

HIGH COURT OF SINDH MOVED

'612' Government and private run hospitals in Karachi Metropolis generates '30-35' Tons 'Hospital Waste' per day.

That, being an Environmentalist as well as practicing Advocate of the Hon'ble High Court, committed to protect Environment and believes that the apex Courts are the most effective forum for the protection of Environment, and conservation of nature and natural resources.

Therefore moved to the Hon'ble High Court of Sindh at Karachi, and filed Pro Bono Petition under its Extraordinary Constitutional Jurisdiction vested under 'Article-199' of the 'Constitution of Pakistan, 1973' in good faith for Environmental Justice with an intention to restrain the Respondents and irresponsible persons for deterioration of Environment due to Air Pollution by Hospital Waste incineration and burning of Solid Waste, which makes the lives of citizens miserable, specially the citizens of Karachi Metropolis are appointed to death because of its highly toxic effects. In these circumstances it will be just and proper as prayed and the same may graciously be allowed accordingly.

BRIEF FACTS

- 1.. Being a one of the resident of Karachi Metropolis is deeply concerned for the hazardous effects of particularly '**Hospital Waste its incineration, and the burning of Solid Waste**' at central places of the city in general; on the millions of citizens, who inhale poison inter alia other hazardous pollutants instead of fresh air; the basic requirement of healthy life.
- 2.. That, there are in the city of Karachi Metropolis about '612' government and private run hospitals under the control and command of the 'Federal and Provincial Health Departments', which generates '30-35' Tons 'Hospital Waste'

per day. And the 'City District Government of Karachi' is responsible to disposed of all the 'Hospital Waste' under the 'Solid Waste Management Programme'.

- 3.. That, according to the information gathered from the department responsible; SWM-wing, W & S, of the 'City District Government of Karachi'; under the control and command of the Government of Sindh' & Sindh Local Government Department', they collect '3-4' Tones Hospital Waste daily by open wheel barrows and carried from '135-140' hospitals to the Incineration Plants at S. I. T. E., against the charges categorized A-E of Rs.110-3500 monthly from each hospital. In that way the health care providers work to "clean up their own house", and the custodian of 'Civil Rights' of the citizens; the 'City District Government of Karachi', increasing the pollution level of the city of Karachi Metropolis and contribute the diseases against some pecuniary benefits.
- 4.. That, two Incineration Plants were imported in the year 1995, from Consumate-USA, which costs '30' million rupees, But due to irresponsible attitude of the 'Government of Sindh', it firstly installed in the year 1998, at SITE-Sindh Industrial Trading Estate, Karachi, with the burning capacity of '1000 KG' per hour, and those were being manually operated without 'Convear' by M/s. Abasen Company (Private) Limited. It is very amazing to note that neighboring India has started to shut down the Incinerators a year back of our installation in 1997 under 'CDM-Clean Development Mechanism' in compliance of the "**Quto Protocol**", 1997.
- 5.. That, the 'Federal and Provincial Health Departments' & 'Government of Sindh', to be considered more responsible towards the issue of Public Health and Environment. But sorry to say they're really unaware that, the Incineration has been understood as an ultimate way of disposing off Hospital Waste, but know a days latest research has proved that Incineration is it-self a highly hazardous way because of generation of 'Carcinogenic Dioxin Gases'; Dioxins are generated in the result of burning of Polyvinyl chloride (PVC), plastic and other chlorinated compounds.
6. That, the 'City District Government of Karachi', and others are regularly using Incinerators such as; SMW-Incineration Plant, JPMC-Jinnah Postgraduate Medical Centre-Incineration Plant, Civil Hospital-Incineration Plant, Aga Khan University Hospital-Incineration Plant, Liaquat National Hospital-Incineration Plant, Ziauddin Hospital-Incineration Plant, The Kidney Centre-Incineration Plant, and other Pharmaceuticals companies Incineration Plants. The Petitioner wrote a letter to the 'City District Government of Karachi', dated 02.12.2003, which eliminate the dangerous practice of Incineration of Hospital Waste, but the Respondent never take a single step even never bother to replied to the Petitioner.
- 7.. That, the 'Federal and Provincial Health Departments' & 'Government of Sindh' are more responsible towards the Hospital Managements, because they

failed to minimize the amount and toxicity of all waste generated by the Health care sector. And it is normally observed that they thrown away all the 'Hospital Waste' without taking any precautions out side their wards/buildings even they never bother to cover the waste properly or segregate, and do not gear a clear understanding of the principles of disease transmission or to the basic steps they can take to protect hospital visitors and to the people of vicinity from 'Hospital Waste Pollutants', which categorically contains; Infectious waste, Pathological waste, Sharp, Pharmaceutical waste, Genotoxic waste, Chemical waste, Radioactive waste, Food waste, Paper & Card board waste, Packaging, Aerosols and Polythin bags/shopping bags.

As a result misuse of discarded syringes as well as repackaging and re-sale is observed as a common practice countrywide and its also consequential source for spread of diseases such as Hepatitis, HIV-aids and other infectious diseases. According to "**WHO-World Health Organization**", every year a large number of population being infected by the caring of infectious diseases like Hepatitis-B in 82,000,00 persons, Hepatitis-C in 23,000,00 and HIV-aids in 1,000,00. The most direct mode is Hepatitis & HIV transmission through needles shared by injecting drug users.

- 8.. That, the research study signifies by "**The Network, 2003**" Injection Practices in Pakistan is yearly 8.5% per person. And 'Injection Practices in the developing world' by **SIGN-Safe Injection Global Network**, under sub-ordination of "**WHO-World Health Organization**", in Pakistan 95% injections at the initial diagnostic stages are unnecessary and 80% of them caused to spread Hepatitis-B & C and more over HIV-aids.
- 9.. That, it is a great responsibility of the Respondents/Health care providers in order to fulfill/maintain the Medical Ethic to "**first do no harm**", the Health care industry has moral binding to manage waste in ways, that protect the Public Health and pristine Environment of mother Earth.
10. That, it is also observed that even the 'Environment Protection Agency to the Government of Sindh', being statutory authority under control and command of 'Pakistan Environmental Protection Agency' & the 'Government of Sindh', pays less attention to perform its statutory obligations for the protection of Environment, vested under Section 6, of the "Pakistan Environmental Protection Act, 1997", read-with Notification SO(EPA)/SWE & WDD/15/98/502 therefore the degradation of Environment in different forms is very common within their jurisdiction.
11. That, it is a matter of public interest and violation of 'Environmental Laws' as well as 'Fundamental Rights' guaranteed by the Constitution of Pakistan. As the Environmental Tribunal is ineffective and not properly working therefore the Petitioners has no other efficacious remedy then to invoke the Constitutional jurisdiction of this Hon'ble Court for **Environmental Justice** on

the principle of natural justice 'ubi jus ibi remedium' inter alia for the following grounds among others:

GROUND S

A. VIOLATION OF CONSTITUTION "RIGHT TO LIFE" :

i.. That, the health services are basic requirements for human being, so every health care service must be start from the mile stone of "**Health Care Without Harm**", but unfortunately its common sight that our **Masih** instead of saving lives on their facilities for a healthy Environment they're seems to be creating hazards through 'Hospital Waste' and its incineration, directly threatening the human lives and natural system, as the human being is a part of nature and life depends on the uninterrupted functioning of natural system which ensure healthy life. Therefore the 'Hospital Waste', and its incineration and burning of Solid Waste adversely affects human health and it is detrimental to life which is violative to the 'Article-9' read-with 'Article-4 (a)' read-with 'Article-5 (2)' of the "**Constitution of Pakistan, 1973**"

ii. That, according to the United Nations Programme on HIV/AIDS (UNAIDS) ... *"The most direct mode is HIV transmission through needles shared by injecting drug users, the sharing or use of contaminated needles carries a very high risk of HIV infection and it spread like wildfire. More and more countries are reporting cases of injecting drug use from 80 countries in 1992 to 136 in 2002 of these 136 countries, 114 of them have reported HIV cases as a result of injecting drug use. Asia is undoubtedly the region with the largest number of HIV/AIDS cases associated with injecting drug use by worst Hospital Waste Management System."*

This stigma disorders the behavior of the society that is common sight to find at the central locations and suburban areas of each city in general and particularly in Karachi Metropolis where people-Heroin addicts using used disposable syringes collected from the 'Hospital Waste' for injecting drugs. This illegal activity on the part of Health care providers is violative to the 'Right to Life' being considered as a 'Fundamental Right' guaranteed by the "**Constitution of Pakistan, 1973**"

iii. That, the Hospital Waste incineration; improper use of technology can actually produce a result in terms of Environmental or public health-harm, that is worse than the condition was employed to correct. This is a basic approach in medicine. Multiple pathways are proposed for treatment of disease-treat the whole person, not just the diseased part. When health care dose harm; it raised many questions because incineration is often erroneously listed as disposable technology.

The federal rules of USA have resulted in the closing of medical Waste incinerators. In the Philippines it leads to a total ban on the use of the incineration for any waste treatment. In Brazil, Canada, Chili, Columbia, England, India, Japan, Korea, Panama, Saudi Arabia, and Taiwan, it has meant of steady decline a number of incinerations in use and a significant rise in the use of non-burn technologies, due to severally effects of Dioxin on human health; birth defects, reduced fertility, disorder metabolic function of the body, immune system disorders and many forms of Cancer or linked to Dioxin exposure. In 1994 the '**U. S. Environmental Protection Agency**' drafted Dioxin Re-assessment identified MWI as the single largest source of "2,3,7,8-tetrachlorodibenzo-p-dioxin", or TCDD and dioxin-like-substances. It further eliminate that the Dioxin may cause a life time Cancer risk that is "1000" times higher than the 'acceptable risk level'

(The complete study report for "Dioxin, PVC, and Health Care Institutions" is annexed hereto for ready reference and marked as **Annexure A**)

- iv. The world health care scenario has been entirely changed but we're in Pakistan not still using the same incineration technology for Hospital Waste disposal, but it's very amazing that we had started to install the Incineration Plants on the time when it went to shut down around the world even in our neighboring India it was completely closed. The example of **Murphy's Law** is correctly applied here by the irresponsible attitude and entirely mismanagement of the Respondent Nos. 1 & 3 which self creates a continues threat to the Environmental health of the citizens of Karachi Metropolis against spending of a huge public amount of '30 Million Rupees', which is contrivance to the 'Right to Life' provided under the "**Constitution of Pakistan, 1973**"
- v. That, the primary source of Dioxins from the health care sector has historically been waste incineration. Chlorine containing products burned in incinerators, including medical devices and products, provide the Chlorine necessary for Dioxin formation. Dioxin compounds can also be formed during the manufacture of Chlorinated materials like PVC, Chlorinated solvents and pesticides. Dioxin compounds can also be formed during the bleaching of paper with Chlorine and in other industrial and combustion processes that the presence of Chlorine. The Hospital Waste its incineration and burning of Solid Waste are nevertheless leading source of hazardous Air Pollutants such as Carbon Dioxide, Particulates, Sulphur, Nitrous Oxides, Hydrochloric Acid, Catalysts and especially Dioxin and Mercury, in this respect the '**WHO-World Health Organization**' guide on safe management of 'Health Care Wastes' provide specification for non-burn technologies, because once Dioxin is emitted into the air from incinerators and other sources, rain, snow and dust can carry it to the surface of the earth and where it can enter the food chain. The estimated over 90% of our exposure is through food, with major sources including meat, dairy products, fish and breast milk. Dermal, oral and inhalation routes of exposures can also be important for people living near Dioxin sources.

(A list of a few countries which were identified non-burn and alternative treatment technologies to Hospital Waste Incineration is annexed hereto for ready reference and marked as **Annexure B & C**)

- vi. That, the incineration of the 'Hospital Waste' at health care facilities is being entirely mismanaged by the Respondents not only affected the physical health but it also disorder the social well being of the Citizens. The '**WHO-World Health Organization**' broadly defined the health; *health includes physical, mental and social well being and not merely the absence of disease or infirmity*; which is clear violation of such provisions of the "**Constitution of Pakistan, 1973**", as under:

Article-9 ... No person shall be deprived of Life or liberty save, in accordance with law.

Article-4(a) ... INALIENABLE RIGHT; No action detrimental to the life, liberty, body, reputation or property of any person shall be taken except in accordance with Law;

Article-5 (2) ... Obedience to the Constitution and law is the [inviolable] obligation of every citizen wherever he may be and of every other person for time being within Pakistan.

- vii. That, this ab initio act of the Respondents which cause the serious threat for continues risk to the Environmental Health at large, which is a clear violation of the law of land, because the such provisions protect the 'Right to Life' as Fundamental Right. The apex Courts observed ... *"It encompasses within its ambit, the protection and preservation of Environment, ecological balance free from pollution of air and water, and sanitation without which Life can hardly be enjoyed. And act of omission contrary thereto will be violative to the said Right to Life."* And for the reason apex Courts of the deferent countries entertain 'Environmental Litigations' on priority basis.

- viii. That, in a welfare state, it is the obligation of the state to ensure the creation and the sustaining of conditions congenial to good health, maintenance and improvement of public health have a rank high as these are indispensable to the very physical existence of the community and on the betterment of there depends the building of the society which the Constitution makes envisaged.

B. VIOLATION OF ENVIRONMENTAL LAWS :

- i.. That, the fresh and clean air naturally considered as to maintain the ecosystem as basic source around the human being, and human life depends on the Environment. The Hospital Waste Incineration and burning of Solid Waste has been severely affected the human health and the pristine Environment of the

mother Earth which upsets the natural ecosystem and adversely effects the Environment, respectively defined under sub-sections (xix) (xxi), (vii), (i), (x) & (xxxiii) of Section-2 of the “**Pakistan Environmental Protection Act,1997**”.

- ii. That, the level of smoke emission/air pollutant discharge from the Hospital waste Incineration Plants is in excess of the ‘**NEQS-National Environmental Quality Standards**’ established under sub-clause (i) of clause (g) of sub-section (i) of Section-6 of the “**Pakistan Environmental Protection Act,1997**”.
- iii. That, by the act of the Respondents the Government Authorities it is proved that such contravention has been committed with the consent or connivance of, or is attributed to negligence on their part being installed Hospital waste Incineration Plants without completing the mandatory provision of ‘**Initial Environmental Examination**’ and ‘**Environmental Impact Assessment**’ under Section-12 of the “**Pakistan Environmental Protection Act, 1997**”,
- iv. That, due to grass negligence of the Respondents the actual state of worst Hospital Waste Management seems to be out side their facilities, where the people used to segregate the ‘Hospital Waste’ and collect used disposable syringes & drip sets, for re-fill & re-sale purposes, and no one dare to interfere or intrepid this common practice. This stigma disorders the behavior of the society, which is consequential source for the spread of infectious diseases this open thereat to the public health at large is violative to the Clause-76 of Sixth Schedule under Section-195 of the “**Sindh Local Government Ordinance, 2001**”
- v.. That, the primary source of Dioxin from the health care sector has historically been waste incineration.. Chlorine–containing products burned in incinerators, including medical devices and products, provided the Chlorine necessary for Dioxin formation. The Hospital Waste pollutants are the consequential source for ‘Global Warming’ and ‘Climate Change’ which adversely affects the Environmental Health, bio-diversity and ecological balance of mother Earth.
- vi. That, it can not be denied that due to our incorrect attitude towards nature we’re already suffered a great loss and at this stage, such attitude is not only needed to be condemn but to take immediate steps for the enforcement of Environmental Laws. Therefore it’s a proper time to maintain the ‘**Environmental Foot Prints**’ and to fallow the worldwide judicially accepted ‘**Precautionary Principle**’ which means to ensure that unless an activity is proved to be presumed to the Environmentally harmful for the present and future generations of human being. The “**World Charter of Nature**” of the ‘Rio Declaration’, 1992, Schedule to the “Pakistan Environmental Protection Act, 1997”, under Section 31, drafted Environment concern at the priority as under:

Principle 15 ... In order to protect the Environment, the Precautionary approach shall be widely applied by States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent Environment degradation.

P R A Y E R

In view of the above submission in the public interest at large, most respectfully prayed before the Hon'ble Court for Environmental Justice as under:

- a. to issue notices to the Respondents.
- b. to ensure that the writ of law should be upheld as to restrain the Respondents from this Environmental as well as Constitutional violations under the principle of '**Precautionary Principle**'.
- c. to issue directives to the Respondents for immediate closer/shut down of the Incineration Plants.
- d. to issue directives to the Respondents for immediate adoptions of Environment friendly non-burn technologies.
- e. to issue directives to the Respondents for immediate lineup of the Hospital Waste Management at their facilities.
- f. to issue directives to the Respondents for compulsorily adoption of segregation mothered before disposing off the Hospital Waste.
- g. to issue directives to the Respondents to initiate an alternative of PVC-polyvinyl chloride medical care facilities.
- h. to restrain the Respondents, pharmaceutical companies, manufacturers, importers, sale promoters, distributors, stockiest and other publicly responsible persons from the usage, manufacturing, imports, sale and sale promotion, distribution and stock, of PVC-polyvinylchloride and Chlorinated medical care facilities.
- i. to issue directives to the Respondents to formulate a public policy for emphasizing to initiate Recycling Paper production and for complete banned on the manufacturing and import of Chlorinated Paper.
- j. to pass a prohibitory public order with imposition of an indiscriminate fine at least Rs.10,000 per person or as this Hon'ble Court consider according to the sensitiveness of the matter for the manufacturing, sale, purchase and publicly usage of Polythen begs/plastic shopping begs as well and to direct the Respondents for its immediate compliance.
- k. to issue directives to the Respondents to initiate a replacement policy for an alternative of the plastic disposable syringes by newly innovated 0% risk level "Auto disable syringes = AD-syringes".

- l. to restrain the Respondents and publicly irresponsible persons for the burning of all kinds of wastes/garbage whether through 'Incineration Plants' or manually and to pass a comprehensive prohibitory order for the same.
- m. to pass a prohibitory public order with imposition of an indiscriminate fine at least Rs.10,000 per person for the burning of all kinds of wastes/garbage, and to direct the Respondents for its immediate compliance.
- n. to issue directives to the Respondents to take immediate steps ahead for power generation technology from garbage/municipal waste.
- o. to issue directives to the Respondents to initiate public sector for 'Recycling Industry' from recyclable wastes and by encouraging introducing it as a tax free industry.
- p. to issue directives to the Respondents to initiate a long term massive public campaign for minimizing the volume of waste at source.
- q. Any other just or equitable relief(s) held appropriate as being fit and proper by this Hon'ble Court.

This Petition drafted and signed on 4th day of February 2008, at Karachi by me that is under Constitution Petition No. D-363 of 2008, styled as, **Qazi Ali Athar**, Environmental Law Attorney, Versus, Ministry of Health to the Government of Pakistan & others. (Pakistan Environment Protection Agency, Government of Sindh, Provincial Health Department, Sindh Local Government Department, City District Government of Karachi, Environmental Protection Agency Sindh, (six cantonments of the city) Karachi Cantonment Board, Cantonment Board Clifton, Cantonment Board Faisal, Cantonment Board Malir, Cantonment Board Kemari & Cantonment Board Korangi).