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## SOUND MANAGEMENT OF HAZARDOUS SUBSTANCES

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### Abstract:

*Environmentally sound management of hazardous substances is a key challenge before policy makers, regulators, implementers, industry workers, and the affected people. The toxic pollution unleashed in Bhopal, Bichri, Patencheru, Kanpur, and many more such toxic hotspots in India led to the strengthening of legal regime for the "Regulation of Environmental Pollution Caused by Hazardous Substances in India".*

### KEY WORDS:

Hazardous Substances , Sound Management , Environmentally , agricultural policies.

### INTRODUCTION

Hazardous substances pervade modern industrialized societies. Indian industry generates, uses, and discards toxic substances. Increasing numbers of farmer encouraged by government agricultural policies—spray highly toxic chemical pesticides to protect their crops. Hazardous substances include flammables; explosives heavy metals such as lead, arsenic and mercury; nuclear and petroleum fuel products; dangerous micro-organisms; and scores of synthetic chemical compounds like DDT and dioxins.

#### Meaning of Hazardous Substance

Section 2(e) of the Environment (Protection) Act of 1986 (EPA) define 'hazardous substance' to mean 'any substance or preparation which, by reason of chemical or physicochemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organisms, property or the environment.

Toxic substances are extensively regulated in India. The first comprehensive rules to deal with one segment of the toxics problem, namely hazardous was; were issued by the Central Government in July, 1989. Framed under the enable provisions of the EPA, the Hazardous Wastes (Management and Handling) Rule as amended in 2002, apply to designated categories of waste that are enumerated in the Schedules to the Rules. Radioactive wastes, covered under the Atomic Energy Act of 1962, and wastes discharged from ships, covered under the Merchant Shipping Act of 1958, are explicitly excluded from the Hazardous Wastes Rules. The Rules also do not apply to waste water and exhaust gases regulated under Water Act and Air Act.

### LEGISLATIVE STEPATNATIONAL LEVEL

#### (1) The Public Liability Insurance Act, 1991

This Act was enacted to provide immediate relief to the victims of an accident involving

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## SOUND MANAGEMENT OF HAZARDOUS SUBSTANCES

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hazardous substance.

The Statement of Objects and Reasons mentions the need 'to provide for mandatory public liability insurance for installations handling hazardous substances to provide minimum relief to the victims. Such insurance apart from safeguarding the interests of the victims would also provide cover and enable the industry to discharge its liability to settle large claims arising out of major accidents. Thus the right of victim to claim additional relief under any other law is expressly reserved. PLI Act 1991, is a beneficial legislation for social objective and it should be given liberal interpretation .

### **Amendment in 1992**

To introduce provisions relating to the relief fund an amendment framed in 1991 lay down the procedure for inviting and processing compensation applications and also cap the potential liability of an insurer as arrears of land revenue or of public demand.

### **(2) The Environment (Protection) Rules, 1986**

For the purpose of protecting and improving the quality of the environment and preventing and abating environmental pollution, the standards for emission or discharge of environmental pollutants from the industries are provided under various schedule. Further the Central Board or a State Board may specify more stringent standards from those provided in [Schedule I to IV] in respect of any specific industry, operation or process depending upon the quality of the recipient system and after recording reasons therefore in writing.

### **(3) Hazardous Wastes (Management and Handling) Rules, 1989**

Hazardous Wastes (Management and Handling) Rules 1989, apply to hazardous wastes specified in the schedule which makes these rules applicable to eighteen categories of hazardous wastes.

Rule 4 of the Hazardous Wastes Rules 1989 deals with the the responsibility of the occupier and the operator of facility for handling of wastes. It provides that the occupier generating hazardous wastes in quantities equal to or exceeding the limits specified in the schedule shall take all practical steps to ensure that such wastes are properly handled and disposed of without any adverse effects which may result from such wastes and the occupier shall also be responsible for proper collection, reception, treatment, storage and disposal of these wastes either himself or through the operator of a facility.

Rule 5 makes it mandatory for the occupier to obtain authorisation of the State Pollution Control Board for handling hazardous waste. 'Authorisation' means, according to Rule 3(5):

permission for collection, transport, treatment, reception storage and disposal of hazardous wastes granted by the Competent Authority in Form 2. Rule 6 provides for the Suspension or cancellation of authorization.

### **(4) Regulation of Hazardous Substances in Environment (Protection) Act 1986:**

The term 'hazardous substance' finds its meaning in the Environment (Protection) Act 1986. Section 2(e) of the Act states that:

“hazardous substance means any 'substance or preparation which, by reason of its chemical or physicochemical properties or handling, is liable to cause harm to human beings, other living creatures, plants, micro-organism, property or the environment.”

The Central Government, in exercise of its powers under the Environment Protection Act, enacted the Hazardous Wastes (Management and Handling) Rules 1989. Moreover, the Manufacture, Storage and Import of Hazardous Chemicals Rules 1989, were also issued to regulate the toxic substances. Furthermore, Rules for the Manufacture, Use, Import, Export and Storage of Hazardous Micro-organisms/ Genetically Engineered Organisms or Cells 1989, were issued by the Central Government in exercise of the powers conferred by sections 6, 8 and 25 of the Environment (Protection) Act 1986, and with a view to protect the environment, nature and health, in connection with the application of genetechnology and microorganisms.

## **INTERNATIONAL REGULATION OF TRANSBOUNDRY TRAFFIC IN HAZARDOUS WASTES**

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### **Basel convention**

In response to the growing worldwide awareness of the problem of international traffic in hazardous wastes, the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and their Disposal (the "Basel Convention"), elaborated under the auspices of the United Nations Environment Programme (UNEP), was adopted in 1989. This treaty, which entered into force on 5 May 1992, constitutes the first attempt at comprehensive regulation of international transport and disposal of hazardous wastes on a global level. Previously, the issue was addressed by international law only in an incomplete and fragmentary fashion. Customary law relating to pollution control provides a number of basic rules.' Thus, no State may use its territory or permit it to be used-to inflict serious harm on the environment of other States; in carrying out or permitting potentially hazardous activities under their jurisdiction or control, States have the obligation to exercise due diligence.

Principle 21 of the Stockholm Declaration laid the foundation for recognising a duty on every State to refrain from activities within its territory which result in serious harm to the environment, regardless whether or not another State is directly affected. Customary law also requires the generating and recipient States to co-operate in the control of transboundary pollution; the obligation of notifying and prior consultation with States likely to be affected by a potentially harmful activity is a concrete expression of this concept. A general obligation of inter-national co-operation in environmental matters between all States, not only those directly affected by a certain activity, has been established by Principle 24 of the Stockholm Declaration. Every State has the sovereign right to control activities taking place within its territory, a State may therefore restrict or prohibit the import of hazardous wastes for the purpose of transit or disposal.

### **The main goal of the convention**

To protect, by strict control, human health and the environment against the adverse effects which may result from the generation and management of hazardous wastes and other wastes.

### **Mechanisms for Achieving this Goal**

The control of the transboundary movement of hazardous wastes and other wastes  
Environmentally sound management (ESM) of hazardous wastes and other wastes

In the field of protection of the marine environment against pollution, international law has been codified by the 1982 UNCLOS. Treaties are in place, on both global and regional levels, to restrict and control marine pollution by waste substances. The regimes regulating the protection of international watercourses and the control of transboundary air pollution also have some relevance for the issue. The quality of the different regimes varies significantly. Moreover, they do not provide a harmonious regulation of the problem of transboundary movements and disposal of hazardous wastes.

### **The regime established by the Basel Convention is based on the following principles:**

**1.Minimisation of generation and transboundary movement of hazardous wastes:** Parties are required to take the appropriate measures to ensure the reduction of the generation of hazardous wastes to a minimum. This obligation is, however, not absolute; sociological, technological and economic aspects may be taken into account. Parties must co-operate in the development and implementation of new low-waste technologies with a view to eliminating, as far as practicable, the generation of hazardous wastes. Each party must endeavour to ensure the availability of disposal facilities located within it; exports have to be minimised.

**2.Environmentally sound management of hazardous wastes:** Parties must require that hazardous wastes subject to transboundary movement are managed in an environmentally sound manner, whatever the place of their disposal. The Convention thus incorporates the principle of non-discrimination. The obligation to ensure environmentally sound management of hazardous wastes is allocated primarily to the generating State; it may not be transferred to the States of import or transit. The crucial notion of "environmentally sound management" is defined only in very general terms (Article 2, paragraphs 2 and 8). For the purposes of the Basel Convention, it means "taking all practicable steps to ensure that hazardous wastes or other wastes are managed in a manner which will protect human health and the environment against the adverse effects which may result from such wastes". More specific definition is delegated to the

## SOUND MANAGEMENT OF HAZARDOUS SUBSTANCES

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conference of the parties at its first meeting (Article 4, paragraphs 2(e) and 8). A number of provisions, although not elaborating the definition, give some guidance for the management of hazardous wastes in accordance with the Convention's aims.

**3. Nature of the general obligations:** The provisions of Article 4 have the character of a general framework. While providing guidance for the conduct of States in the context of hazardous waste management, they do not contain absolute obligations. States are required to take "appropriate measures" to achieve these aims; the exact nature and extent of such steps are left open. In addition to the definition of environmentally sound management, the provisions also leave open a number of other important questions, such as the extent of the generating State's duty to ascertain the adequacy of disposal facilities in the prospective State of import, and the allocation of the burden of proof for the permissibility of export. Nevertheless, they do set important global standards for the protection of the environment against adverse effects of hazardous wastes.

## RESTRICTIONS ON TRANSBOUNDARY MOVEMENTS OF HAZARDOUS WASTES

1. Waste traffic between parties: The sovereign right of every State to ban the import of hazardous wastes for transit or disposal is expressly referred to in the preamble. Any party exercising this right must inform the other parties, through the secretariat of the Convention, of its decision (Article 4, paragraph 1(a); Article 13, paragraph 2(c)). No State party may permit hazardous wastes to be shipped to a party which has prohibited their import (Article 4, paragraph 1(b)).

2. Waste traffic between parties and non-parties: After a lengthy and arduous debate, the negotiators agreed on the adoption of the concept of limited ban, which does not allow parties to the Basel Convention to trade in hazardous wastes with non-parties. Article 4, paragraph 5 of the Convention stipulates that parties may not permit the export of hazardous wastes to a State which is not a party to the Convention, or the import of hazardous wastes from a non-party State.

3. Absolute prohibition of exports to Antarctica: The Basel Convention provides for a prohibition of hazardous wastes exports to the area south of 60° South latitude, whether or not such wastes are subject to transboundary movement as defined by the Convention (Article 4, paragraph 6).

## LIABILITY AND COMPENSATION:

Article 12 of the Basel Convention obliges parties to co-operate with a view to adopting a protocol setting out rules and procedures in the field of liability and compensation. As requested in Resolution 3 adopted by the Basel Conference, a working group of experts on liability, at two sessions held subsequent to the adoption of the Basel Convention, has elaborated elements for inclusion in a liability protocol, which will be submitted to the conference of the parties at its first meeting. In the course of its work, the group analysed numerous existing international liability regimes in order to determine existing or emerging practice in the field. Although the conclusions of the experts are quite general, they outline the proposed structure of the liability protocol. According to the views of the experts, it should apply to a wide range of damage, including the costs of restoration of the environment; it is to be based primarily on a civil liability regime, providing for either absolute or strict liability, coupled with a minimum threshold for compulsory insurance or other financial guarantee. Matters of substance and procedure should be governed by national law. As a subsidiary mechanism, an international liability regime should be established to ensure the availability of resources to the extent that compensation under the civil liability regime is insufficient or unavailable. This could take the form of either State liability or an international fund. The experts working group has mandated the interim secretariat of the Basel Convention to prepare, for submission to the conference of the parties, a study on the management, operation and financing of such a fund.

### The Basel Protocol on Liability

Responding to the concerns of developing countries regarding limited financial and technical capacity to respond to and address cases of illegal dumping or accidental spills of hazardous wastes

### Article 12 of the Basel Convention

The Parties shall co-operate with a view to adopting, as soon as practicable, a protocol setting out appropriate rules and procedures in the field of liability and compensation for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes

## SOUND MANAGEMENT OF HAZARDOUS SUBSTANCES

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### Main Goal of the Protocol

To provide for a comprehensive regime for liability and for adequate and prompt compensation for damage resulting from the transboundary movement of hazardous wastes and other wastes and their disposal including illegal traffic in those wastes.

### Mechanism for Achieving this Goal

The provision of third party liability and environmental liability in order to ensure that adequate and prompt compensation is available for damage resulting from the transboundary movement and disposal of hazardous wastes and other wastes

### CONCLUSION

After examining all executive, legislative, and Judicial prevented and regulatory means regarding hazardous substance we can clearly see the inadequacy of their proper effectiveness.

The confusion regarding concept of limited ban under Basel Convention still to be clarified. The Public Liability Insurance Act 1991, has its own shortcomings, as:

it does not cover nuclear war like situation,  
workmen is not covered under the Act,  
only over dose exposure to hazardous substances attracts condemnation. The routine exposure and its effects on the health and property are ignored.  
Exemption of “no fault” liability to Government authorities may lead to dilution of this concept.  
Discourages representative suit, class action, social action litigation.

Hence we can say that despite of these shortcomings the Act has played an important role in field of protection from hazardous substance. Judiciary has also evolved doctrines like “deep- pocket theory to the effective conceptualization on the issue of quantum of compensation, the Supreme Court has followed innovative approach and evolved new theory which may be termed as 'deep pocket theory'. In cases of accidents resulting from handling of hazardous substances, the Supreme Court held that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have deterrent effect. The larger and more prosperous the enterprise, greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on of the hazardous or inherently dangerous activity by the enterprise. The Supreme Court vehemently held that the quantum of damages to be paid in cases of hazardous activities would be proportionate to the financial ability of the polluter to pay.

Without any doubt the enactment of National Green Tribunal Act 2010 is an effective step towards environment protection. Still much has to be done to preserve our environment at national and international level.



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