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## RESEARCH ARTICLE

# ROLE OF INDIAN JUDICIARY IN SOLID WASTE MANAGEMENT

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### ABSTRACT

Indian Courts of law has established new principles of law and also introduced innovations in the environmental justice delivery system. It is a blunt truth that more than the legislative and administrative measures the "Judicial Activism" supported by public interest litigation (PIL) has served the cause of environmental protection and the pollution free environment. In its efforts to protect the environment from solid and hazardous waste, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle; polluter pays principle, the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land.

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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. International legal experts have been unequivocal in terming the Indian Courts of law as pioneer both in terms of laying down new principles of law and also in the introduction of innovations in the environmental justice delivery system.

Although it is not unusual for courts in Western democracies to play an active role in the protection of environment, the way Indian Supreme Court has been involved since 1980s in interpreting and bringing new changes in the environmental jurisprudence is unique in itself. 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>2</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.

Beginning with the *Ratlam Municipality case* (1980)<sup>3</sup> where the Supreme Court directed a local body to make proper drainage provisions there have been numerous cases where such positive directions have been given.<sup>4</sup>

In the ensuing years, there appears to be a growing consensus

amongst the media and in academic circles that the general approach of the higher judiciary in environmental litigation can be described as 'activist' in nature. A prominent example of such activism in evaluating the environmental impact of commercial activities justified in the name of development is the decision given in the *Dehradun Valley case* (1985)<sup>5</sup>.

It is a blunt truth that more than the legislative and administrative measures the "Judicial Activism" supported by public interest litigation (PIL) has served the cause of environmental protection and the pollution free environment. This 'activism' on the part of the judiciary derives its constitutional legitimacy from Article 141 of the Constitution which lays down that the Supreme Court's declaration of law is final and Article 13 which empowers the judges to declare any law null and void if it was found to be against the provisions of Part III of the Constitution. Its areas of activity are widening such as Public Interest Litigation, writ petitions under Article 32, interpretation of Arts, 12, 14, 19, 21 etc.

It is now a well-settled principle of law that socio-economic conditions of the country cannot be ignored by a court of law because the benefit of the society ought to be the prime consideration of courts. Thus, the court must take cognizance of the environmental problems. However, law courts ought not to put an embargo to any development project, which may be in the offing. The courts are required to strike a balance between the development and ecology and there should be no compromise with each other. It is worth mentioning here that while dealing with the problem of environmental degradation

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the courts are applying the principle of sustainable development.

Therefore let us have a look over the attempts made by the “Temples of Justice” in the new era of judicial activism through coercive sanctions of judicial process for the noble cause of protection of environment.

### ***New Trends in Indian Judiciary***

The judiciary has played a very vital role in protecting the environment and checking its degradation and pollution. It is the judiciary, which introduced the concept of environmental jurisprudence and made continuous serious efforts to make the people aware about the dire consequences of environmental pollution. Keeping in view the dangerous consequences of environmental pollution, the judiciary has propounded the theories of “*Absolute Liability*”,<sup>6</sup> theory of “*Polluter Pays*”,<sup>7</sup> and theory of “*Public Trust*”<sup>8</sup>. Further, the judiciary has not only made tremendous efforts to protect the flora and fauna but also interpreted the right to life in such a way as to include the right to pollution free and wholesome environment. In this regard judiciary has jumped from one principle to another, that is, from strict liability<sup>9</sup> to absolute liability and, from compensatory principle<sup>10</sup> to polluter pays principle and to the principle of public trust.

### ***Role of Higher Judiciary In 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.

In its efforts to protect the environment from solid and hazardous waste, the Supreme Court and the Indian Judiciary in general have relied on the public trust doctrine, precautionary principle; polluter pays principle, the doctrine of strict and absolute liability, the exemplary damages principle, the pollution fine principle and inter-generational equity principle apart from the existing law of the land. Another guiding principle has been that of adopting a model of sustainable development. The consistent position adopted by the courts as enunciated in its judgments<sup>11</sup> has been that there can neither be development at the cost of the environment or environment at the cost of development.

The fundamental rights part of the constitution of India does not have any specific mention of the environmental matters. Here the Supreme Court played a pivotal role. The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of the environmental jurisprudence in India. The Supreme Court and the high courts have in several cases held that maintenance of health and preservation of sanitation falls within the purview of Article 21 of the Constitution as it adversely affects impacts health and life of citizens, in the event of default. It has therefore mandated municipal authorities to remove rubbish, filth, night soil or any noxious or offensive matter and to ensure their proper and scientific

disposal. Apart from the municipal authorities, the Pollution Boards also have a basic duty under the Environment (Protection) Act, 1986 to assist in the proper disposal of the waste.

The Supreme Court, in its interpretation of Article 21, has facilitated the emergence of an environmental jurisprudence in India (including the solid waste management laws). Till 1980, not much contribution was made by the courts in preserving the environment. One of the earliest cases which came to the Supreme Court of India was *In Municipal Council Ratlam v Vardhichand and others*<sup>12</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 filed before the Supreme Court and there was a dynamic change in the whole approach of the courts in matters concerning solid waste handling.

In *L.K. Koolwal v State of Rajasthan and others*<sup>13</sup> a writ petition was filed by the petitioner asking the court to issue directions to the state to perform its obligatory duties. The petitioner invoked Fundamental Rights and the Directives Principles of State Policy and brought to the fore the acute sanitation problem in Jaipur which, it claimed as hazardous to the life of the citizens of Jaipur.

The Court observed that maintenance of health, preservation of sanitation and environment falls within the purview of Art. 21 of the Constitution as it adversely affect the life of the citizen and it amounts to slow poisoning and reducing the life of the citizen because of the hazards created of not checked.

In *B. L Wadhwa v Union of India* (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 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.

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 effect from June 1, 1996 and the MCD. Was also to examine the construction of 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 MCD 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

In *Rampal v State of Rajasthan*<sup>15</sup> the residents of Bhilwara District of Rajasthan, complained of the lack of drainage facilities made available by the district administration due to which drinking water, drain and storm water use to mix and get collect in open chowks, leading to the growth of insect and moss and possible threat of epidemics. The Court allowed the writ petition by awarding suitable order and direction to the Municipal Board to clean by the city and for maintain proper drainage system. It may also be noted that the National Commission that is set up to review the working of the Constitution of India in its report submitted to the Central Government has recommended the addition of a separate article (30-D) in the Constitution of India which would confer the stature of a fundamental right within the Indian Constitution to the right to save drinking water, clean environment etc.<sup>16</sup>

#### *Saga of Almitra Patel's Case*

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>17</sup> A writ petition was filed by Almitra H. Patel 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. In its reply, the Central Pollution Control Board submitted that the responsibilities of management of solid waste were vested with the municipal corporations of the municipalities which are under the administrative control of respective states/ union territories. At the Central level, the ministry of Urban Affairs is the nodal Ministry to deal with the matters relating to municipal solid wastes. The Central Pollution Control Board itself has taken several initiatives for improvement, collection, transportation, disposal and utilization of municipal solid wastes. 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:

1. Mandatory recommendations for citizens/associations;
2. Mandatory recommendations for local bodies/state governments; and
3. Discretionary recommendations for urban local bodies.

#### ***Mandatory recommendations for citizens/associations***

1. Not to throw any waste on the streets, lanes, bylane, footpaths, open spaces, water bodies etc.
2. Store the organic (food) and bio-degradable waste at source in personal domestic bins.
3. Segrate/store separately recyclable waste/non bio-degradable wastes as well as domestic hazardous waste at source.
4. Provide community bin/bins in commercial complexes.
5. Deposit domestic, trade, institutional wastes in the food cart/recycles/community bins/vehicles as may be notified by the local body.
6. Trim the garden waste by the days notified by the local body.
7. Store the construction waste within the permission outside the presence.
8. Hospitals, nursing homes makes their own arrangements for disposal of their industrial and bio-medical waste.

#### ***Mandatory recommendations for local bodies/state governments***

- a. Initiate public awareness campaigns through Information Education and Communications (IEC) strategy.
- b. Primary collection of waste from doorstep/community bins with or without community participation.
- c. Street sweeping on all days in the year irrespective of Sundays and Public holidays, making adequate provision for giving statutory weekly off to the workers or compensating them for working on holidays, etc.
- d. Provision of mobile/bulk community waste storage containers/tractors trolleys at the waste storage depots.
- e. Transportation of waste at regular intervals before the containers start overflowing.
- f. Collection, transportation and disposal of market waste, Hotel and Restaurants waste, Construction waste, Garden Waste, Kalyan mandap/Marriage hall waste with the participation of waste producers.

#### ***Discretionary recommendations for urban local bodies***

- a. Monthly charging for door-to-door collection based on income groups may be implemented.
- b. The vehicles for transporting the waste from the transfer point to the disposal site should be of appropriate design, suiting the waste characteristics.
- c. Composting of municipal solid waste should be the next appropriate option after land filling.
- d. Participation of private sector in setting up pilot plant utilizing appropriate technologies for urban solid waste management should be encouraged.

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>18</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 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>19</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 *Almitra H. Patel v. Union of India*,<sup>20</sup> the Supreme Court considered the reference of the learned counsel for the petitioner to the extracts from Vol. II Sectoral Policies and Programmes of Tenth Five Year Plan (2002-07), Planning Commission, Govt. of India, New Delhi and directed the Govt. of India to file the action taken report (ATR) on the formation and time bound activities of the State Sanitation Councils and Mission-mode Urban Sanitation Mission to be set up during the Tenth Plan (2002-07). It was also submitted that the Govt. of India, Ministry of Agriculture, Department of Integrated Plant Nutrient Management with Indian Council of Agricultural Research and Ministry of Fertilizers shall set up a task force to

: (i) prepare within 4 months a policy, strategy and action plan for promoting IPNM using city compost along with synthetic fertilizers in every area of agriculture, horticulture, plantation crops, forestry and revegetation of mining overburdens; and (ii) create market demand and supply mechanism for city compost within 50 km. radius of all urban local bodies and their compost plant.

The Supreme Court also took cognizance of Annual Report (2002-2003) on the implementation of Municipal Solid Wastes (Management and Handling) Rules 2000, which showed large scale of non-implementation of these Rules.<sup>21</sup> Accordingly, the Supreme Court emphasized the necessity for formulating an action plan for management of Municipal Solid Wastes (MSW) in respect of metro cities and State capitals by the Ministry of Urban Development in consultation with all concerned. Directions were also issued to Central Govt., State Govt. and State Pollution Control Boards and concerned Pollution Control Committees to examine various aspects submitted by the petitioner in this regard.<sup>22</sup>

In *Sector 14 Residents Welfare Association v. State of Delhi*,<sup>23</sup> the Supreme Court considered the final report of the committee constituted for upgradation of city sewerage and management system in trans Yamuna and certain Noida sectors. The Court held that it will be appropriate if the monitoring of the implementation of the committee report as per its action plan is undertaken by the Environment Pollution (Prevention and Control) Authority constituted under section 3 of the Environment (Protection) Act, 1986.

Similarly, the court declared in *Chhetriya Pardushan Mukti Sangharsh Samiti v. State of U.P.*<sup>24</sup> that every citizen has a fundamental right to enjoy quality of life and living as contemplated by Article 21 of the Constitution and violation of it will be punished adequately. Thus, courts have assumed the role of guardians and protectors against health hazardous activities and pollution disseminating activities affecting, directly or indirectly, the flora and fauna, micro-organisms and property.

In another landmark case of *Sat Priya Mehamia Memorial Education Trust and another petitioner, v. State of Haryana and others*,<sup>25</sup> the Punjab and Haryana High Court has made it clear that the judicial process cannot be used for fixing the lifespan 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>26</sup>

In *S. Nandakumar vs. The Secretary to Government of Tamil Nadu and others*<sup>27</sup> Writ appeal pertains to the decision taken by the Government of Tamil Nadu to allot an extent of 70 acres of land and the consequential entry permission given to the municipalities of Ambattur, Maduravoyat, Thiruverkadu, Valasaravakkam and Poonamallee and Porur Town Panchayat to establish their Solid Waste Management Plant in Kuthambakkam Village in the District of Thiruvallur. In a petition, S. Nandakumar, president of Kuthambakkam Panchayat; stated to be a model village and nominated for the UN Habitat Award, said the livelihood of the people of the village was agriculture. Most of them solely relied on livestock. The cattle depended on common grazing lands where the government had decided to set up the SWMP.

There is a prescribed procedure as contained under Section 134 of the Tamil Nadu Panchayats Act and Rules 3 and 4 of the Tamil Nadu Panchayats (Restriction and Control to Regulate the use of Porombokes in Ryotwan Tracts) Rules, 2000, in the matter of taking over the land for any other specific purpose. Section 134 of the Tamil Nadu Panchayats Act provides that the porambokes namely, grazing grounds, threshing floors, burning and burial grounds, cattle-stands, cart-stands and topes shall vest in the village panchayat and the panchayat shall have power to regulate the use of such porambokes. Section 134(3) authorises the Collector, after consulting the Village Panchayat to exclude the land from the operation of the Act. However the said procedure was not followed by the District Collector. Effective consultation made by the District Collector was only after granting entry permission by the Government as per G.O.Ms.No.78 dated 23 February, 2009. Therefore mandatory consultation process was not resorted to by the District Collector before recommending the case to the Government.

Disposing of the appeal and writ petitions, the Bench, said though it was of the view that no interference was called for in the order passed by the government as well as the order of the District Collector in view of the larger public interest involved in establishing garbage disposal plant and the developments which have taken place subsequently, it would make the legal position clear - before taking action under Section 134 (3) of the Tamil Nadu Panchayats Act (Village panchayat to regulate the use of certain porombokes in ryotwari tracts), the concerned panchayat should be consulted. The Bench also indicated the importance of public hearing and the need to ascertain the views of the affected persons by authorities before giving environmental clearance. The public consultative process is an essential component in the process of environmental impact assessment. Therefore, any violation of the mandatory procedure in the matter of conducting public hearing and

recording the views or objections of the affected persons would give the aggrieved a cause of action to challenge the legality and correctness of the public hearing proceedings, without waiting for the final outcome of the impact assessment proceedings.

The court directed the EIAA to give a copy of the application by the municipalities and the panchayat for granting environmental clearance for establishing the facility, to the Kuthambakkam panchayat so as to enable the petitioner to submit the views or objections in the matter. The Kuthambakkam panchayat and the local affected persons should be given an opportunity to offer their comments during the public hearing. The court said that in case the EIAA rejected the application for environmental clearance, liberty is given to the Kuthambakkam panchayat to approach the government for cancellation of allotment to the local bodies, in view of the statement made by the Advocate-General.

In *K.K. v. State of Punjab and Others*,<sup>28</sup> petitioner seeks a direction to the respondents to shift/remove the Garbage Dumping Ground situated in between the residential area and adjacent to Government School. To say that the solid waste material is being dumped in the open area, reference was made to the photographs placed on record. It was further stated that due to non-cleaning of the sewerage lines, dirty water is coming out and is accumulating next to the residential houses.

In *Satpal Singh & others v/s Municipal Council Gardhiwala and others*<sup>29</sup> the National Green Tribunal held that the Respondents have failed to implement Municipal Solid Wastes (Management and Handling) Rules, 2000 and discharge their duties under the Punjab Municipal Act, 1911.

The tribunal directed to take immediate action to shift the dumping ground “*Hada Rori*” to a suitable place outside the limits of Municipal Council and if necessary by acquiring a suitable land, after negotiating with owner of such land and to complete the shifting process within a period of six months hereinafter.

In *Pollution Control Committee, Amritsar V. Municipal Corporation other*<sup>30</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.
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.

### ***Laws Pertaining To Land Fills and Role of Judiciary***

Landfills are considered a growing menace. On one hand, their lack of availability reduces the ability of the local body to effectively manage and dispose waste. On the other hand, unsanitary land filling adversely impacts health and the environment. Increasingly, it faces resistance from locals where the landfills are sited. Both these problems are rampant and myriad issues relating to landfills have been brought to court. Landfills, in several parts of the country, are the primary source for collection of waste by waste pickers.

The location of these sites has a direct impact on the livelihood access of waste pickers. Reviewing the situation in Delhi, the court in Almitra Patel’s case<sup>31</sup> noted that the MCD despite orders in Dr. B.L. Wadehra’s case<sup>32</sup> had neither identified nor handed over sufficient number of sites for landfills. One of the reasons cited for the sites not being made available, was that land owning agencies like the DDA or the Government of National Capital Territory of Delhi were demanding market value of the land of more than rupees forty lacs per acre before the land could be transferred to MCD. The Supreme Court held that “It is the duty of all concerned to see that landfill sites are provided in the interest of public health. Providing of land fill sites is not a commercial venture, which is being undertaken by the MCD. It is as much the duty of the MCD as that of other authorities enumerated above to see that sufficient sites for landfills to meet the requirement of Delhi for next twenty years are provided. Not providing the same because the MCD is unable to pay an exorbitant amount is un-understandable. Landfill site has to be provided and it is wholly immaterial which Governmental agency or the local authority has to pay the price for it.”

Contentious as the use of land for dumping waste, there has been several struggles and resistance to indiscriminate dumping by the locals. To cite an instance, in 2007, a division bench of the Kerala High Court<sup>33</sup> which had directed the municipal corporation to dump waste at Brahmapuram, had to also order police protection if faced with villagers’ protests. Violent protests had erupted against the indiscriminate dumping. The court was examining a contempt petition against the municipality for not submitting a detailed plan for solid waste disposal in accordance with previous orders. Thus, land filling concerns are slowly snowballing into major controversies not merely from a public health and environment perspective but also from locational concerns over which land is more suited for land filling. Town planning and zoning laws need to be examined carefully in this context.

### **CONCLUSION**

The judiciary has also shown its deep concern for the protection of environment from solid and hazardous wastes.

The emphasis of the judiciary has been on sustainable development and it has strictly applied the "precautionary principal" as well as the "polluter pays principle". The judiciary while interpreting 'Right to Life' under Article 21 of the Constitution has now approved the right to live in a pollution free and healthy environment as fundamental rights. There are several vocal NGO's and public-spirited individuals who have moved the courts to seek relief against numerous problems such as those created by negligence in management of solid waste, increasing deforestation etc. Acting either at the instance of petitioners or on their own, the Supreme Court has invoked Article 32 of the Constitution to grant remedies to restrain harmful activities in many cases. Reliance has also been placed on the power to do complete justice under Article 142 to issue detailed guidelines to executive agencies and private parties for ensuring the implementation of the various environmental statutes and judicial directions.

## Reference

1. Sandip Bhasal, "Role of Indian Judiciary in Protection of Rights of the Children" available at <http://orgnal.accademiaedu/sandipbhasal/papers/756296> visited on 31-09-2015.
2. 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)
3. Municipal Council Ratlam v. Vardichand (1980) 4 SCC 162.
4. See generally: Harish Salve, 'Justice between generations: Environment and Social Justice', Chapter 18 in B.N. Kirpal et. Al. (eds.), Supreme but not infallible – Essays in Honour of the Supreme Court of India (New Delhi: Oxford University Press, 2002) at pp. 360-380.
5. Rural Litigation and Entitlement Kendra v. State of Uttar Pradesh and others. A.I.R. 1985 SC 652.
6. M.C. Mehta v. Union of India, A.I.R. 1987 SC 1086.
7. Indian Council for Enviro-Legal Action v. Union of India A.I.R., 1996 SC 1446.
8. See the Hindustan Times, November 20, 1997.
9. Ryland v. Fletcher, 1868, L.R. 3 HL 331.
10. Charan Lal Sahu v. Union of India A.I.R. 1990 SC 1481.
11. N. D. Jayal and Another vs Union of India and Others (2004) 9 SCC 362; also see M.C. Mehta v. Union of India (2002) 4 SCC 356; Narmada Bachao Andolan v. Union of India 2000 (10) SCC 664.
12. A.I.R. 1980 SC 1622
13. A.I.R. 1988 Raj.2
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16. <http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-role-of-green-benches-in-india/> visited on 26 march 2015
17. Almitra H. Patel v. Union of India 2000(2) SCC 166.
18. 2000(2) SCC 166
19. (2000) 8 SCC 19. See also K.C. Malhotra v. State, A.I.R. 1994 M.P. 48 where the Corporation was directed to take necessary measure to ensure public health and safety which was threatened due to caused by open drainage.
20. (2003) 12 SCC 254.
21. See Almitra H. Patel v. Union of India (2004) 12 SCC 536.
22. See Almitra H. Patel v. Union of India, (2004) 13 SCC 538.
23. (1999) 1 SCC 161. See also Sector 14 Residents' Welfare Association v. State of Delhi, (2000) 9 SCC 511; D.K. Joshi v. Chief Secy., State of U.P. (1999) 9 SCC 578; Sews Item "Hindustan Times" A.Q.F.M. Yamuna v. Central Pollution Control Board, (2000) 10 SCC 587; News Item Published in Hindustan Times Titles "And Quiet Flows The MAILY Yamuna". In re, (2004) 8 SCC 638; (2004) 9 SCC 569.
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31. Almitra Patel v. Union of India, Judgement dated 15-02-2000
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