

CHAPTER 4

Existence of Waste legislation

Objective 3: Whether legislations specifically dealing with disposal of each kind of waste existed and whether penalty for violation had been incorporated in the legislations already enacted.

Legislation is a means to secure compliance to government's policies and lays down the steps to be taken to implement policy. To be effective, legislation should also contain suitable penalty for violation, which can serve as deterrent to non-compliance. According to UNEP, *"apart from the adoption of a detailed and well-structured waste policy, the waste industry requires a legal framework that enables it to reach set objectives and targets. A well-elaborated legal framework will assist in the effective implementation of those targets. The legal framework must also be provided with an effective enforcement system."* In addition, according to Article 8.20 and 8.21(a) of Agenda 21, *"for developing effective national programmes for reviewing and enforcing compliance with national, state, provincial and local laws on environment and development, each country should have enforceable, effective laws, regulations and standards that are based on sound economic, social and environmental principles and appropriate risk assessment, incorporating sanctions designed to punish violations, obtain redress and deter future violations"*. Audit findings related to existence of legislations for all kinds of waste and penalty specified for violation of these legislations are discussed below:

4.1 Legislation for all kinds of waste

4.1.1 At the Central Level

The types of waste generally recognised by most countries are: household/municipal waste, bio-medical waste, e-waste, waste electronic & electrical equipment, waste from construction and demolition activities, waste from end of life cars, mining waste, waste from power plants, hazardous waste, waste from agriculture/forestry etc.,

MoEF had not enacted laws/rules that would govern the management of all kinds of waste in India. MoEF had enacted the following rules:

- Management and Handling of Municipal Solid Waste (2000),
- Management and Handling of Bio-Medical Waste (1998, amendment 2003),
- Management and Handling of Hazardous Waste (1989, amended in 2000 and 2003),
- Recycled Plastics Manufacture and Usage Rules (1999),
- Notifications for the disposal of fly ash, and
- Management and Handling of batteries.

In addition, it has circulated draft guidelines for the management of e-waste (2007). However, no rules/ guidelines had been enacted in India for the disposal of the following kinds of waste:

1. construction and demolition activities
2. end of life vehicles

3. packaging
4. waste tyres
5. agriculture/ forestry
6. waste electrical and electronic items.

Though MoEF claimed that rules had been enacted for the management of mining wastes, no supporting documents were furnished.

In the absence of legislation/rules governing the disposal of all kinds of waste, the possibility of waste disposal in a manner that is hazardous to the health of citizens and the environment cannot be ruled out.

MoEF stated in August 2008 that Municipal Solid Waste (Management & Handling) Rules, 2000 were already in place and these were in the process of revision for further improvement. MoEF also stated that the Plastics Manufacture, Sale & Usage Rules, 1999 as amended in 2003 mainly emphasises on sale and manufacture of plastics products and no specific clause exists on management and handling of plastics waste.

MoEF, however did not dispute the fact that laws/rules/guidelines for the disposal of waste from construction & demolition, end of life vehicles, packaging, waste tyres, waste electrical and electronic items and waste from agriculture/forestry have not been framed.

International good practices:

- *Finland's* waste legislation covers all types of waste like end of life vehicles, waste electrical and electronic equipment, construction waste, packaging and packing waste, etc., except certain special wastes such as radioactive wastes, which are controlled by separate laws.
- In *Ireland, Portugal and United Kingdom*, waste legislations exist for bio-medical waste, packaging, waste electrical and electronic equipment, end of life vehicles/tyres, batteries etc.,

Recommendation

- MoEF should consider framing laws/rules governing the safe disposal of all major kinds of waste like construction & demolition waste, end of life vehicles, packaging waste, mining waste, agricultural waste and e-waste being generated in the country.

4.2 Polluter pays principle

According to Article 21.40 of Agenda 21, governments should “*apply the polluter pays principle, where appropriate, by setting waste management charges at rates that reflect the costs of providing the service and ensure that those who generate the wastes pay the full cost of disposal in an environmentally safe way*”.

4.2.1 At the central level

No information was made available by MoEF to show whether the rules governing the management and handling of municipal solid waste, bio-medical waste, plastic waste, e-waste etc., incorporated penalty for violation of these rules. MoEF stated that the rules for

the management and handling of hazardous waste did incorporate penalty and CPCB claimed that all the rules governing waste in India incorporated a penalty for violation. However, audit scrutiny revealed the following:

(a) Municipal Solid Waste (Management and Handling) Rules, 2000 does not contain any provision for levying penalty on the generator of wastes or the operator of the facility for the collection, segregation, transportation, processing and disposal of municipal solid wastes, if the wastes are not disposed in the prescribed manner. Similarly, the Rules prescribe no penalty if the incinerator or landfills disposing municipal solid waste do not meet operating standards. Thus, there is no disincentive provided in the rules for the unsafe disposal of waste.

(b) Bio-medical Waste (Management and Handling) Rules, 1998 and its amendment in 2003 do not specify any penalty for hospitals and operators of waste disposal facilities if the autoclaves, incinerators, microwaves etc., do not meet the standards prescribed in the rules.

(c) Hazardous Wastes (Management and Handling) Rules, 1989 and its amendments in 2000 and 2003 do not contain any provision for penalty to be imposed for the violation of these rules, nor is the waste generator/ operator of the waste treatment facility to be held responsible for cleaning up the damage caused to the environment as a result of improper disposal of hazardous wastes. This needs to be viewed in light of the fact that improper disposal of hazardous waste can cause significant damage to the environment as well as public health.

The Environment (Protection) Act (EPA) introduced in 1986, sought to take steps for the protection of environment and prevention of hazards to human beings, other living creatures, plants and property. Section 15 of the act laid down that *“whoever fails to comply with or contravenes any of the provisions of this Act, or the rules made or orders or directions issued there under, shall, in respect of each such failure or contravention, be punishable with imprisonment for a term which may extend to five years or with fine which may extend to one lakh rupees, or with both, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for every day during which such failure or contravention continues after the conviction for the first such failure or contravention.”* Thus, EPA specified penalty for violations of act/rules made there under. The laws governing management of wastes in India - Municipal Solid Wastes (Management and Handling) Rules, 2000, Bio-medical Waste (Management and Handling) Rules, 1998 and its amendment in 2003 and Hazardous Wastes (Management and Handling) Rules, 1989 were all made in exercise of the powers conferred by section 3, 6 and 25 of the EPA, 1986. Thus, even though no specific provision was incorporated in the rules, MoEF/CPCB could always take recourse to EPA for punishing the violators of waste management rules. However, MoEF was silent when asked whether there had been cases of imposition of penalty for illegal dumping of wastes and if the polluter was held responsible for cleaning up the damage caused to the environment as a result of improper disposal of wastes.

4.2.2 At the level of the states/PCBs

Action taken by the PCBs/state governments for illegal dumping of waste and the polluter being held responsible for cleaning up the damage caused to the environment as a result of improper disposal of waste in the 24 sampled states was as follows:

- Only in 25 *per cent* of the states action had been taken by PCB/government for illegal dumping of waste. In the sample, only one case of imposition of penalty was seen in the last 5 years in *West Bengal*. In *Kerala*, penalty was levied in two sampled municipalities. In *Karnataka*, one case had been filed for unauthorised dumping of municipal solid waste. In *Himachal Pradesh*, notices were issued to municipalities for illegal dumping of waste and in *Rajasthan*, cases were filed in the courts for illegal collection of bio-medical waste by kabadis. In *Madhya Pradesh*, PCB filed court cases against 17 health care facilities for non-compliance of bio-medical waste rules.
- No cases of levy of penalty or the polluter being held responsible for cleaning up the damage caused to the environment as a result of improper disposal of wastes were found in 46 *per cent* of the sampled states. In 29 *per cent* of the sampled states, it could not be verified whether any penalty was levied or action taken by the PCBs for illegal dumping of waste, despite they being empowered to do so under EPA. List of states is attached in **Annexure 2**.

Rules for management of waste did not pin responsibility for degradation of the environment on the polluter and did not make him pay for restoring the environment. Even though provision existed in EPA for taking action against polluters, penalty was seldom imposed for violation of these rules, as could be seen from the situation prevailing in the states. Hence, open dumping of wastes as well their improper disposal had no deterrent effect in the rules.

MoEF stated in August 2008 that imposition of penalties were as per the provisions made under the Environment (Protection) Act, 1986 since the Municipal Solid Wastes (Management & Handling) Rules, 2000 were framed under this Act. MoEF also stated that as per Rule 16 of the Hazardous Waste Rules, 1989 as amended, liability lay with the occupier or operator of a facility or transporter of hazardous wastes for improper handling and disposal of hazardous wastes, including restoration of damage caused to the environment. MoEF also stated that penalties could also be imposed as per the provisions of Environment Protection Act since hazardous waste rules were made under this Act. In addition, MoEF stated that in the existing rules, provision for Polluter Pay Principle (PPP) was not available and that CPCB was suggesting inclusion of the Extended Producer Responsibility (EPR) in the amendments to the rules. According to MoEF, National Environment Policy–2006 also recommended that the polluter should, in principle, bear the cost of pollution with due regard to the public interest.

International good practices:

- **Sweden** charges a “Nitrogen Oxide Charge on Energy Production” on large combustion plants in which heating plants, power plants, and combustion plants run by

pulp and paper industry, chemical industry and incineration plants which exceed capacity of 10 MW or annual energy production exceeding 50 GWh pay a charge of SEK 40 per kilogram of nitrogen dioxide emitted.

- **Finland, Sweden, Denmark** levy a carbon dioxide tax for emissions of carbon dioxide above a limit fixed by the government.
- **United Kingdom** levies a fuel duty escalator based on the load carried by trucks, as heavier trucks use more fuel and contribute more to emissions.

Recommendation

- *Considering the fact that the provisions of Environment Protection Act are seldom used, both at the central and the state level for punishing the polluter, there is a need to incorporate the Polluter Pays Principle (PPP) in the waste rules/legislations itself. This would act as a deterrent against open dumping of waste.*

Conclusion

Laws/rules were not framed for all kinds of waste, leaving the safe disposal of many kinds of waste unmonitored. In addition, the polluter was not effectively held responsible for unsafe disposal, thus creating no deterrence for non-implementation of the rules. Non-levy of penalty may result in no deterrence for illegal dumping of waste; which would have a harmful impact on health and environment.