908:**

The Code of Civil Procedure, 1908 provide protection of environment in the context of public nuisance and other wrongful acts affecting the public in its Section 91.

‘Public nuisance’ is an act which interferes with the enjoyment of a right which all members of the community are entitled to, such the right to fresh air, to travel on highways, to have clean surroundings etc. generally the Code of Civil Procedure, 1908 contains procedural law, but it also contains some specific provisions of substantive law. Resources like land, air, waste and vegetation are the property of the public or state. The State or members of public in their representative capacity may approach Civil Court under this code to seek relief against polluters of these

---

resources. The court may grant temporary (Order XXXIX) or permanent injunction against the polluters.

(iii) **Indian Penal Code, 1860:**

Chapter XIV of the Indian Penal Code, 1860 consisting Section 268 to Section 294-A that deals with the environment protection. But this chapter does not exclusively deals environment however certain sections are concerned with the environment protection. In the present study only relevant sections are dealt with such as public nuisance, negligent/malignant act likely to spread infection of disease dangerous to life, adulteration of drugs, fouling of water of public spring or reservoir, making atmosphere noxious to health and punishment for public nuisance.

According to public nuisance¹ the grievance lies in the inconvenience in fact caused and not in the intent or knowledge of the person responsible as occupier of the premises on which the nuisance is created or of the owner, if the premises are, in fact unoccupied².

Similarly, Negligent act is also codified under Indian Penal Code, 1860. Negligent act connotes that such person must have knowledge that his action was likely to spread infectious disease. In *Krishnappa case*³, where a man was suffering from cholera and was aware of its infectious nature, travelled by train without informing the railway authorities of his condition, it was held that he was responsible for spreading infection of Cholera.

Another interesting Section that can be noticed herewith provision of punishment in Section 270 of the Indian Penal Code, 1860. This Section states that whoever malignantly does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description of a term which may extend to two years or with fine or with both.

---

¹ 'Public Nuisance', Section 268 of the Indian Penal Code, 1860-

"A person is guilty of a public nuisance, who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage”.

² Prof.S.N. Mishra, Code of Criminal Procedure, 352 (10th edn., 2001)

³ *Krishnappa case*, (1883) 7 Mad. 276
In another Section if a person voluntarily fouls the water of any public spring or reservoir, he shall be liable to be punished under Section 277 of the Indian Penal Code, 1860. This section equally attracts biomedical wastes (liquid and solid) if let into water without pretreatment.

The making of atmosphere noxious to health and thereby affecting the health of the public at large is punishable under Section 278 of the Indian Penal Code, 1860. This provision would certainly attracts improper combustion of biomedical wastes in the process of incineration and allow the formation of noxious gas like dioxins and furans that would have adverse effect on health and environment contributing to air pollution.

Another Section that talks about negligent conduct with respect poisonous substance is Section 284 of the Indian Penal Code, 1860. To invoke this provision it is necessary that the poisonous substance should endanger human life or should be likely to cause hurt or injury to any person. Part II of section 284 of the Indian Penal Code, 1860 provides that the person in possession of poisonous substance should have omitted to take reasonable care which is sufficient to guard against any possible danger to human life. It is to be noted that merely the negligent omission by the person who is in possession of poisonous substance is sufficient to constitute the offence punishable under Section 284 of the Indian Penal Code, 1860. This provision of law could be invoked in case of improper management of biomedical wastes. Biomedical wastes are associated with poisonous substances like radio-active element (used in Chemotherapy etc), mercury (thermometer etc) phenolic compounds, medicinal preparations also contains poisonous substances etc which all would prove fatal. Therefore, when these are discarded as wastes simultaneously it should be taken the best care so that it would not adversely affect health and environment. The ‘duty of care’ is emphasized here because one who operates the above substances is having full knowledge of its dangerous effects. Therefore, handling of such poisonous substances should be under due vigilance till disposal. If such poisonous substances are neglected while disposal, it naturally amounts to omission and it is of course punishable under law. Thus, open dumping contaminating water by throwing wastes into open drains, reservoir, pond, river etc and improper combustion of incinerator all amounts of attract Section 284 of Indian Penal Code 1860.
To the present context Section 291 of the Indian Penal Code, 1860 would be helpful to combat pollution through biomedical waste. It appears from the above provision that if a person repeats or continues a public nuisance after he is enjoined by a public servant not to repeat or continue it, he shall be liable to be punished. It is to be noted that under Sections 142 and 143 of the Code of Criminal Procedure 1973 a Magistrate is empowered to forbid an act of public nuisance.

It is true that there are many more provisions of law under Criminal Procedure Code 1973, Indian Penal Code 1860, Tort law under different principles (which has been already discussed) etc. In the instant study only relevant principles and laws are mentioned that which would help to combat the problem of biomedical waste and safeguard the health and environment.

4.6 THE CONSTITUTIONAL MANDATES: BIO-MEDICAL WASTE MANAGEMENT

This part of study is attempted to cover the environmental jurisprudence and its correlation with the ‘right to health’, ‘right to safe environment’ and ‘duty to take care of environment’. It gives specific emphasis upon the need of the mechanism for safe handling and management of biomedical waste which have created greatest threat to the health and environment by further analyzing the legal liabilities clauses developed and discussed in various judicial pronouncements.

The various Constitutional provisions of law relevant to the present study is very necessary to mention because it helps to know the significance of healthy environment, adverse effect and remedies suggested through pronouncement of landmark judgments and specific law that talks about the protection of such rights against pollution from bio-medical waste.

These analysed data would naturally create awareness among the generators to final waste handlers and of course, general public regarding the rights against pollution and judicial activism to protect the health and environment. And ultimately, it stresses the need of comprehensive national policy, renovation of existing machineries and a fresh looks towards the existing framework to making objectives into reality with respect to bio-medical waste management and give due regards to right to health and safe environment to the public.
Legal analysis of bio-medical waste management is necessarily an ancillary rider of overlapping premises of ‘right to environment’ and ‘right to health’. Both these rights are necessary for human existence and implicitly flow from ‘right to life’, environmental jurisprudence and linked the free and non-polluted environment with right to health of person that directly comes from the Constitution of India. Apex court has rightly interpreted that the free and non-pollute environment is primary requirement for human existence and state cannot vitiate from its duty. It is not only the moral but it is constitutional mandate of the Constitution.

In this chapter the instant study has attempted to elaborately analyze the legal aspect in bio-medical waste management and judicial attitude towards the environmental protection, right to health, impact of bio-medical waste, problems associated with it, and judicious approach of the judiciary and implementable judicial remedies, suggesting new innovative techniques for proper management.

The life of a person is meaningful when he has right to non-polluted environment, right to dignified life, right to privacy, right to freedom of expression, right to education, right to hygienic conditions and right to healthy life which is enshrined in the Constitution under right to life. Therefore, Supreme Court has widened the scope of this right to its maximum extent. Eventually, improper management of bio-medical waste is now-a-days is also considered as one of the major obstacles for execution of ‘right to life’ of the people in this country. Thus, Supreme Court has taken all the necessary steps to direct the concerned authorities to abide the rules regarding bio-medical waste. The Court also should amalgamate work to pass appropriate rules for planning and management of bio-medical waste so that the right enshrined in Art.21 of the Constitution may be given proper meaning.

The Indian Constitution is amongst the few in the world that contains specific provisions on environment protection. The directive principles of state policy and the fundamental duties explicitly enunciate the national commitment to protect and improve the environment.

2 See Art. 21 of the Constitution of India.
3 See Art.48 of the Constitution of India.
4 See Art. 21 of the Constitution of India.
4.6.1 The Directive Principles of State Policy relating to Environmental Protection:

The Constitution of India came into force on 26th January, 1950 as it is well known to everybody. But at that time it did not contain any mother provision which was of some significance that commanded the State to improve the standard of living and public health could be seen in Article 47\(^1\) Directive Principle of State Policy.

The Directive Principle of State Policy contained in Part IV of the Constitution set out the aims and objectives to be taken up by the States in the Governance of the country. The importance of Directive Principles were explained by Chandrachud C.J by saying that the fundamental rights are not an end in themselves but are means to an end. The end is specified in the Directive Principles.

Since, the directive principles have been embodied in the constitution, they are fundamental in the governance of the country as mentioned in the above and it should be the duty of the Union and State Governments to implement the directive principles. The Articles from 36 to 51 of the Constitution of India deals with the Directive Principle of State Policy\(^2\), among them only relevant Articles are highlighted in the instant study.

In the environmental concern and impact of bio-medical waste, Article 47 is predominantly significant because it emphasizes that the State shall endeavor to bring about prohibition of the consumption except for medical purposes of intoxicating drinks and of drugs which are injurious to health.

Therefore, it is to be understood that the ‘discarded medicines’\(^3\) are to be disposed properly. And use of ‘banned drugs’ should strictly be prohibited. The former has the intoxicating properties after expiry.

---

\(^1\) Article 47 of the Directive Principles of State Policy which reads:

"The State shall regard the raising of the level of nutrition and standard of living of its people and improvement of public health as among its primary duties”.


\(^3\) Discarded Medicines and Cytotoxic drugs (Wastes comprising of outdated, contaminated and discarded medicines), Category No. 5, Schedule I, Bio-medical waste (Management and Handling) Rules 1998.

And the latter drug may cause the addiction to kind of chemical combination that would be both intoxicating and prove health hazard. eg: (cough mixtures).

In *Dabur India v. State of UP*\(^1\) the Supreme Court held that Article 47 of the Constitution does not indicate that medicinal preparation containing alcohol should be excluded in the enforcement of prohibition, even though the medical preparation contains high percentage of alcohol. Article 47 uses the words prohibition of the high percentage of alcohol consumption “except for medical purposes” and the expression medical purposes contained in that Article has to be construed in the light of directive principle of State policy of bringing about “prohibition of intoxicating drinks” and “of drugs” which are injurious to health. When medicinal preparation has 24% of alcohol used for effectiveness of preparation, the State must be held to have power to regulate the possession or consumption of such medicinal preparation containing comparatively high percentage of alcohol so that the monitoring of such preparation would not harm the body.

In, another context, protection and improvement of environment and safeguarding of forests and wild life\(^2\) is quite very important. The provision of law has imposed obligation on the State to ‘protect’ and ‘improve’ the environment.

The bio-medical waste is not only a major contributor to the pollution in and around forests but also responsible for the destruction of wild life. The untreated medical wastes are openly dumped in the forest areas causing health hazards to the wild life and contaminate the natural environment as well. Therefore, it is necessary that State makes strict implementation of law to uphold the very essence of Article 48-A.

One of the instant facts shows that, the bio-medical wastes were dumped in open Scrub Jungle Talaghat-tapura, just 14 kms from Bangalore, on the Kanakpura Road\(^3\). It showed the interest of rag pickers who were involved in search of disposables like syringes and other metals and were completely unaware of the fact that they were the victims of infections that would inflict when they contacted such hazardous wastes. Unfortunately, according to the sources nearly 30-40 garbage

\(^{1}\) AIR 1988 SC 520

\(^{2}\) Part IV Directive Principles of State Policy, Article 48A was inserted by constitution (Forty Second Amendment) Act, 1976, Section.10 (w.e.f. 3-1-77). The State shall endeavor to protect and improve the environment and to safeguard the forests and wildlife of the country.

\(^{3}\) “This jungle is BCC’s waste dumping ground” The Vijaya Times Tuesday, 25\(^{th}\) March 2003.
vehicles dumped untreated BMWs every day. Therefore, forest environment turned up to stink of dumped garbage, scattered wastes, plastic bags and bottles, toxic and hazardous biomedical waste and disposing cancer causing lead cells welcomed visitors and created threat to natural habitat of birds, animals and human beings in that place. It was also stated that BCC (Bangalore City Corporation) and KSPCB (Karnataka State Pollution Central Board) were unaware of the dumping of biomedical waste in those places. But, there was one more authority which was equally failed to notify any unscrupulous activities near or within the forest, that is none other than Forest Department. It was the people who revealed and created awareness of the fact to the concerned departments. In spite of it there was no positive response from the authorities to take immediate action. This showed complete failure of administrative mechanism towards society.

Whereas in our Constitutional Amendments one of the highly appreciated amendments was 42nd Amendments of 1976 where Article 48A and Article 51A(g) were inserted. Therefore in the above mentioned case public response should be appreciated. Article 48(A) the Directive Principles of State Policy lacked effective implementation in this case. Because of the negligence of the authorities in the earlier case, it gave birth to the new issue that emerged in Mysore District. If this is the rate of negligence and legal response it would continue in future in the same State or in any part of India. Thus, strict enforcement of laws is very necessary to control improper management of biomedical waste in future. Anything that causes damage to health and environment should be immediately taken care by people and also by state policies and the same is highlighted in one of the Landmark Judgement of Andhra Pradesh High Court attributing effective judicial activism in T. Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad. Where, in this case Article 48(A) was interpreted as imposing “an obligation” on the government including courts, to protect the environment. Therefore, it becomes the legitimate duty of courts as the enforcing organs of constitutional objectives to forbid all action of the state and

1 Article 48A declares that “the state shall endeavor to protect and improve the environment and to safeguard the forest and wild life of country”. Article 51A(g) declares ‘Fundamental Duties; imposes a similar responsibility on every citizens : to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

2 “Dumping of Bio-medical waste” Star of Mysore, Page 1, Monday 18th December 2006. Already discussed in chapter II.

3 “Biomedical Waste not being disposed Off properly” July 2nd 2012, as discussed under preambular objectives.

the citizens from upsetting the environmental balance. The object of reserving certain area as a recreational zone would be utterly defeated if private owners of the land in that area are permitted to build residential houses. It, therefore, held that the attempt of the Life Insurance Corporation of India and the Income-tax Department to build houses in that area was contrary to law and also contrary to Article 21 of the Constitution.

The similar action should be taken to avoid any further dumping of BMW in future. In spite of decided cases in order to protect health and environment, still there are few reports specifying failure of legal control. In 1995 a report was prepared for the planning commission acknowledged the progressive decline in the standard of services with respect to the collection and disposal of household, hospital and industrial wastes.¹

The protection of monuments and places and objects of national importance² is also very essential. The hygiene environment is expected in such places as number of visitors is attracted towards those historical places from all over the world. This has been rightly observed in *MC. Mehta v. State of Orissa*.

In *MC. Mehta V. State of Orissa*³ it has been clearly highlighted that biomedical wastes when caused environmental pollution and health hazard it has been strictly directed by High Court to combat the problem and also bring attention to stop such pollution from further continuation by passing the suitable Orders. In the instant case, the petitioner came to visit the thousand year old silver city, Cuttack, hoping to have a look at the rich and cultural heritage of the city. He saw that there was a horrible pollution of water in the city. The petitioner visited Taladanda Canal which was excavated about 100 years back for the purposes of irrigation of a part of Mahanadi Delta of Cuttack District. This canal had become highly polluted. The petitioner a practicing advocate of the Supreme Court and General Secretary of the Indian Council for Enviro Legal Action, a registered voluntary organization, had filed the writ petition seeking for a *Writ of Mandamus* to protect the health of

---

² Article 49 of the Constitution of India, states that “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”.
thousands of innocent people living in Cuttack and Adjacent areas who were suffering from pollution being caused by the Municipal Committee, Cuttack and the S.C.B. Medical College Hospital, Cuttack alleging violation of not only Article 21 of the Constitution of India but also, the National Health Policy, the Environment Act and the Water Act.

Therefore, this case also shows the clear violation of not only Article 21 (Right to polluted free environment) but also Article 49 (The protection of monuments and places and objects of national importance) of the Constitution.

4.6.2 The Fundamental Duties Relating to Environmental Protection(Article 51-A(g )):

The fundamental duties are intended to serve a constant reminder to every citizen that while the Constitution specified certain fundamental rights, it also requires citizens to observe certain basic norms of democratic conduct and democratic behavior.

A new Part IV-A regarding fundamental duties was added to the Constitution by the 42nd Amendment 1976. It consists of only one Article 51-A. this Article for the first time specifies a code of ten duties from (a) to (j) for citizens. Whereas among them, Art.51-A (g) alone deals with the duty towards environment. This part was added on the Swaran Singh Committee recommendation to have nexus with Article 29 (1) of the Universal Declaration of Human Rights. Article 51 (g) refers to natural environment i.e., pollution free environment. Further it is important to note that the protection of environment is a matter of constitutional priority. Therefore, it becomes primary duty of every citizen to protect the environment from any kind of pollution. It also obligates on every citizen that if the environment has been polluted, it has to be ‘improved’ and bring back to environmental quality.

The Prevention of the environmental degradation and keeping ecological balance unaffected is a task which not only government but also every citizen must undertake.

1 Part IV A Fundamental Duties (Inserted by the constitution (42nd Amendment) Act, 1976 Section.11 (w.e.f 3-1-1977)) Article 51-A(g) of the Constitution of India insists the duty on citizens relating to environmental protection thus it states: Art. 51-A, “Fundamental Duties- It shall be the duty every citizen of India. (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures”.

366
In Rural Litigation and *Entitlement Kendra v. State of Uttar Pradesh*\(^1\), it has been held that ‘it is a social obligation to protect environment and let us remind every Indian that it is the fundamental duty as enshrined in Article 51-A (g) of the Constitution.’ The court quoted this observation in order to bring to light the unscientific exploitation in the hilly tracts and regions of Himalayas, and highlighted the evil consequences and lasting impact on the natural wealth and resources of the country as well as on the local population.

Finally the Supreme Court relying on reports of committees and appreciating the Article 51-A (g) that Rural Litigation and Entitlement Kendra adopted, ordered to stop stone quarrying in Mussoorie in a phased manner.

Similarly, in *Kinkri Devi v. State*\(^2\) A writ was filed under Art.226, 51-A (g) and 48-A in the Himachal Pradesh High Court in order to protect and preserve the Shivalik Hills as it was destructed due to excavation of limestone.

The Court observed the importance of issues relating to environment and ecological balance and under Art. 51-A and 48-A, Constitutional pointer exists towards the State and a Constitutional duty of the Citizens, not only to protect but also to improve the environment and to preserve and safeguard the forests flora and fauna.

And finally the Court held that no further lease for mining a limestone are to be granted or renewed and the existing mines are to be strictly supervised.

This Article naturally applies to the bio-medical waste management process as it is bounded duty of every generator, occupiers, waste handler to take appropriate steps from the point of generation to final disposal.

### 4.6.3 Fundamental Right Against Environmental Pollution. Articles 14, 19 and 21:

Constitution has guaranteed to every person ‘right to life’ under Article 21. During last six decades, the Supreme Court had widened the scope of this right to its maximum limit.

‘Fundamental Rights’ are those rights which have their source and are explicitly or implicitly guaranteed, the federal constitution. Part III of the Constitution

---

\(^{1}\) AIR 1987 SC 359 at P.364  
\(^{2}\) AIR 1988 H. P.4
of India contains a long list of fundamental rights (Arts 12-35). These rights were deemed essential to protect the rights and liberties of the people against the encroachment of the power delegated by them to their Government.

Articles which protect the environment are embodied in Articles 14, 19 and 21 (right to equality, freedom of expression and right to life and personal liberty respectively) of the Constitution of India. Here Principle 1 of Stockholm Declaration on Human Environment, 1972 could be clearly stated as it gives the total wider meaning to the above Articles stated to protect and preserve environment to the present and future generation. This obviously applies to bio-medical waste management. It implies that the proper and systematic management of bio-medical wastes from the site of generation to final disposal. When this is maintained then it would contribute towards sustainable development that which leads to protect and preservation environment for the present and future generation (Sustainable Development).

The three Article 14, 19 and 21 are explained below to show the significance of protection of rights against environmental pollution is as follows:

i) Right to equality (Art.14) and the protection of environment:

Articles 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. If there is arbitrariness in State action including legislative, administrative or executive, Article 14 immediately springs into action and such arbitrary action is set aside.

The equilibrium state has to be maintained in case of environmental issues because any damage caused to environment through pollution would directly or indirectly affects community at large, whole of ecosystem (Plants, animals, birds, air, water, land and human beings) and also hamper the development of developing Countries like India. Therefore, environment and its safeguarding motive is of prime/serious concerned that one should not ignore.

---

1 Principle I of Stockholm Declaration on human Environment, 1972 which proclaims that man has the fundamental right to freedom, equality and adequate condition of life, in an environment of quality and permits a life of dignity and well being, and he bears a solemn responsibility to protect and improve the environment for present and future generations.
In *Bangalore Medical Trust v. B. S. Muddappa*\(^1\) the scheme for the residential complex envisaged by Bangalore Development Authority (BDA) had the approval of the state government. The scheme envisaged an open space reserved as a park. Subsequently, in pursuance of orders of the state government, BDA allotted the open space in favor of the appellant medical trust for the purpose of constructing a hospital.

The Court further held that discretion is an effective tool of administration. It is to be tested on anvil of rule and fairness or justice particularly if competing interests of members of society is involved when affecting public interests, it should be exercised objectively, rationally, intelligibly, fairly and authority cannot act whimsically or arbitrarily. It also should not be exercised in undue haste disregarding the procedure. The court has held that the allotment of site reserved under the scheme for public park to construct a hospital by a private party by the authorities was arbitrary and hence ultra virus and violative of Article 14 of the Constitution.

Thus, it is evident from this case law that Art.14 has wider regards to protection of environment. Similarly, this Article also applies to bio-medical waste management in order to control any kind of threat that would cause destruction towards environmental issues.

ii) Restriction on Freedom of Trade, Profession or Occupation for the protection of Environment Article 19(1) (g):

Article 19, Right to Freedom and it states that all citizens shall have the right enshrined in Article 19 from 19(1) (a) to 19(1) (f).

And also simultaneous restrictions on the above freedoms from Sub Clauses (2) to (6) are mentioned in the Constitution of India. In the present study it is necessary to mention restriction on freedom of trade, profession, occupation for the protection of environment under Article 19 (1) (g). As per Article 19(1) (g) of the Constitution, all citizens shall have the right to practice any profession or to carry on any occupation, trade or business. However, according to Article 19(6) of the Constitution which authorizes reasonable restriction to be imposed by the State in the interest of the general public.

\(^1\) 1991 4 SCC 54.
The Supreme Court in *Oleum gas leakage case*\(^1\) has ruled that an enterprise which has engaged in hazardous or inherently dangerous industry which poses a potential threat to the health and safety of persons working in the industrial unit and residing in the surrounding areas, owes an obligation to the community to ensures that no harm results to anyone on account of such hazardous or inherently dangerous nature of the activity. A person engaged in such industrial activity is under an obligation to conduct his commercial activities with the highest standards of safety. Therefore, it is clearly stated in this case that no person could claim to have a right of carrying on any commercial activity under Article 19(1) (g) of the constitution of India, which admittedly affects the health of others. The State, under these circumstances is under a Constitutional obligation to provide safeguards for protecting the life and health of the citizens. It also stated that, there is no absolute right vesting any citizen to carry on commercial activity of trade or occupation without limitation as under Article 19(6) of the Constitution of India.

Similarly, in *S.R. Pvt. Ltd v. Dr. Prem Gupta*\(^2\) the Central Government Notification dated 3\(^{rd}\) November, 1988 under S. 26 A of the Drugs and Cosmetics Act 1940 had banned the manufacture and sale of the fixed dose of combination steroids was challenged being arbitrary and violative of Art 14 and Art 19(1)(g) of the constitution and the court held that the ban imposed the sale and manufacturing of fixed dose combination of steroids was based on the advice tended by the Drugs Technical Advisory Board as such the notification of the Government is not violative of Article 14 and Article 19(1)(g) of the Constitution.

And also in *Abhilash Textile v. Rajkot Municipal Corporation*\(^3\), the court held that one cannot carry on trade or business in the manner by which the business activity becomes health hazard to the entire society. By discharge of effluent water on public road and / or in public drainage system the entire environment of the locality gets polluted. The Court further held that in a complex society in which we live today, no one can claim absolute freedom without incurring any obligation whatsoever for the general well being.

---

1. AIR 1987 SC 1086
2. AIR 1993 P and H 28
3. AIR 1988 Gujarat 57

The most important rights among all fundamental rights which deals with protection of life and personal liberty in relation to the protection from environmental pollution is Article 21. Article 21 says that “No person shall be deprived of his life or personal liberty except according to procedure established by law”.

The word ‘life’ in Article 21 means a life of dignity as a civilized human being and not just animal survival. It is true that right to live with human dignity must include protection of health and strength of workers, men and women and of the tender age of the children against abuse, opportunities and facilities for the children to develop in a healthy manner and in condition of freedom and dignity, educational facilities, just and human condition of work and maternity relief as held by the Supreme Court while deciding a case regarding the existence of bonded labour.

While interpreting the Art 21 of the Constitution of India, the Supreme Court of India observed that the right to life and personal liberty includes “the right to wholesome environment”. The Apex Court similarly, dealt with number of cases regarding right to pollution free air and water. The Court held that in the context of the national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under Article 21, 48-A and 51-A (g) and declared the Bhopal Gas leak Disaster (Processing of claims) Act, 1985 as Valid. The Court further stated that the right to live is a fundamental right under Article 21 of the constitution and includes the right of enjoyment of pollution free water and air for full enjoyment of life. A notable Judgement by Kerala High Court stated that the right to sweet water and the right to free air, are attribute of the right to life under Art.21 of the Constitution for those are the basic elements which sustain life itself. The Court with regard to drinking water and its importance over other needs has highlighted in the case where it held that drinking is the most beneficial use of water and this need is so paramount that it cannot be made subservient to any other use of water, like

---

1 Bandhu Mukti Morcha v. Union of India, AIR 1984 SC 802.
2 Charanlal Sahu v. Union of India, 1990 1 SCC 613.
4 F.K. Hussain v. Union of India AIR 1990 Ker.321 at 323.
irrigation. So the right to use pollution free water for domestic purpose would prevail over other needs.

In many decisions Supreme Court has held that Article 21 include right to healthy environment. The healthy environment consists of freedom from health hazard due to pollution and also the health hazards from use of harmful drugs.

The healthy environment insists upon sustainable use of water. The development is the dynamic concept and in order to sustain the requirement of natural sources are necessary like water. After the use of water to an industrial set up the waste water in turn has to be treated and then discharged into the water bodies ultimately. But there were certain instances where the untreated effluents were either discharged in rivers, water streams or an open land affecting water as well as land. The untreated waste water was discharged from tanneries in Kanpur into River Ganga. Therefore, the Court held closure of the industries of tannery.

In the similar case the river Yamuna was polluted which is the main source of drinking water supply for the City of Delhi was used as a free dumping place for untreated sewage and industrial waste. The city was rendered as an open dustbin. Garbage was a common sight. The hospitals functioning in the city of Delhi did not have their own incinerators to destroy the wastes or if any hospital had them, they were not of enough capacity to burn the entire hospital waste.

Supreme Court after analyzing facts issued time bound directions to Municipal Corporation of Delhi (MCD) and New Delhi Municipal Corporation (NDMC) to have the city cleaned every day, to the Government and the authorities concerned to construct and install incinerators in all hospitals/ nursing homes.

4.6.4 Constitutional Remedies for the protection of Environment under Articles 32 and 226:

The constitutional remedies are in the form of ‘writ’ which is a written command precept, or formal order issued by a Court, directing or enjoying the person or persons to whom it is addressed to do or refrain from doing some act specified therein. The provisions relating to writ jurisdiction are contained in Articles 32 and

---

1 Delhi Water Supply and Sewage Disposal undertaking case AIR 1996 SC 2992.
2 Dr. Ashok v. Union of India 1997 5 SCC 10.
3 M.C. Mehta v.Union of India AIR 1988 SC 103.
4 Dr. B.L. Wadehra v. Union of India AIR 1996 SC 2969
226 of the Constitution of India empowering the Supreme Court and the High Courts, respectively to issue directions in the nature of habeas corpus\(^1\), mandamus\(^2\), prohibition\(^3\), quo warranto\(^4\) and certiorari\(^5\). Article 32 belongs to the domain of the fundamental rights, therefore, under this Article only the Supreme Court can grant the remedy. Article 226, on the other hand, is a general remedy, therefore, under this Article the High Courts are competent to grant the remedy. In matter of environmental pollution, the remedy of mandamus, certiorari and prohibition are generally granted. The *writ of Summons* is also invoked as other writs. *Writ of Summons* is a writ used to denote the judicial process by which any one is summoned before a Court of Justice.

(a) Remedy under Article 32 for the protection of the environment:

Remedy under Article 32 could be claimed directly from the Supreme Court, it must be established that the fundamental right of the petitioner is violated.

In *Rural Litigation and Entitlement Kendra v. State of U.P*\(^6\) Article 32 was invoked, thereafter the Court ordered for closure of certain limestone quarries being worked out in Dehradun on the ground that there were serious deficiencies regarding safety about hazards in them and the work was found to have been caused by the quarries adversely affecting the safety and health of the people in the region.

Generally, under Article 32 no compensation is awarded, but it is awarded in exceptional cases. And thus, in *M. C. Mehta v. Union of India*\(^7\) the Supreme Court has held that under Article 32 of the Constitution the Court is empowered to award compensation to the environment victim. The Court was of the view that ordinarily a petition under Article 32 of the Constitution of India should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary course of Civil Court. It is only in exceptional cases that, the compensation may be awarded in a petition under Article 32 of the Constitution.

---

1. Habeas Corpus is a writ to a jailor to produce a prisoner in person and to state the reasons of detention.
2. Mandamus is a writ or command issued by a higher court to a lower court.
3. Prohibition is writ issued primarily to prevent an inferior court or tribunal from exceeding its jurisdiction, or acting contrary to the rules of natural justice.
4. Qua warranto is a writ to call upon one to show by what warrant holds or claims a franchise or office.
5. Certiorari is a writ by which causes are removed from inferior courts into the High Court of Justice.
6. *AIR 1985 SC 652*
Power of the Apex Court under Article 32 of the Constitution could be noted in *M. C. Mehta v. Kamal Nath*\(^1\) the Supreme Court has held that pollution is a civil wrong. It is a tort committed against the community as a whole. A person, therefore, who is guilty of causing pollution, has to pay damages (compensation) for restoration of the environment and ecology. He has to pay also damages to those who have suffered loss on account of the act of the offender. The powers of the Supreme Court under Article 32 are not restricted and it can award damages in a P.I.L or Writ Petition as has been held in a series of decisions. In addition to damages aforementioned, the person guilty of causing pollution can also be held liable to pay exemplary damages so that it may act as a deterrent for others not to cause pollution in any manner.

Similarly, in *Vincent Panikurlangara v. Union of India*\(^2\), a Writ Petition was filed before the Supreme Court requesting the Court to issue direction for maintenance of approved standards of drugs and banning of injurious and harmful drugs. The court issued the *writ of mandamus* and directed the central government to compensate and reimburse the petitioner in recognition of his service for bringing the matter before the court.

There are many such cases which portray the power of the Supreme Court under Article 32 and it shows care and concern towards environment and its protection.

**(b) Remedy under Article 226 for the protection of the environment:**

Under Article 226 of the Constitution, the High Courts can entertain Writ Petitions where any of the fundamental rights provided under Part III of the Constitution or any of the legal rights provided under any law for the time being in force in support of a person are infringed and issue appropriate writ or directions to meet the ends of justice. The writ jurisdiction of High Court is wider in scope than that of the Supreme Court. The High Courts also have the power to issue any Direction, or Orders or Writs in the nature of *habeas Corpus, mandamus, prohibition, quo warrants or certiorari*, whichever is appropriate.

In the area of environment the writs of *mandamus, prohibition and Certiorari* are significant.

---

\(^1\) AIR 2000 SC 1997  
\(^2\) 1987 2 SCC 165.
In order to claim prompt relief with respect to a problem relating to environmental pollution, writ jurisdiction is most important.

In *K.C. Malhotra v. State of M.P*1 the *writ of mandamus* under Article 226 was invoked as the inhabitants of the locality belonged to backward class or weaker section of the society were living in a filthy environment without drainage or sewer constructed by Municipal Corporation. The High Court of Madhya Pradesh held that they have got a Fundamental right under Article 21 of the Indian Constitution entitling to them to live as human beings in the area which was in the limit of Gwalior Municipal Corporation. The High Court directed that there should be separate sewage line from which the filthy water may flow out.

### 4.7 THE JUDICIAL ACTIVISM FOR THE PROTECTION OF ENVIRONMENT

Judiciary plays a vital role in administration of justice based on Constitution. Constitution of India is the supreme in India. The Indian judiciary is the guardian and the custodian of Indian Constitution. The Supreme Court of India interprets the Constitution. Judicial review is an essential component of the rule of law, which is a basic feature of the Indian Constitution. Judicial review, means overseeing the acts of the legislature. Hence, the power of judicial review has been provided in Constitution and this gave scope of judicial activism by an independent judiciary.

Judicial activism is an inherent feature of judicial review. At the same time, as the policy becomes more complex and new challenges are thrown up, the judiciary has to take on a more proactive role to interpret the laws and where laws do not exist. Justice P. N. Bhagawathi explained judicial activism as under:

> “The Indian Judiciary has adopted an activist goal-oriented approach in the matter of interpretation of fundamental rights. The judiciary has expanded the frontiers of fundamental rights and the process rewritten some parts of the Constitution through a variety of techniques of judicial activism. The Supreme Court of India has undergone a radical change in the last few years and it is now

1 AIR 1994 MP 48
increasingly being identified by the justices as well as people as “the last resort for the purpose of the bewildered.”

According to Justice Bhagawathi, Juristic Activism in India is being used for achieving justice which otherwise labeled as ‘Social Justice’. There is another form of constitutionals which otherwise is concerned with substantivisation of Social Justice which is termed by him as ‘Social Activism’.

Judicial activism means a creative thought process through the displays vigour, enterprise, initiative pulsating with the urge of creating new and refined principles of law. It is an act of Judge to fill up the gaps, doubts, because the provisions of Constitution are couched normally in general terms to give then adaptability and elasticity.

Judicial Activism implies progressive judicial thinking, developing the law for handling constructively the contemporary socio-economic problem of the society.

The word ‘environment’ has a broad spectrum and within its ambit fall “hygienic atmosphere and ecological balance.”

Therefore, Environmental degradation, ecological imbalance, air water and land pollution etc amounts to violation of Art.21 of the Constitution and these issues have been dealt with the concept of Judicial activism as realized in enormous case laws.

In APPCB v. M.V. Nayudu\(^1\) the Supreme Court observed that “Drinking water is of primary importance in the country”. In fact, India is a party to the resolution of the UNO passed during the United Nations Water Conference in 1977 as under: “All people, whatever their stage of development and their social and economic conditions, have the right to have access to drinking water in quantum and of a quality equal to their basic needs.” The Court held that Water is the basic need for the survival of human beings and is part of the right to life and human rights as enshrined in Art. 21 of the Constitution of India.

In Damodar Rao v. The Special Officer, Municipal Corporation of Hyderabad\(^2\) the High Court of Andhra Pradesh reasonably held that the enjoyment of life and its attainment and fulfillment guaranteed by Art. 21 was comprehensive one.

---
\(^1\) 2001 (2) SCC 62.
\(^2\) AIR 1987 AP 171 at P 187.
And questioned the reason why practice of violent extinguishment of life alone should be regarded as amounting to violative of Article 21 of the Constitution. The slow poisoning by the polluted atmosphere caused by environmental pollution and spoiling should also be regarded as amounting to violation of Article 21 of the Constitution.

4.8 THE PUBLIC INTEREST LITIGATION FOR THE PROTECTION OF ENVIRONMENT FROM POLLUTION

The term ‘Public Interest Litigation’ (PIL) consists three words, ‘public’, ‘interest’, and ‘litigation’, the word ‘public’ carries the meaning of the people, the general body of mankind, the community at large, the whole body politics, all the citizens of the State, the people of the neighborhood, the inhabitants of a particular place, populace, society, etc.

The word ‘interest’ means legal concern, right and pecuniary stake. The legal concern of a person in the thing or in the right to some of the benefits which can be enforced by judicial proceedings.

The word ‘litigation’ means, a judicial controversy, a contest in a court of law, a judicial proceeding for the purpose of enforcing a right or seeking a remedy; legal proceedings; the action of carrying on a suit in law. The term ‘public interest’ is defined in the Oxford English Dictionary as “the common well-being and also public welfare.”

Lexically, the expression ‘Public Interest Litigation’ means a legal action initiated in a court of law for the enforcement of public interest or general interest in which the public or a class of the community have pecuniary interest or some interest or some interest by which their legal rights or liabilities are affected.

The public interest litigation’s aim is to provide an effective remedy to the poor, weak and illiterate persons to enforce their rights and interests. Hence, the Supreme Court allowed the associations to register writs under Arts. 32 and 226 for the redressal of common grievance.

The ability to invoke the original jurisdiction of the Supreme Court and the High Courts under Arts. 32 and 226 of the Constitution is a remarkable step forward in providing protection for the environment. Courts have widened the dimensions of
the substantive right to health and a clean and unpolluted environment. In many cases, this process was made with the aid of Public Interest Litigation.

In *Rural Litigation and Entitlement Kendra, Dehradun v. State of Uttar Pradesh*¹, a Public Interest Litigation was filed for the closure of certain limestone quarries on the ground that there were serious deficiencies regarding the safety and hazards in them. The court had appointed a Commission for the purpose of inspecting certain limestone quarries. The Commission had reported for the closure of them having regard to adverse impact of mining operation therein and was causing for a large scale pollution by the limestone quarries. On the basis of the report of the Commission the Court Ordered the government to take steps to control the affecting the safety and health of the people living in the area otherwise close them.

In *M. C. Mehta v. Union of India*², the petitioner, through a public interest litigation, brought before the Apex Court about the pollution of the Ganga by tanneries at Jajman near Kanpur. The court observed that no effective steps have been taken by the government to stop the grave public nuisance caused by the tanneries at Jajman, Kanpur notwithstanding the comprehensive provisions contained in the Water (Prevention and Control of Pollution) Act and the Environment (Protection) Act. The Supreme Court held that the court was entitled to order the closure of tanneries unless they took steps to set up treatment plants.

In *Subhas Kumar v. State of Bihar*³ public interest litigation, the court cleared that the public interest litigation of pollution under Art. 32 is maintainable at the instance of affected person or even by a group of social workers or journalists. It also held that public interest litigation is also maintainable for ensuring enjoyment of pollution-free water air which is included in the right to life under Article 21 of the Constitution of India.

In *Hamid Khan v. State of M.P.*⁴ Public Interest Litigation the Apex Court has observed that though the State Government conducted water tests it failed to conduct fluoride tests as a result the health of a large number of people in the village was affected. The court ordered free medical treatment to be given to these people besides awarding compensation to certain categories of persons.

¹ 1985 2 SCC 431.
² AIR 1988 SC 2217.
³ AIR 1991 SC 420.
⁴ AIR 1997 MP 191.
In *Free Legal Aid Cell Shri Sugan Chand Aggarwal alias Bhagatji v. Government of NCT of Delhi*\(^1\) the Division Bench of the Delhi High Court held in this public interest litigation that “The effect of noise on health is a matter, which has yet not received full attention of our judiciary, which it deserves. Pollution being wrongful contamination of the environment which causes material injury to the right of an individual, noise can well be regarded as a pollutant because it contaminates environment, causes nuisance and affects the health of a person and would, therefore, violates Art. 21, if it exceeds a reasonable limit.

In *M. C. Mehta (2) v. Union of India*\(^2\), public interest litigation was filed by the petitioner for the prevention of Ganga Water Pollution. The Apex Court issued appropriate direction for the prevention of Ganga Water Pollution. The court directed all the Mahapalikas and Municipalities which have the jurisdiction over the areas through which, the river Ganga flows.

1. To get dairies shifted to a place outside the city and arrange for removable of wastes accumulated at the dairies so that it may not reach the river Ganga.
2. To lay sewerage line wherever it is not constructed.
3. To construct public latrines and urinals for the use of poor people free of charge.
4. To ensure that dead bodies or half burnt bodies or half are not thrown into the river Ganga.
5. To take action against the industries responsible for pollution; and
6. To grant licences to establish new industries only to those who make adequate provisions for the treatment of trade effluents flowing out of the factories.

Regarding the plea of financial inability to set up treatment plants, the court observed that “just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence for the adverse effect from April 1, 1991 and to implement it seriously and effectively”.

---

\(^1\) AIR 2001 Del 455.
\(^2\) 1988 1 SC 471.
In *M. C. Mehta v. Union of India*\(^1\), a public interest litigation was filed by the petitioner against pollution in Delhi by increasing number of petrol and diesel vehicles. The court directed the Delhi Administration to make the Motor Vehicles Act, 1988 effective from April 1, 1991 and to implement it seriously and effectively.

In *M. C. Mehta v. Union of India*\(^2\), in this public interest litigation the Apex Court directed the government to spread the knowledge and the need of protection of the environment through the governmental mass media agencies and through the audio-visual media. The court also directed the government to introduce the subject of environment as a compulsory subject in schools and colleges.

In *M. C. Mehta v. Union of India*\(^3\), this public interest litigation is concerned regarding the yellowing of Taj Mahal Agra. Vardharajan Committee was appointed to submit a report. As per the findings of NEERI and the Vardharajan Committee, the court found that the foundries, chemical or hazardous industries and Mathura refinery were the major sources of pollution in the area.

The Court Ordered the industries to shift away from the Taj Trapezium or to switch over to gas as fuel instead of coke and those industries which did not switch over to gas were ordered to shut down. At the same time the Court had taken the rights and benefits which a worker should receive in case the industry was to close down or to stop its operations.

The court gave certain directions in the interest of workers as the court felt that the workers were also the victims of these polluting industries and that the issue of pollution should not be resolved at the cost of poor people’s livelihood.

The court recognized the ‘*polluter pays principle*’ in pollution cases which means two things primarily: (1) The polluter should pay for the administration of the pollution control system and (2) The polluter should pay for the consequences of the pollution.

\(^1\) (1991) 2 SCC 137.  
\(^2\) AIR 1992 SC 382.  
\(^3\) AIR 1996 SC 2715
Both Judicial Activism and Public Interest Litigation has the special mention in the instant study as it is also necessary for combating pollution from bio-medical waste.

4.9 THE IMMUNITY OF ENVIRONMENT LEGISLATION FROM JUDICIAL SCRUTINY (ART 31-C)

The Immunity means exception conferred by any law, from a general rule. Immunity is the favour granted by law contrary to the general rule. Thus immunity is a right peculiar to some individual or body; an exemption from some general duty or burden; a personal benefit or favour granted by law contrary to the general rule.

Judicial scrutiny is an action performed by a court, touching the rights of parties or property, brought before it by voluntary appearance or by the prior action ministerial officers or enactments.

Immunity of environmental Legislation from Judicial Scrutiny under Article 31-C.

In Sachiananda v. State of W.B\(^1\), the Supreme Court held that in cases where the problem of ecology is brought before the court, the court is bound to bear in mind Article 48-A which enjoins that the State shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country.

In M.C. Mehta (II) v. Union of India\(^2\) the Supreme Court, relying on Art 48-A gave directions to the Central and the State Governments and various local bodies and Boards under the various Statutes to take appropriate steps for the prevention and control of pollution of water.

In Rural Litigation Kendra v. State of UP\(^3\), the court directed the closing down of the mines in the Mussoori Hill Range due to the danger relating to environment and ecological balance arising out of the large number of leases of limestones quarries carrying operation and its effect on the people residing there and the welfare of the generality of the people living in the country.

\(^1\) AIR 1987 SC 1109 at 1115  
\(^2\) 1988 1 SCC 471  
\(^3\) AIR 1987 SC 359
This kind of approach should be entertained even in case of BMW cases. This would naturally help to reduce the problem of pollution caused by improper management of BMW.

4.10 THE LEGISLATIVE POWERS OF CENTRAL GOVERNMENT AND STATE GOVERNMENT IN ENACTING THE ENVIRONMENT RELATED LAW

Legislative Powers of the Central Government lie with the Parliament of India. Parliament of India consists of three organs: the Council of States (the Rajya Sabha); the House of the People (the Lok Sabha) and the President. Though President is not a member of either House of Parliament yet, he is an integral part of the Parliament and perform certain functions relating to its proceedings.

In India, the Parliament is not supreme under the Indian Constitution but the Constitution is supreme. The Indian Parliament is the creature of the Constitution and derives all its powers from the Constitution and it is not a Sovereign Power.

The most important function of the Parliament is the making of the laws. The laws relating to environment are initiated in the form of Bills. They may originate in either House of Parliament. The environmental Bills must be passed by both the Houses of Parliament then only it can be sent for President’s assent. They become laws when they are assented to by the President.

India is a federal State. The distribution of power is an essential feature of federalism. The basic principle of federation is that the legislative, executive and financial authority is divided between the Centre and State not by any law passed by the centre but by Constitution itself.

The Constitution provides for a Legislature for every State in the Union. The procedure of legislation in a State Legislature is broadly similar that in the Parliament. As is the case in the Centre, a Bill must be passed by both Houses when a Bill has been passed by both the Houses, the Bill is sent to Governor for his assent when a Bill is assented by the Governor, it becomes State Act.
Legislative relations between the Union and the States and its application in the field of environmental laws which also influences the essence of bio-medical waste management rules applicability are as follows:

(i) The laws which is made by the Parliament is applied to whole India or any part of the territory of India while the laws made by legislature of States is applicable to whole part of the State or any part of the State. The central laws also could go to the extent of having extra-territorial operation\(^1\).

(ii) The Parliament has the power to makes laws with respect to any matters under Union list also called as List I in the Seventh Schedule. In the same way Legislature of any State also have power to make laws regarding any subject under State List which is also known as List II. The Parliament and State legislature have the power to make any laws on any subject matter enumerated in List III or called it as concurrent list. And finally Parliament has all the power to make laws with respect to any matter which is not included in the State List.\(^2\)

(iii) Parliament has also empowered with exclusive power with respect to any matter not contained or listed in either State or Concurrent list\(^3\).

(iv) Another such Article which also empower the Parliament to legislate with respect to a matter in the State List in the National interest\(^4\).

(v) One of the important legislative powers of Parliament is to legislate for two or more States by consent and adoption of such legislation by any other State\(^5\).

(vi) Parliament has also power to recognize and adopt international agreements and equally legislate the same\(^6\).

---

1. See Article 245 of the Constitution of India.
2. Article 246 of the Constitution of India.
3. Article 248 of Constitution of India.
4. Article 249 of Constitution of India.
5. Article 252 of the Constitution of India. For example: The Wild Life (Protection) Act, 1972 was enacted by the Indian Parliament, though the subject Matter is related to entry 20 of the Constitution, namely, protection of wild animals and birds as the Legislatures of the States of Andhra Pradesh, Bihar, Gujarat, Haryana, Himachal Pradesh, Madhya Pradesh, Manipur, Punjab, Rajasthan, Uttar Pradesh and West Bengal in pursuance of Article 252 of the Constitution of India.
6. Article 253 of the Constitution of India. For example, Indian Parliament enacted the Environment (Protection) Act, 1986 according to the decisions taken at the United Nations Conference on the Human Environment, held at Stockholm in June 1972, in which India participated.
India is also obliged and respects international agreements, conventions, declarations etc\(^1\). According to Article 51, Article 253 and entries 13 and 14 of the Union List (List I), the Parliament has very wide power of legislation covering the subjects of any international treaty, agreement or convention. India had done a good deal of work by participating in many international conferences relating to environment. In some cases she was only a signatory State but in other cases she has ratified them and taken suitable action to implement them. India is a party for the following few international agreements relating to environment are mentioned below:

5. Stockholm Declaration on Human Environment, 1972
12. World Summit on Sustainable Development – Johannesburg, 2002 etc.

\(^1\) Article 51 International Obligations.
The international covenants, conventions, protocols, agreements are in the position of jural postulates. They can be recognized and enforced by the court in India if they are not in conflict with the provisions of the constitution which is the Supreme Law\textsuperscript{1}.

(viii) The Parliament has got significant power to provide for the establishment of certain additional Courts\textsuperscript{2}. It has been enumerated to establish better administration of laws.

The protection of Environment against to bio-medical waste has been dealt under Seventh, Eleventh and Twelfth Schedules under the Constitution of India and it has been mentioned its importance in the relevant parts of the study.

The Present Constitution divides the powers between the Union and the States in three Lists-Union List, the State List and the Concurrent List. The Union List consists of 97 subjects which are of national importance. The State List consists of 66 subjects, which are of local importance. The Concurrent List consists of 47 subjects.

The relevant Subject related to environment exclusively bio-medical waste management in the present study has been identified in the Seventh Schedule of the Constitution of India is dealt with here under in Lists I, II and Concurrent are as follows:

According to the N.D. Towari Committee Report (Sep. 1980) which deals with the Legislative measures and Administrative machinery for ensuring Environmental Protection, there are nearly two hundred Central and State Statutes and some of these have scattered provisions of environment.

The issue pertaining to BMW, it notifies that the centre (Union List I)\textsuperscript{1} is responsible for any international law applicable to BMW management of India is possible after final ratification under the Constitution.

\textsuperscript{1} In Vellore Citizen’s welfare Forum v. Union of India [(1966) 5 SCC 647 at 659-660 ], the Supreme Court has held that it is almost an accepted proposition of law that rules of customary International Law which are not contrary to the municipal law shall be deemed to have been incorporated in the domestic law and shall be followed by the courts of law. Further, in People’s Union for Civil Liberties v. Union of India [(1977) 3 SCC 422 at 433], the Supreme Court has held that the provisions of international covenant, which elucidate and go to effectual fundamental rights guaranteed by our Constitution can certainly be relied upon by courts as facets of those fundamental rights and hence enforceable as such.

\textsuperscript{2} Article 247 of the Constitution of India.
The Health care system and Health care establishments and its working are governed by the State (State List II). It also refers to all the ancillary concepts that are necessary to management of bio-medical waste under the State List.

The protection of health and environment and its preventive measures are undertaken by Concurrent List (List III). This implies the adverse effect that caused by BMW has been controlled by both Union and State.

4.11 THE LOCAL SELF-GOVERNING BODIES FOR THE PROTECTION OF ENVIRONMENT: 73RD AND 74TH AMENDMENTS TO THE CONSTITUTION OF INDIA UNDER PART IX – PANCHAYATS AND PART IX A- MUNICIPALITIES

Subject to the provisions of the Constitution, the legislature of State will endow the Panchayats and Municipalities with such powers and authority as may be necessary to enable them to function as institutions of self-government.

The importance of the bio-medical waste management is also recognized under Panchayats and Municipalities as very significant factor under the Constitution of India.

Indian Constitution has empowered curtained provisions of Law which enumerates the self governing bodies from the grass-root level itself. The bodies are also made enable to act locally keeping several activities under check and control and also enable the people / public under direct contact for any environmental problem they face. This equally holds good for management of bio-medical wastes. The most

---

1 List I- Union List-Entries-14.Entering into treaties and agreements with foreign countries and implementing of treaties; agreements and conventions with Foreign Countries. 52. Industries, the control of which by Union is declared by Parliament by law to be expedient in the public interest.
2 List II – State List-Entries-6. Public health and sanitation, hospitals and dispensaries. 14. Agriculture, including agricultural Education and research, protection against pests and prevention of plant diseases. 17. Water, that is to say, water supplies, irrigation and canals, drainage and embankments, water storage and water power subject to the provisions of entry 56 of List 1.
3 List III – Concurrent List-Entries-17A. Forests 17B. Protection of wild animals and birds 19. Drugs and poisons, subject to the provisions of entry 59 of List I with respect to opium. 29. Prevention of the extension from one State to another of infectious or contagious diseases or pests affecting men, animals or plants.
4 Part IX – Panchayats, Health and sanitation, including hospitals, primary health centers and dispensaries.
5 Part IX A- Municipalities, Public health, sanitation, conservation and solid waste management.
important such local self-governing bodies under the Constitution are Panchayats (Arts. 243, 243-A to 243-0) and Municipalities (Arts. 243 P to 243ZG) respectively. These significantly help the problem related to bio-medical wastes and management of the same.

Parts IX and IXA have been added to the Constitution by the Constitution (73rd Amendment) Act, 1992 and the Constitution (74th Amendment) Act, 1992 popularly known as the Panchayat Raj and Nagarpalika Constitution Amendment Acts. These Amendments provide Constitutional sanction to democracy at the grass root level by inserting in the Constitution two new parts relating to Panchayats and urban local bodies.

The passing of the Panchayati Raj and Nagarpalika Constitution Amendment is in accordance with the directives envisaged in Art. 40 of the Constitution which enjoins the State to take steps to organize village Panchayats and endow them with such powers and authority as may be necessary to enable them to function as units of self-government.

It is, however, to be noted that the constitution, elections, devolution of powers and authority relating to these institutions have been completely left within the purview of the States. On 23rd March, 1994, The Panchayati Raj Act has now come into force with the enactment of new legislation or amendment of their Panchayati Raj Acts by more than 50 percent of the States and Union Territories.¹

There are various responsibilities of the Panchayats towards protection of environment and that envisages the importance to the bio-medical waste management too. These responsibilities would prepare, plans for economic development and provide social justice and implement schemes for the same. The different matters of its Governance are listed under Eleventh Schedule. Only the relevant matter is highlighted in the present study such as Health and sanitation, including hospitals, primary health Centers and dispensaries.²

In the grass root level it is very important to maintain hygienic environment as the tribal & Village Zone are most filled with innocent people who are ignorant

---

¹ Art 243G of the Constitution of India.
regarding the waste produced in hospitals, primary health Centers and dispensaries and also the veterinary hospitals. The impact of such bio-medical wastes are completely neglected part in such zones and it has created the health hazards and spreading of infectious diseases unknowingly.

Therefore, under technical training of vocational education program should be conducted to the hospital staff for the proper management of the bio-medical wastes in such areas\(^1\). Another important procedure to create awareness and right way to impart education to such public is through basic education and insertion of topics regarding health hazards due bio-medical wastes and environment pollution. These awareness has to be brought right from primary and secondary schools education system\(^2\).

This can be very prominently done without any disturbance because the Constitutional provisions have made easier the adoption of such steps to be taken regarding protection of environment against pollution through bio-medical waste by providing financial assistance and its implementation\(^3\).

Eventually, when the Indian Constitution has given such great provisions of law to properly govern the public upon any matter may it be environmental concern relating to bio-medical waste management, it has to be properly studied and implemented.

The Karnataka Panchayat Raj Act, 1993 has also paid immense attention towards protection of health and environment. It could be made visible through various sections of the Act and it shall also impose duty upon the health care institutions to abide the provisions of law under the said Act. The Act has provided the post of “health officer”\(^4\) who is made responsible for the matter of health concern.

\(^3\) Art. 243-I provides for the establishment of a Finance Commission for reviewing financial position of the Panchayats, a(iii) the grant-in-aid to the Panchayats from the Consolidated Fund of the State. (b) the measure needed to improve the financial position of the Panchayats. The Governor shall cause every recommendation made by the Commission together with an explanatory memorandum as to the action taken thereon to be laid before the Legislature of the State,(clause (4)).
\(^4\) Section 2 (17) “Health Officer” means the Health Officer, employed by or on behalf of the Zilla Panchayat and if there is no such officer, the Government Health Officer having jurisdiction over the Taluk or district concerned, The Panchayat Raj Act 1993.
And if any “infectious disease”\(^{1}\) is notified it would be immediately informed to the Government. This should be very sensitively noticed because the bio-medical waste if openly dumped shall cause infection to the general public, animals and birds would be under the threat of spreading of infections. Such activities are recognized under “nuisance”\(^{2}\) to the public. In order to abate nuisance, the Act has empowered\(^{3}\) the Grama Panchayat Adhyaksha and Upadhyaksha to prohibit such activities that foul water etc\(^{4}\). The Act has also taken some important steps regarding management of waste by inserting the provisions of law and requiring the functioning of the same in an appropriate manner. The Standing committees have the duty to perform functions regarding promotion of health and education\(^{5}\). The Act has particularly mentioned that education must be given regarding health services and hospitals and it has also mentioned regarding management of hospitals and dispensaries.\(^{6}\) All these provisions of law show the very attention given towards the management of bio-medical waste directly or indirectly.

It was by an amendment of the Panchayat Raj Act in 1999 that Sections 219A to 219S were incorporated, whereby the Panchayats were specifically authorized for dealing with rubbish, solid waste and filth. Adequate arrangements are to be made by the Panchayats for removal of filth and waste. The collected wastes are the property of the Panchayat, and suitable places require to be identified for final disposal of the same. Section 219F gives the necessary guidelines. Section 219H also ultimately

\(^{1}\) Section 2(18) “Infectious disease” means cerebro-spinal fever, chicken pox, cholera, diphtheria, enteric fever, epidemic influenza, leprosy, measles, plague, rabies, scarlet fever, small-pox, tuberculosis, typhus, yaws or any other disease which the Government may notify in this behalf either generally throughout the State or in such part or parts thereof as may be specified in the notification, The Panchayat Raj Act 1993.

\(^{2}\) Section 2 (23) “Nuisance” includes any act, omission, place or thing which causes or is likely to cause injury, danger, annoyance or offence to the sense of sight, smell or hearing or disturbance to rest or sleep or which is or may be dangerous to life or injurious to the health or property of the public, or of the people in general, who dwell in the vicinity or of persons who may have occasion to exercise a public right, The Panchayat Raj Act 1993.


\(^{4}\) Section 87 “Abatement of nuisance from foul water”, when any pool, ditch, tank, pond, well, hole, or any waste or stagnant water, or any channel, or receptacle of foul water or other offensive or injurious matter, whether the same be within any private enclosure or otherwise shall appear to the Secretary to be likely to prove injurious to the health of the inhabitants or offensive to the neighborhood, the Secretary may by written notice require the owner of the same to cleanse, fill up, drain off or remove the same, or to take such measure as shall, in his opinion be necessary to abate or remove the nuisance, The Panchayat Raj Act 1993.

\(^{5}\) Functions of the standing Committees- Section 187(4)(e) of the Act 1993.

\(^{6}\) SCHEDULE II Health and family welfare: (1) Promotion of health and family welfare programmes. (2) Promotion of immunization and vaccination programs. (3) Health and sanitation at fairs and festivals. The Panchayat Raj Act 1993.
makes the Panchayat answerable for the disposal of rubbish and offensive materials, produced by factory, workshops, markets, slaughter houses, hotels, hospitals, warehouses and places of public resorts. Thus, initially the discretion for identifying the methods of disposal of the waste primarily was vested with the local authority.

In one of news Article\(^1\) it has appeared that all the bio-medical wastes were proposed to burn in a well-like covered hole in Valapattanam Panchayat zone. But it was later objected by the District Medical Officer as it was violative of Bio-medical Waste Rule 1998 which provided segregation into items for shredding or incinerating or autoclave as the case may be. Therefore, it could be understood that the health and environment is taken care in the Panchayat zone also.

The Municipal services are very important regarding urban area development as well protection environment. It is also a necessary concept with respect to bio-medical waste management and also to combat the environmental pollution caused by bio-medical waste. It is equally important to note the three types of municipal corporations\(^2\) for urban areas namely Nagar Panchayat, for the area transition from rural area to an urban area and Municipal Corporation for a larger urban area.

The municipalities are responsible for the good governance of the respective areas regarding protection of health and environment. Every State has its own Municipalities Act and the areas are governed by the same. These are also empowered with power, authority and responsibility\(^3\) as self-governing bodies for the preparation of plans for economic development and social justice, performance of functions and the implementation of schemes to the matters listed in Twelfth Schedule.

It is significant to know that out of 18 subjects mentioned in Twelfth Schedule, the municipalities are empowered to exercise its administrative Control over those subjects which influence the environmental concern including bio-medical waste management. The direct mention regarding ‘public health’ and management of waste is stated under the Twelfth Schedule\(^4\) of the Constitution of India. Therefore,

---

2. See Article 243 Q – Constitution of Municipalities, Part IX A The Municipalities under the Constitution of India.
3. See Article 243 W – Powers, authority and responsibilities of Municipalities, under the Constitution of India.
the Municipalities are bound with equalant duty to take care of bio-medical waste and its proper disposal.

The Constitutional provisions have also provided financial commission\(^1\) which the municipalities can utilize for better working of the purpose suggested.

The Karnataka Municipalities Act\(^2\) has taken initiation to protect the health and environment by providing number of Sections in the Act regarding it. The bio-medical waste management is also has been considered by the Act. The Act signified that the bio-medical waste which causes infections due to dumping openly into Corporation’s dustbin etc would be consider under nuisance\(^3\) under the Act.

The Mysore City Corporation has shown positive attitude in combating the ill-effect if improper management of bio-medical waste and it directed the hospitals and nursing homes to transport bio-medical waste generated by them to the waste management plant established on the outskirts of the city. It also warned that action would taken against institution that do not dispose of bio-medical wastes in the stipulated manner and also stated to take action against the institutions to impose fine of Rs. 1 lakh or imprisonment up to five years. It also stated that corporation could also initiate action against those who dump bio-medical wastes in the Corporation dustbins. Further water and power connections to the units could be snapped as detrimental measure to prevent any further commissions of offence\(^4\).

4.12 THE IMPORTANT CASE LAWS PERTAINING TO BIO-MEDICAL WASTE MANAGEMENT UNDER CONSTITUTIONAL PURVIEW

4.12.1 Rajesh Kumar Srivastava v. A.P. Verma:

This case\(^5\) is all about to stop unauthorized medical practice and unregistered medical practitioners in the state of Utter Pradesh. The decision of this case was relied

\(^1\) See Article 243-I – Financial Commission under the Constitution of India.


\(^3\) Section 2(22) “nuisance” includes any act, omission, place or thing, which causes or is likely to cause injury, danger, annoyance, or offence to the sense of sight, small or hearing or disturbance to rest or sleep or which is or may be dangerous to life or injuries to health or property.

\(^4\) Corporation’s directive on bio-medical waste disposal, The Hindu Online edition of India’s National Newspaper Sunday, June 05, 2005 visited on Dec 23, 2012

upon D.K. Joshi’s case\(^1\) decided by the Apex Court and thus binding on all lower courts. The earlier decision of the Supreme Court in D.K. Joshi’s case was not given the importance in eye of law by the authorities and therefore once again such similar issue has been raised and has came before the Court of law in the same State. And therefore again the strict directions were given by the Court to take action in pursuance of Order of Supreme Court in D. K. Joshi’s case dated 25-09-2000.

The Supreme Court observed that in spite of the above direction of the State Government, the District Magistrates and the Chief Medical Officers did not take effective steps to stop the menace which is hazardous to human life and some directions were also issued to take appropriate action “by the secretary, Health and family Welfare Department, State of U.P and would take such necessary steps as may be required to stop carrying on medical profession in the State of U.P by persons who are unqualified / unregistered and in addition should take following steps:

\begin{enumerate}
  \item All the District Magistrates and the Chief Medical Officers of the State shall be directed to identify, within a time-limit to be fixed by the Secretary, all unqualified / unregistered medical practitioners and to initiate legal actions against these persons immediately.
  \item Direct all the District Magistrates and the Chief Medical Officers to monitor all legal proceedings initiated again such persons.
  \item The Secretary, Health and Family Welfare Department shall give the publicity to the names of such unqualified / unregistered medical practitioners so that people do not approach such persons for medical treatment.
  \item The Secretary, Health and Family Welfare Department shall monitor the action taken by all District Magistrates and all Chief Medical Officers of the State and issue necessary directions from time to time these Officers so that such unauthorized persons cannot pursue their medical profession in the State”.
\end{enumerate}

In this Directions Supreme Court has taken maximum care regarding medical practitioners and safety of health of public at large.

Further, Supreme Court issued following directions or strict compliances by all those who are concerned: that 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 situated, 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 and state their qualifications in a form (for each category) prescribed by the Principal Secretary, Medical Health and Family Welfare, Government of U.P.

These directions are quiet very significant from the study point of view because any Order or Direction or any decree provided by the Supreme Court of India in exercise of its jurisdiction for doing complete justice in any cause or matter pending before it under Article 142 of the Constitution. The law declared by Supreme Court of India is binding on all Courts under Article 141 of the Constitution of India and that all the authorities civil or judicial, in the territory of India, under Article 144 have been mandated to act in aid of Supreme Court the power of this Article is meant to supplement the existing legal framework to do complete justice between the parties and not to supplant it. It is conceived to meet the situations which cannot be effectively and appropriately tackled by the existing provision of law. The Article provides that the Supreme Court in exercise of its jurisdiction may pass such decree or make such order as is necessary for doing complete justice in any ‘cause’ or matter, which would include any proceeding pending in Court and would cover almost every kind of proceeding in Court. It is residuary power, supplementary and complementary to the powers specially conferred by the Statutes to do complete justice between the parties whenever it is just and equitable to do so. It is intended to present any obstruction to the stream of justice. It can grant relief even to a party who is not before the Supreme Court and has omitted to challenge the impugned order before the Supreme Court.

In the above case the Supreme Court has also observed certain necessities of rules that have been adopted by The Medical Council of India. And the Court has found that the different laws that are important should be observed by the physician in
regulating the practice of medicine and shall also not assist others to evade such laws. He should be co-operative in observance and enforcement of sanitary laws and regulations in the interest of public health.

A physician should observe the provisions of the State Acts like *Drugs and Cosmetics Act, 1940; Pharmacy Act, 1948; Narcotic Drug and Psychotropic Substances Act, 1985; Medical Termination of Pregnancy Act, 1971; Transplantation of Human Organ Act, 1994; Mental Health Act, 1987; Environmental Protection Act, 1986; Persons with Disabilities (Equal Opportunities and Full Participation) Act, 1995 and Biomedical Waste (Management and Handling Rules, 1998 and such other Acts. Rules and Regulations made by the Central/State Government or local Administrative Bodies or any other relevant Act relating to the protection and promotion of public health.

**4.12.2 Dr. Shiv Milan Yadav v. State of U.P.:**

This is one of the interesting cases\(^1\) that attract the provisions of law and judicial consciousness towards the protection of health of the public at large and of the environment in toto which was decided by Hon’ble Judges Sunil Ambwani and Kashi Nath Pandey.

In this case Dr. Shiv Milan Yadav is a qualified and registered medical practitioner and along with him there were other Doctors namely Dr. Suman Singh, Dr. Om Hari Agnihotri, Dr. Sanjay Kumar Doharey and Dr. P. K. Varma who are also equally qualified and registered medical practitioners. They were all registered with the Chief Medical Officers.

The issue before the Court of law was whether medical practice in any place as a right to profession is acceptable? Whether medical institution is a commercial business? Is the Chief Medical Officer authorized to issue notice and suspend the registration? And whether registration should be obtained to manage the biomedical waste by the medical professionals?

The facts of the case stated that the above petitioners were residing carrying on their medical practice in their residential houses in Awas Evam Vikas Colony in District Etawah, Uttar Pradesh. They were only permitted to provide ‘consultancy’

---

but not to diagnostic clinics and admit patients. Therefore, a notice was issued informing them that the clinics / hospitals / nursing homes run by them in the residential houses in Awas Evam Vikas Colony, Etawah was against the Rules of the U.P Awas Evam Vikas Parishad. Under clause 2(d) of the U.P AEVP Act stated that “the allottee /purchaser under hire purchase scheme would not use the property for business or commerce and also not use the premise for any purpose other than residential purposes and not to carry out any activity in the house which in the opinion of other residents of the colony, is against public interest or for any purpose other than the purpose for which the colony has been developed”.

And the other detailed facts showed in the case regarding the clinic / nursing homes were not situated in a spacious and comfortable manner but in a cubical room which was not authorized in the residential colonies. The congested space was occupied by X-ray plants, Ultra sound, pathology, medical stores, operation theatre and wards including general wards.

The Court stated that in order to run such nursing homes / clinics it was required to obtain registration for running Ultra sound machines, permission from the Atomic Energy Commission for the use of x-ray plant and to dispose of the medical waste after obtaining registration and the facilities provided under the Bio-medical waste Management Rules and the petitioners had not obtained these permission and licenses.

The Court finally held that the petitioners as qualified doctors have fundamental right under Article 19(1)(g) of the Constitution of India to carry on their profession at any place of their choice but it is subjected to reasonable restrictions in public interest under Article 19(6) or may be imposed under an agreement to which the person may subscribe in the interest of other residents. It was also held that the residential colony should be used only for ‘consultancy’ and not for other purpose such as diagnostic clinics etc.

4.12.3 Mr. K. Ashok Kumar v. State of Tamil Nadu:

Mr. K. Ashok Kumar v. State of Tamil Nadu\(^1\) was decided by Justice P. Jyothimani very judiciously. This case law clearly states the pivotal role of Constitution and importance of Article 226 to invoke Writ in order to combat

\(^1\) W. P. No. 34897 of 2007 decided: March 17, 2008
pollution through bio-medical waste. In the facts of the case it has been stated that a 24 hours hospital was run along with facilities of ambulance, x-ray, ultra sound, ECG, Scanning etc. in residential flat. The hospital authorities were also negligent towards disposal of bio-medical waste as they threw out bio-medical wastes in front of the flats causing environmental distress apart from nuisance to other occupants of the flats. It has been also stated that large number of patients visited suffering from different contagious diseases who used to assemble in the said building in the front of the common gate causing not only disturbance but also health hazard to the occupants. The main issue was improper management of bio-medical waste that was literally throwing of needles, syringes, used saline water bottles and tubes, solid wastes (Cotton Waste and bandage materials contaminated with blood) etc. that which gives scope for spreading of various types of diseases and it affected the right to life guaranteed under Article 21 of the Constitution of India.

Hence, Writ Petition was filed under Article 226 of the Constitution of India for the issuance of a *writ of Mandamus*, directing the closure of the hospital. The Court observed the facts and passed an interim Order to close the hospital.

This case law gives an excellent example for the public that bio-medical waste is hazardous and it should be properly taken care to dispose it safely.

**4.12.4 Mananthavady Grama Panchayath v. The Deputy Superintendent:**

The Mananthavady Grama Panchayath v. The Deputy Superintendent. This case was judged by Justice M. Ramachandran and Justice S. Siri Jagan and set a wonderful judgement with respect to the active role of Grama Panchayath, Pollution Control Board, police officials and general public towards protection of environment against pollution through municipal and bio-medical wastes. The Court has identified the problem and gave suitable remedy.

The facts of the case notifies that the Mananthavady Grama Panchayath was involved in transporting the solid waste collected from the Mananthavady town area and also facilitated disposal of the same in yard belonging to the Panchayath. According to the Panchayath, they had extensive properties under their control and possession of Mananthavady village at Choottakadavu and that would have been thought to be ideal for the purpose. The Grama Panchayath had to take this step

---

1 WP(c) No. 30482 of 2003, decided on Aug 11, 2005.
because over a considerable number of years, without any problems or objections, a
large extent of land situated at Thazhayangadi was being used as dumping ground for
wastes collected. However, it was the land of Kerala State Housing Board and the
same Board requested to discontinue such activities as there was proposal for putting
up a Housing Colony there. The Panchayath was therefore constrained to seek for an
alternate site. Because of the introduction of Municipal Waste (Management and
Handling) Rules, 2000, the Panchayath was statutorily bound to adopt scientific waste
management methods and stepped to envisage installation of Waste Treatment Yard
and it was approved by Pollution Control Board. Later, while the project was held
many obstructions were raised by public spirited persons and hence the Grama
Panchayath invoked Article 226 for writ commanding the police officers to assist
necessary support to transport the solid waste collected from the mentioned town to
the required site of disposal. After the interference of the public spirited persons was
sought the Court directed Pollution Control Board to scrutinize the issue once again.
The Board found that the selection of place for the installation was not suitable and
therefore suggested Grama Panchayath to change the place for installation of the
treatment plant. The important issue that dealt with was the disposal of bio-medical
wastes and which was not considered seriously when the treatment plant was planned
to set up previously.

The very fact is known that hospital / bio-medical waste are prohibited to mix
with other wastes / biodegradable wastes. It has been clearly expressed under the
Municipal Solid Waste (Handling and Management) Rules 200 that only treated bio-
medical wastes are to be mixed with Municipal waste in the final disposal. Therefore,
bio-medical wastes are considerately generated and are to be treated separately. It was
also simultaneously noticed in the instant case that Bio-medical waste (Management
and Handling) Rules, and the Municipal Administration is a member of the Statutory
Advisory Committee to be formed there under. Rule 14 thereof is to the following
terms:

"Common disposal / incineration sites without prejudice to Rule 5 of these
rules, the Municipal Corporations, Municipal Boards or Union Local Bodies, as the
case may be, shall be responsible for providing suitable common disposal /
incineration sites for the bio-medical wastes generated in the area under their
jurisdiction and in areas outside the jurisdiction of any municipal body, it shall be the
responsibility of the occupier generating bio-medical waste / operators or bio-
medical waste treatment facility to arrange for suitable sites individually or in
association so as to comply with the provisions of these rules”.

After analyzing the whole fact the Court held that the Pollution Control Board
had approached the issue with a practical sense. The Writ petition for commanding
police protection for waste disposal at Choottakaladavu therefore was not admissible.
The Court stated that the Panchayat may proceed with the installation of waste
disposal plant at the site suggested by the Pollution Control Board for them to
examine the suitability feasibility of such places.

This case is very significant to express the positive attitude regarding bio-
medical waste management and recognize the same and providing appropriate
solution.

4.12.5 Dada Fire Works Ltd v. State of Maharastra:

The above case1 was decided by J.Rebello F. I and the Court has upheld the
principle of Sustainable Development and supported it in order to bring about
equilibrium between environment and development.

In this case a petitioner company had purchased certain lands in Phursungi
village, Taluka Haveli, District Pune. Later, the notification was issued under Section
4 of the Land Acquisition Act, 1894 to acquire land for public purpose viz. extension
of garbage depot, garbage treatment plant and 40ft. wide road. A declaration was also
made under Section 6 of the Land Acquisition Act, 1894.

There were also objections from the villagers regarding the acquisition of the
land by the Municipal Corporation for the purpose mentioned above. This was the
reason for invoking writ petition under Article 226 of the Constitution of India against
the declaration.

Here, in this case, it could be analysed that judiciary has taken into account the
developmental aspects that is land for disposal of wastes etc is remarkable. The Court
ultimately held that the judgement would support advancement and development as
well as protect the environment forming a bridge between the two or call it as
equilibrium.

1 Dada Fire Works Ltd v. State of Maharastra Writ Petition No. 7415 of 2002 decided on March 22,
2005.
The court stated that waste management is predominant feature of protection of health and environment by maintaining hygienic, proper and scientific environment for disposal of wastes. (Municipal Solid waste and Bio-medical waste etc) and acquisition of land for the same under “public purpose” was considered appropriate and relevant. And the court also considered widening of load and acquisition of land for the same also to be justifiable and stated infrastructural development was necessary for the economic development of the country.

The Court regarding the land acquisition for the purpose of Waste management held:

1. In setting up of land fill sites or the garbage treatment plant, the objections are entertained if there exists serious threat of pollution.
2. Sites have to be provided for disposal of the waste, generated by human habitations.
3. A statutory duty is cast on the respondent corporation could proceed to set up the process for a landfill sites and garbage disposal plant as required by the rules.

The Court in the case of widening of the road held:

1. Our Country is now launched upon an ambitious programme of all round economic advancement to make our economy competitive in the world market. And are anxious to attract foreign direct investment to the maximum extent.
2. It is, however, recognized on all hand that the infrastructure necessary for sustaining such a pace of progress is woefully lacking in our country.
3. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay.

The Court also held that, “It is, however, recognized on all hand that the infrastructure is necessary for sustaining such a pace of progress is woefully lacking in our country. The means of transportation, power and communications are in dire need of substantial improvement, expansion and modernization. These things very often call for acquisition of land and that too without any delay. It is, however, natural that in most of these cases, the persons affected challenge the acquisition
proceedings in courts. These challenges are generally in the shape of writ petitions filed in High Courts. Invariably, stay of acquisition is asked for and in some cases, orders by way of stay or injunction are also made. Whatever may have been the practices in the past, a time has come where the courts should keep the larger public interest in mind while exercising their power of granting stay/injunction. The power under Article 226 is discretionary. It will be exercised only in furtherance of interests of justice and not merely on the making out of a legal point. And in the matter of land acquisition for public purposes, the interests of justice and the public interest coalesce. They are very often one and the same. Even in a Civil Suit, granting of injunction or other similar orders, more particularly of an interlocutory nature, is equally discretionary. The courts have to weigh the public interest vis-a-vis the private interest while exercising the power under Article 226 indeed any of their discretionary powers. It may even be open to the High Court to direct, in case it finds finally that the acquisition was vitiated on account of non-compliance with some legal requirement that the persons interested shall also be entitled to a particular amount of damages to be awarded as a lump sum or calculated at a certain percentage of compensation payable. There are many ways of affording appropriate relief and redressing a wrong; quashing the acquisition proceeding is not the only mode of redress. To with, it is ultimately a matter of balancing the competing interests. Beyond this, it is neither possible nor advisable to say. We hope and trust that these considerations will be duly borne in mind by the courts while dealing with challenges to acquisition proceedings."

Therefore, it could be clearly understood that the court has set a renowned example regarding sustainable development. Thus, it could be better notified that the bio-medical waste management has got conspicuous place in the issues relating to the environment and development of the nation.

4.12.6 K. Balamurugan v. The State of Tamil Nadu:

This case was decided by luminaries of judiciary namely; Chief Justice Mr. A. K. Ganguly and J. F.M. Ibrahim Kalifulla. The court has studied the case in-depth and gave a landmark judgement which would prove as an example of protection, conservation of Environment and sustainable development.

---

In this case a writ petition was filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents not to commit any act or omission which will interfere with landscape of Mundiyambakkam lake, Mundiyambakkam Village, Villipuram District being an example of protection, Conservation of Environment and sustainable development.

In this case a Writ petition was filed under Article 226 of the Constitution of India for the issuance of a Writ of Mandamus directing the respondents not to commit any act or omission which will interfere with landscape of Mundiyambakkam lake at Mundiyambakkam village, Villumpuram District. But the facts of the case revealed that the lake was ceased to be a lake for 15 years. Therefore, the court held that the attempt of the District Authorities as well as the State Government proposing to convert the Mundiyambakkam lake as a fully fledged specialty Medical College Hospital with all facilities as a prudent step in the right direction in the interest of public at large. And also stated that the concept of ‘sustained Development’ without infringing or causing any impact on the environmental set up or injuring the ecological set up and therefore the setting up of Medical College and Hospital was justified.

4.12.7 Saf Fermian Ltd v. Santuka Agencies:

This case was judged by Hon’ble Justice Patherya. The Court has impressively dealt with the case by realizing the facts. Today it could be analysed the ill-effect of bio-medical waste in the pharmaceutical field too. The pharmaceutical waste is governed under Bio-medical waste Rules 1998. The drugs that are manufactured are followed with the “dated of expiry” on it and it is very essential feature of the drug industry if those expired drugs / medicines are used it becomes poisonous / hazardous than life saving or curative in nature

In the facts of the case the manufacturer of drugs / medicines distributed to his agents large sum of pharmaceutical goods and also received the required amount. Later it was realized by the agencies that the sent drugs were expired and also some were damaged badly.

---

It could be analysed that the expired drugs are of no use at all and could not be sold to the retailers and to the general public. The court after analyzing the facts directed that as a larger part of the pharmaceutical goods have been sold the same was directed to be destroyed as per Drugs and cosmetics Act and Bio-medical waste (Management and Handling) Rules 1998 and any other prevailing or relevant enactment Regulations or Rules there under.

Therefore, this direction specifies the strict implementation of Laws and also shows positive judicial approach towards management of bio-medical waste.

4.13 CONCLUSION

The constitution of India has imperatively mentioned the necessity of healthy environment under Article 21. The healthy and clean environment is the criteria behind the Article 21 of the Constitution to govern the aspect of the bio-medical waste management. The Constitutional aspects naturally show the protection towards health and environment targeting many provisions of Constitutional law. The significant role is played by Article 21 under Fundamental rights and Directive principles of State Policy where it requires the State to take up sincere responsibility towards protection of health and environment.

The ‘duty’ to take appropriate step to protect environmental aspects has been specified under Fundamental Duty. Constitutional remedies are there for the rights that which have been infringed or violated any provision of law while managing the Medical waste. The every responsibility has been recognized for proper management of medical waste under Panchayats and Municipal authorities.

While concluding this Chapter it is very necessary to note down the very dynamic concept is “sustainable development”. Therefore the constitutional law has also imparted the study of waste management positive support and guidance and also has created every minute substance of knowledge. But, whether the Constitutional dimension has been successful in implementing the provisions of law is unanswerable!

In order to curb the menace of medical waste many provisions of law, statutory bodies, legal actions have been taken but still there are number of reports, cases news regarding improper management could be noticed. It is very unfortunate to
state that the Bio-medical waste (Management and Handling) Rules came into existence in the year 1998 and today it is 2013 year almost 15 years have completed after the Rule has existed but still as the position of management and awareness is concerned, it is poor. It could be noticed that the ill-effect has not decreased rather increased in past 15 year since the existence of the law on bio-medical waste. But it equally could be noted that judiciary is constantly working on combating with the problem and also engaged in giving solution by way of Orders, Directions and so on under the invocation of writ remedies of the Constitution.

In *Maitree Sansad v. State of Orissa*¹ which was decided in the year 2006 stated that the three Medical Colleges and Hospitals run by the Government in the State and other various Nursing Homes situated in the City of Cuttack and elsewhere in the State by not following the provisions of law and not taking appropriate steps for due disposal of bio-medical waste. And alleged that it was causing Air and water pollution in as much as the same was hazardous to the health of the local people as well as the patients and their attendants who are treated in the said Hospitals / nursing Homes.

Hence the petitioner, which is a voluntary organization registered as a society having the aim and object to raise awareness amongst the people in regard to their rights, has come up with the present writ petition filed in the nature of Public Interest Litigation.

The Court after considering the seriousness of the of the matter had issued Directions to the Chairman State Pollution Control Board to cause the enquiry in the three Medical Colleges and Hospitals of the State, namely, S.C.B. Medical College & Hospital, Cuttack, V.S.S Medical College and Hospital, Burla and M.K.C.G College and Hospital Berhampur as well as the Nursing Homes which are operating in the City of Cuttack and the Capital Hospital at Bhubaneswar and specifically state therein regarding the steps taken by the institutions mentioned above for treatment / disposal of Bio-medical waste in the said institutions and as to whether such disposal is effective in preventive water and air pollution and preventing infectious diseases from spreading and the steps taken by the State Pollution Control Board in curbing such menace.

By analyzing this case law it could be understood that the improper management of bio-medical waste is still prevailing in India. But it is equally appreciable that public is generating awareness regarding such menace of pollution by bio-medical waste. And another significant note is that as public is causing awareness, the Judiciary is upholding such active role and protection the fundamental rights (Rights to wholesome environment) Article 21 through Constitutional mandates.

In another case *Sumit v. Payyannur Municipality*¹, the working of Municipalities which is brought under the Constitutional mandates regarding the provisions of law that protects health and environment is viewed very aptly in this occasion because it creates the proper working of the System (Municipality) towards management of bio-medical waste. And after the law was enunciated in the year 1998, the present scenario could be analysed through different mechanisms like Municipality. The effective implementation of laws by local governing bodies and the key role played by the judiciary is highlighted here. And moreover, the constitutional effort has been positive in the protection of environment against pollution caused by bio-medical waste. This can be viewed through case laws. Wherein, in this case the petitioner has filed the Writ petition on behalf of himself and on behalf of the members of the general public in Moorikovval area in the Kannur District, State of Kerala. The facts of the case is very clear in stating that the Payyannur Municipality was started in Moorikovval a plant called Malinya Samsarana Kendrum for the purpose of disposal of solid waste collected from the entire Municipality and was brought to this ground to be converted into bio-fertilizers. The petitioner alleged that people living in the close vicinity had to under the menace of dumping of waste from different hospitals, hotels, workshops, barber shops and residential houses. It was also noticed that the heaps of waste haphazardly dumped was allegedly stated as vermin compost plant by the respondent that consisted of plastic items, rubber, tubes, tyres, even dead bodies from the hospitals and often bones, flesh and other remnants of slaughter house wastes were identified and it was noticed that the crows and dogs carried such wastes and it used to reach neighbouring wells. It was also alleged that there was open burning that caused serious nuisance in that area.

This makes very clear that Municipality was partly performing the duty to manage the bio-medical waste and such other wastes. Though the effort was done to dump in faraway place in Municipality area yet the systematic approach / system / technology waste not adopted properly.

Therefore, the Court after analyzing the fact issued direction under *writ of Mandamus* to the State Pollution Control Board, Kannur and its Environmental Officer to inspect the plant set out there in the municipality area and to ensure the proper working of the same regarding the performance of the provisions of the Act\(^1\) and directed to segregate the wastes and suitable send for different process in order to systematically dispose of the waste.

This shows that the active predominant role of the Constitutional remedies in the form of writs. This automatically corrects and implements to apply the suitable provisions of law by giving justifiable solution to the problems.

Therefore, the Constitutional provisions / dimensions are very important to safeguard the environment and health from the pollution caused by bio-medical wastes.

---

\(^1\) Section 331 of Kerala Municipality Act.