

HIGH COURT OF SINDH MOVED

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

REVIEW PETITION

UNDER SECTION 114 OF THE CIVIL PROCEDURE CODE, 1908

AGAINST ORDER DATED 22.12.2010 PASSED BY THIS HON'BLE COURT

IN CONSTITUTION PETITION No. D-363 OF 2008

Being aggrieved and dissatisfied with the Order dated 22.12.2010 passed by this Hon'ble Court, Principal Seat at Karachi, in 'C. P. No. D-363 of 2008', hence the Petitioner begs to prefer this Review Petition, on inter alia, the following POINTS OF LAW / GROUNDS:

**POINTS OF LAW & GROUNDS :**

1. Whether the Respondents or any of state functionary or citizens is allowed by law to degrade particularly the pristine Environment of the city of Karachi and generally the mother Earth by Hospital waste, its incineration and burning of solid waste at the central location of the city?
2. Whether the impugned action of Hospital Waste Incineration on the part of Respondents is violative to the 'Article 9' and 'Article 4 (a)' of the "Constitution of Pakistan, 1973" and 'Section 9' and 'Section 10' of the "Hospital Waste Management Rules, 2005"?
3. Whether the Hospital Waste Incineration is an ultimate way of disposing off Hospital Waste and whether the 'Carcinogenic Dioxin Gases'; Carbon Dioxide, Particulates, Sulphur, Nitrous Oxides, Hydrochloric Acid, Catalysts and especially Dioxin and Mercury, generated in the result of burning of Polyvinyl chloride (PVC), plastic and other chlorinated compounds are fit for the environmental health of the citizens?
4. Whether the Respondents are allowed to install more Incineration Plants for the spreading of diseases/poisonous gases and whether the Respondents are being encouraged to loss to the Public Exchequer and the state economy in the name of public health?
5. Whether the requirement of IEE-Initial Environmental Examination and EIA-Environmental Impact Assessment is mandatory for Hospital

Waste Incineration Plants under the law and whether the Respondents are bound under 'Article 5 (2)' of the Constitution of Pakistan, 1973 to work within the framework of Constitution and Law?

6. Whether the learned bench of this Hon'ble Court has been expressed his deep concern to the matter as ... It seems that the regulatory agencies are working in their own respective sphere though it requires more scientific coordinated efforts to produce better result under by pooling resources and technical know-how of each of the regulatory authorizes. It is also noted with deep concern that Environmental Protection Act a beneficial legislation has been rendered ineffective on account of stringent requirement under Section 21 thereof to involve the jurisdiction of the Tribunal, which is above out from the fact hardly any case goes to the Environmental Tribunal ... ?
7. Whether on the directives of learned bench of this Hon'ble Court dated 02.02.2010 EPA constituted an experts committee in the lines as ... It is expected that the committee shall formulate uniform guideline/policy that may be extended and workable for all private and public sector/hospital/medical services providers ... ?
8. Whether that committee of experts formulated uniform guidelines/policy and submitted before the learned bench of this Hon'ble Court?
9. Whether the Petition is merely academic exercise and no useful purpose could be served?
10. That, while passing the order under Review this apex Court over looked the prayer clauses of the Petition and disposed of the Petition under Review without providing any solution into the very serious matter of Hospital Waste especially for the burning technology of Hospital Waste Incineration which is went to shout down all over the world due to its hazardous effects on environmental health.
11. Whether this Constitutional Court has jurisdiction for the issuance of a writ to imposed completely ban on the burning technology for Hospital Waste as well as the burning of Solid Waste at the central locations of the city by saving the Fundamental Rights of the public at large under 'Article 9', and 'Article 14' read with 'Article 4 (a)' of the "Constitution of Pakistan, 1973" ?
12. That, in the circumstances of the case, this apex Court ought to have decided the Review of the Petitioner-In-Person on the basis of question of law mentioned in the Petition.
13. That, the questions of law evidently do constitute error apparent on the face of record of the subject case and merits it Review by this apex Court according to well settled principle of law.

That, the afore-stated POINTS OF LAW / GROUNDS arises from the following facts:

## **FACTS :**

1. That, the factual matrix may be referred to in brief the Petitioner being 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 Respondent Nos. 1, 3 & 4, which generates '25-30' Tons 'Hospital Waste' per day. And the Respondent No. 6 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 Respondent No. 6; under the control and command of Respondent Nos. 3 & 5, 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 Respondent No. 6, 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 Respondent No. 3, 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 "**Kyoto Protocol**", 1997
5. That, the Respondent Nos. 1, 3 & 4 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 Respondent No. 6, 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 Respondent No. 6, 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 Respondent Nos. 1, 3 & 4 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, Genotozic waste, Chemical waste, Radioactive waste, Food waste, Paper & Card board waste, Packaging, Aerosols and Polythin begs/shopping begs.

As a result misuse of discarded syringes as well as repackaging and re-sale is observed as a common practice country wide 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 Respondent No. 9, being statutory authority under control and command of Respondent Nos. 2 & 3, 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

That, the Petitioner-In-Person relied upon and reiterate the aforesaid points of law / grounds in support of this Review Petition and crave indulgence to urge and /or add such other ground(s) as may be available at the time of hearing of this Review Petition by this apex Court.

### PRAYER

In view of the above submission it is most respectfully prayed that this Hon'ble Court may be pleased to Review its impugned order in the interest of justice and passed an appropriate speaking order and save the pristine Environment of mother Earth.

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This Review Petition drafted and signed on 4<sup>th</sup> day of June 2011, at Karachi by me arising from 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**. (Disposed off on December 22, 2010) Including Ministry of Environment to the Government of Pakistan; Pakistan Environment Protection Agency; Government of Sindh; Provincial Health Department; Sindh Local Government Department; City District Government of Karachi; Environmental Protection Agency Sindh; (six Cantonment Boards of the city) Karachi Cantonment Board, Cantonment Board Clifton, Cantonment Board Faisal, Cantonment Board Mallir, Cantonment Board Kemari & Cantonment Board Korangi and (six Teaching Hospitals) such as Jinnah Post-Graduate Medical Center, Civil Hospital, Agha Khan University Hospital, Liaquat National Hospital, Dr. Ziauddin Ahmed Hospital & The Kidney Center.

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The memo of this original Petition is placed as guideline source on the official websites of Health Care Without Harm-USA and Environmental Law Alliance Worldwide-US

<http://www.noharm.org> & <http://www.elaw.org/node/5333>