

**SOLID WASTE MANAGEMENT AND INDIAN JUDICIARY**

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**ABSTRACT**

The role of Indian Judiciary and scope of judicial interpretation have expanded remarkably in recent time partly because of the tremendous growth of statutory intervention in the present era. In India solid waste management law has seen considerable development in the last two decades. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States. India's activist judiciary has undertaken the task of proper management of solid waste and its efforts to protect the environment have become effective to a certain extent only through PIL. Solid waste has many adverse effects on ecology. Thus the credit may go to judiciary for taking measures in solid waste management to a certain extent where the executive failed in spite of legal authorization. Solid Waste Management was completely neglected in past and is now receiving some attention at the highest levels in several cities and states, many are lagging behind and several have not bothered to make any improvement at all. Though levels of SWM services in the country have started improving on account of active monitoring by the Supreme Court of India, the central and state pollution control boards and finance and technical support from proactive state governments there still is a long way to go.

**Key Words: Solid waste Management, Judiciary, MSW Rules, Constitution of India.**

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### **Introduction:**

The role of Indian Judiciary and scope of judicial interpretation have expanded remarkably in recent time partly because of the tremendous growth of statutory intervention in the present era.<sup>2</sup> Perhaps no judiciary in the world has devoted as much time, effort and innovativeness to protect the environment from the adverse effects of solid waste as the Supreme Court of India has for the last two decades.<sup>3</sup> Besides the assigned role of interpretation and application of law, the judiciary has also performed an educative and innovative function by creating awareness about environmental problems among the public through a series of illuminating directions and judgments.

Principle 1 of the Stockholm Declaration on the Human Environment, 1972, provides that "Man has fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations". This principle finds reflection in Articles 14, 19 and 21 of the Constitution of India dealing with the right to equality, freedom of expression and right to life and personal liberty respectively. Solid waste management is the duty of local self Government enshrined under the Constitution of India. Indian judiciary through plethora of judgments has held that right to clean environment is part of Article 21 of the Constitution of India and it is the duty of Municipal corporations and Local Panchayats for the solid waste management.

In India solid waste management law has seen considerable development in the last two decades. The development of the laws in this area has seen a considerable share of initiative by the Indian judiciary, particularly the higher judiciary, consisting of the Supreme Court of India, and the High Courts of the States. India's activist judiciary has undertaken the task of proper management of solid waste and its efforts to protect the environment have become effective to a certain extent only through PIL. Solid waste has many adverse effects on ecology. Thus the credit may go to judiciary for taking measures in solid waste management to a certain extent where the executive failed in spite of legal authorization.

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<sup>2</sup> Sandip Bhasal, "Role of Indian Judiciary in Protection of Rights of the Children" available at <http://orgnal.accademiedu/sandipbhasal/papers/756296> visited on 21-02-2017.

<sup>3</sup> The supreme court of other countries such as USA, Canada, Australia, New Zealand and Brazil also became part of environmental jurisprudence in their respective countries(186th Law Commission Report of India 2003)

### **Solid waste management and Indian Judiciary:**

In *Virendar Gaur v. State of Haryana*,<sup>4</sup> the Supreme Court has declared that Right to life under Article 21 encompasses right to live with human dignity, quality of life, and decent environment. Thus, pollution free environment and proper sanitary condition in cities and towns is considered to be integral part of right to life.

In *Subhash Kumar v. State of Bihar*,<sup>5</sup> the Court observed that the right to live is a fundamental right under Article 21 of the Constitution, and it includes the right of enjoyment of pollution-free water and air for full enjoyment of life. If anything endangers or impairs that quality of life in derogation of laws, a citizen has the right to have recourse to Article 32 of the Constitution.

In *Municipal Council Ratlam v Vardhichand and others*,<sup>6</sup> the residents of a locality within the limits of Ratlam Municipality, tormented by stench and stink by open drains and public excretions by nearby slum dwellers moved the Sub-Divisional Magistrate under Sec. 133 CrPC to require the Municipality to construct drain pipes with the flow of water to wash the filth and stop the stench towards the members of the Public. The Municipality pleaded paucity of funds as the chief cause of disability to carry out its duties. The Magistrate gave directions to the Municipality to draft a plan within six months for removing nuisance. The High Court approved the order of the Magistrate, to which the Municipality further appealed to the Supreme Court.

The issue was whether a Court can compel a statutory body to carry out its duties to the community by constructing sanitation facilities?

The Supreme Court through J. Krishna Iyer, upheld the order of the High Court and directed the Municipality to take immediate action within its statutory powers to construct sufficient number of public latrines, provide water supply and scavenging services, to construct drains, cesspools and to provide basic amenities to the public. The Court also accepted the use of section 133 CrPC for removal of public nuisance. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Thereafter, series of cases were filled before the

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<sup>4</sup> 1995 (2) SCC 577

<sup>5</sup> A.I.R. 1991 SC 420

<sup>6</sup> A.I.R. 1980 SC 1622

Supreme Court and there was a dynamic change in the whole approach of the courts in matters concerning solid waste handling.

In *M. C Mehta v State of Orissa*,<sup>7</sup> a writ petition was filed to protect the health of thousands of innocent people living in Cuttack and adjacent areas who were suffering from pollution from sewage being caused by the Municipal Committee Cuttack and the SCB Medical College Hospital, Cuttack. The main contention of the petitioner was that the dumping of untreated waste water of the hospital and some other parts of the city in the Taladanda canal was creating health problems in the city. The State, on the other hand contended that a central sewerage system had been installed in the hospital and that there is no sewage flow into the Taladanda canal as alleged. Further, it was asserted that the State had not received any information relating to either pollution or of epidemic of water borne diseases caused by contamination of the canal. Also, the health department shrugged off the responsibility for supply of drinking water and passed the buck to the Municipality which refuted the contentions of carelessness and callousness.

The Court reprimanded the authorities and directed the government to immediately act on the matter. Also, the court recommended setting up of a committee to take steps to prevent and control water pollution and to maintain wholesomeness of water meant for human consumption amongst other things. A responsible Municipal Council is constituted for the precise purpose of preserving public health. Provision of proper drainage system in working conditions cannot be avoided by pleading financial inability.

In *B. L Wadhera v Union of India*,<sup>8</sup> (Delhi Garbage Case), a writ petition was filed under Article 32 seeking directions to the Municipal Corporation of Delhi (MCD) and the New Delhi Municipal Corporation (NDMC) to perform their statutory duties, in the collection, removal and disposal of garbage and other wastes from the city. The Court issued a couple of interim order, wherein directions were issued to the Delhi administration to perform their duties.

The court observed that the river Yamuna—the main source of drinking water supply is the free dumping place for untreated sewage and industrial waste. Apart from air and water pollution, the city is virtually an open dustbin. Garbage strewn all over Delhi is a common sight. It is no doubt that rapid industrial development, urbanization and regular flow of persons from rural to urban

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<sup>7</sup> A.I.R. 1992 Ori 225

<sup>8</sup> A.I.R. 1996 SC 2969

areas have made major contribution towards environmental degradation but at the same time the authorities-entrusted with work of pollution control- cannot be permitted to sit back with folded hands on the pretext that they have no financial or other means to control pollution and protect the environment.

Authorities were also asked by the court to place before the court, the difficulties which were likely to come up in their way. But at the same time the court made it clear that from the date which may be given by the authorities concerned, “not a drop of garbage is to be seen anywhere in the city of Delhi on early morning each day. The whole of the work of garbage collection must be completed over-night and the city is to be left absolutely clean of the residents for their use.” The court mentioned that MCD had a very large force of workers; it had 38,311 safai karamcharis and more than 1,400 Sanitary Inspectors to keep clean and tidy an area of 1399.29 sq. km. The simple arithmetic showed that there were 27 safai karamcharis and one Sanitary Inspector for one sq. km. of area. The NDMC was found by the court in still better position having 2,172 safai karamcharis for cleaning an area of 42.40 sq. km., i.e. 50 safai karamcharis for one sq. km. of area. The court held that there was no reason whatsoever why with such a large manpower at their command the MCD and NDMC cannot give a neat and clean Delhi to its residents.

In the light of the facts and circumstances of the case and also keeping in view the suggestions made by the learned counsel assisting the court in the petition, the court issued following directions:

1. The experimental schemes placed by MCD and NDMC to distribute polythene bags and door to door collection of garbage and its disposal were approved by the court.
2. Directions were issued to construct and install incinerators in all the Government administered hospitals and nursing homes, with 50 beds and above preferably within nine months.
3. The All India Institute of Medical Sciences (AIIMS), New Delhi was directed separately to install sufficient number of incinerators, or an equally effective alternate, to dispose of the hospital waste.
4. The MCD and NDMC were asked to issue notices to all the private hospitals and nursing homes in Delhi to make their own arrangements for disposal of their garbage and hospital waste.

5. The Central Pollution Control Board (CPCB) and Delhi Pollution Control Committee (DPCC) were assigned the job to inspect the different areas of Delhi to ascertain that the collection, transportation and disposal of garbage and waste is carried out satisfactorily.
6. The Government of NCR of Delhi was directed to appoint Municipal Magistrate for the trial of offences under the DMC Act and the NDMC Act.
7. 'Doordarshan' was asked to undertake a programme of educating the residents of Delhi regarding their civic duties.
8. The Ministry of Defence Production, Government of India was directed to have already ordered Tippers supplied to the MCD as expeditiously as possible and preferably within three months.
9. The Development Commissioner, Government of NCT, Delhi was directed to hand over two sites, near Badarpur on Jaitpur pits and Mandi Village near Janpur Query pits, to be used as SLF sites within three months.
10. The compost plant at Okhla was to be revived and put in to operation with 4 additional compost plants as recommended by the Jagmohan Committee.'
11. The Union of India and NCT Delhi Administration were requested to consider grant for financial assistance to the MCD and NDMC.
12. The MDC and NDMC were to construct/install additional garbage collection centers within four months.
13. NCT Delhi Administration, MCO and NOMC were directed to engage an expert body like NEERI to find out alternative methods of garbage and solid waste disposal as the existing landfills would get exhausted soon\_\_
14. The MCD shall not use the filled-up SLFs for any purposes except forestry. There are 12 such sites including Rajiv Gandhi Smriti Van. MCD has been directed to develop forests and gardens on these 12 sites. The work of afforestation shall be undertaken by the MCD with affect from April 1, 1996. An affidavit shall be filed by the end of April indicating the progress made in this respect.

The land mark case that drew attention to and changed the manner in which waste is handled in major cities is the ruling in the *Almitra Patel* case.<sup>9</sup> A writ petition was filed by Almitra H. Patel

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<sup>9</sup> *Almitra H. Patel v. Union of India* 2000(2) SCC 166

in 1996 regarding the management of solid waste disposal in four metropolitan cities—namely, Mumbai, Chennai, Calcutta and Delhi. It also referred to Bangalore, but the Court took up the case of National Capital Territory of Delhi. The petitioner alleged that the practices adopted by municipalities for disposal of waste were deficient. The management of solid waste by the municipalities had a direct effect on the health of the people in the country. The petitioner had appreciated the guidelines and recommendations made by the Central Pollution Control Board for the management of the municipal waste.

On the basis of the replies of various departments, Central/State Pollution Control Boards and concerned State Government, the Hon'ble Supreme Court by an order dated January 16, 1996 appointed a Committee headed by Mr. Asim Burman (Commissioner of Calcutta Municipal Corporation) to look into the aspects of 'municipal solid waste management'. The terms of reference for the Committee was to look into all aspects of urban solid waste management, particularly examine and suggest ways to improve conditions in formal and informal sector for promoting eco friendly sorting, collection, transportation, disposal and utilization etc. of municipal solid wastes. The Committee gave its report in the month of March 1999 before the Supreme Court for consideration. The committee made several recommendations including technical aspects also for the management of solid waste in class I cities. The recommendations were further classified under three heads:

- i. Mandatory recommendations for citizens/associations;
- ii. Mandatory recommendations for local bodies/state governments; and
- iii. Discretionary recommendations for urban local bodies.

The report of the committee was circulated to all the states. The pronouncement made by the Supreme Court in *Almitra H. Patel v. Union of India*<sup>10</sup> compelled the Central Government, the Ministry of Environment and Forest to notify the Municipal Solid Waste (Management and Handling) Rules, 2000. The *Almitra Patel* case brought to fore the need for door-to-door collection of waste, segregation of waste at source as dry and wet, new and appropriate technologies for the handling of waste and final disposal. While it was a good first step in

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<sup>10</sup> 2000(2) SCC 166

addressing serious concerns relating to waste management, regrettably, the focus of this petition was not on reducing and recycling waste with the concomitant directions to ensure penalties on large polluters and reward efforts to recycle with tax breaks and subsidies. It may well be the subject of another writ petition.

In *Almitra H. Patel v. Union of India*,<sup>11</sup> the Supreme Court pointed out that schemes such as “Svachha Bangalore” involving separation of recyclable waste/non biodegradable waste as well as domestic hazardous waste at source by means of door to- door collection by municipal workmen or through private contractors can and should-be -role model for other cities particularly in Delhi. The Court further directed that such schemes should be started as soon as possible, including the slum areas. The Court also directed the Delhi Municipal Corporation to file an affidavit in respect of each of the recommendations in Burman Committee report. The court pointed out that the disposal of wastes and identification of person or body to be fined was the responsibility of NDMC and it may do so in accordance with law. The court also laid emphasis that the slum clearance is interrelated with solid waste disposal because slums generate a great deal of solid waste adding to Pollution as borne out by report of Central Pollution Control Board.

In *Ahmedabad Municipal Corporation v. Nawab Khan Gulab Khan*,<sup>12</sup> it was held that unauthorised encroachment of pavements affects pedestrian's right to free passage and also creates unhygienic ecology, traffic hazards and risk to the lives of pedestrians. Therefore, the Municipal Corporation is entitled to remove such encroachments. The Court also pointed out that there is a constant efflux of rural people to urban areas leading to consequential growth of slums and encroachments. It is for constitutional functionaries to evolve such schemes and policies so as to provide continuous means of employment in the rural areas and to prevent the immigration of rural people to urban areas.

In another landmark case of *Sat Priya Mehamia Memorial Education Trust and another, v. State of Haryana and others*<sup>13</sup>, the Punjab and Haryana High Court has made it clear that the judicial

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<sup>11</sup> (2000) 8 SCC 19

<sup>12</sup> (1997) 11 SCC 121

<sup>13</sup> CW P No. 8504 of 2003 Decided on 17 March 2009



process cannot be used for fixing the life span for landfill sites in Haryana. In its petition the petitioners had brought under the high court scanner the problem arising out of waste dumping and need for its disposal by Rohtak Municipal Council. The petitioners had, among other things, contended landfill site had been used for over 25 years and should, therefore, be closed.

The Bench ruled: Whether or not a site can be used any further, would depend upon the size of the site and the quantity of solid waste being dumped on the same and the methods for its eventual disposal whether by process of decomposition or otherwise. Referring to the case in hand, the Bench asserted that the solid waste treatment plant, being set up on the site in question, will eventually use the solid waste after proper segregation to generate manure which would then be used by the farmers in their fields.

“What is important is that the waste, if dumped at the site, would be converted into useful material for use by the farmers. If that is so, as it appears to be, the site may never saturate for the purposes of dumping as the process of dumping, also the process of removal of the waste after conversion into manure, would be a continuous cycle”.

Attaching utmost importance to the issue of waste management, the Bench added:

"Disposal of municipal solid waste generated by cities big and small is a formidable challenge for the municipal authorities in this country".<sup>14</sup>

In *Pollution Control Committee, Amritsar v. Municipal Corporation other*<sup>15</sup> the petitioner prayed to shift the dumping place of Municipal Solid Waste and dead animals to an authorized and approved place in accordance with the provisions of the Municipal Solid Waste (Management & Handling) Rules, 2000 (for short the Rules) and for scientific disposal of the Municipal solid wastes and dead animals. The Hon'ble High Court allowed the petition with the following directions.

- 1) The Corporation shall award contract to set up Municipal Solid Waste Management Plant within six months from today.
- 2) The Municipal Corporation shall apply for authorization in respect of its site at Bhagtanwala, but the grant of such authorization shall not be a condition precedent for awarding contract to set up Municipal Solid Waste Management Plant.

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<sup>14</sup> The Tribune April 14, 2009

<sup>15</sup> CWP No. 2032 of 2016 (O and M) decided by Punjab and Haryana Court on July 23, 2013

3) The successful contractor shall be bound to obtain permission or to carry forward the request of the Municipal Corporation to obtain authorization from the stage, it may be pending at the time of grant of Contract.

4) Till such time, the contract is awarded, the Corporation shall make all efforts to keep the Municipal Limits free from garbage and ensure its disposal so as to minimize the hazards which the residents may suffer.

### **Conclusion:**

Solid Waste Management was completely neglected in past and is now receiving some attention at the highest levels in several cities and states, many are lagging behind and several have not bothered to make any improvement at all. Though levels of SWM services in the country have started improving on account of active monitoring by the Supreme Court of India, the central and state pollution control boards and finance and technical support from proactive state governments there still is a long way to go. Save the formalization of the MSW Rules 2016, state action in this regard at many levels has been fairly uninspiring thus far. While MSW Rules 2000 and 2016 Rules is a watershed document in India's history of effective SWM, implementation issues still overwhelm the system. A firm commitment from central and the state governments towards a time bound mission to turn the provisions into action is urgent. Isolated cases of short-term steps to manage solid waste can hardly be cited as instances of governmental awareness and sensitivity to a problem that is only getting more daunting with each passing hour. It is no longer enough to take ad hoc measures to merely postpone the inevitable consequences of decades of neglect and nationwide mismanagement of SWM. A comprehensive nationwide programme needs to be actively implemented keeping in mind possible future scenarios. Key individuals within the governing system and the bureaucracy need to be educated to the magnitude of the crisis and motivated to use their power to influence the system and appropriately channelize resources to actively promote effective and progressive SWM projects and practices.