

DR. KAILASNATH KATJU LAW COLLEGE, RATLAM MOOT COURT

Before the Honourable Supreme Court of Aryavarta

IN THE MATTER OF

AEP NGO & OTHS..... PETITIONER

V.

STATE OF ARYAVARTA.....RESPONDENT

**IN THE CASE CONCERNING ARTICLE 21 OF THE CONSTITUTION OF
ARYAVARTA**

SUBMITTED TO:

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SUBMITTED BY:

TEAM CODE: 1

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4TH YEAR, 8TH SEMESTER

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LIST OF ABBREVIATION

- **SCC** – Supreme Court Cases
- **AIR**- All India Reporter
- **SC** – Supreme Court
- **UCC** – Union Carbide Corporation
- **UCIL** – Union Carbide India Limited
- **MIC** – Methyl Isocyanate
- **GCC** – Global Chemicals Corporation
- **EC** – Ethyl Cyanide
- **NIH** – National Institutes of Health
- **ICMR** – Indian Council of Medical Research
- **NGT** – National Green Tribunal
- **BGTRRD** – Bhopal Gas Tragedy Relief and Rehabilitation Department
- **CPCB** – Central Pollution Control Board
- **BEIL** – Bharuch Enviro Infrastructure Limited
- **PCB** – Pollution Control Board
- **ESM** – Environmentally Sound Management
- **PIC** – Prior Informed Consent
- **PIL** – Public Interest Litigation
- **DPSP** – Directive Principles of State Policy
- **V.** – Versus

INDEX OF AUTHORITES

1. Statues referred:

- Constitution of the India, 1950.
- Directive Principles of State Policy.
- The Bhopal gas leak disaster (Processing of claims) act, 1985.
- Basel Convention.
- The Environment (Protection) act, 1986.
- Hazardous and other wastes (management & transboundary movement) rules, 2016.

2. Cases referred:

- Union Carbide Corporation v. Union of India, (1991) 4 SCC 584,
- M.C. Mehta v. Union of India (Oleum Gas Leak Case), AIR 1987 SC 965,
- Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212,
- Sankareswari v. The District Collector & Ors. 20.01.2023,
- R.K. Gupta v. State of Madhya Pradesh (2022),
- State of Gujarat v. Union of India, (2011) 7 SCC 545,
- Vellore Citizens' Welfare Forum v. Union of India (1996),
- Subhash Kumar v. State of Bihar, AIR 1991 SC 420,
- Netherlands v. Belgium (PCA, 2003),
- Research Foundation for Science v. UoI (2005) 10 SCC 510,
- A.P. Pollution Control Board v. Prof. M.V. Nayudu (1999),
- Paryavaran Suraksha Samiti & Anr vs Union of India & Ors on 22 February, 2017,
- Almitra Patel v. Union of India (2000),

3. Reports referred:

- <https://pubmed.ncbi.nlm.nih.gov/1306166/> - National Institutes of Health (NIH), an official website of the U.S. government agency.
- <https://hsph.harvard.edu/news/40-years-after-bhopal-toxic-gas-leak-suffering-continues/> - Harvard T.H. Chan School of Public Health, the public health school of Harvard University.

- [.https://www.downtoearth.org.in/pollution/bhopal-gas-tragedy-at-40-not-just-methyl-isocyanate-other-unknown-compounds-also-played-significant-role-in-long-term-health-impacts-on-survivors-2010-icmr-study-found](https://www.downtoearth.org.in/pollution/bhopal-gas-tragedy-at-40-not-just-methyl-isocyanate-other-unknown-compounds-also-played-significant-role-in-long-term-health-impacts-on-survivors-2010-icmr-study-found) - The Indian Council of Medical Research (ICMR) is the apex body in India for biomedical research.

4. Article referred:

- <https://indianexpress.com/article/explained/explained-mp-to-begin-toxic-waste-disposal-bhopal-gas-tragedy-9488668/> -The Indian Express a prominent Indian English-language newspaper and digital news group.

STATEMENT OF JURISDICTION

The Petitioner has approached the Hon'ble Supreme Court of Aryavarta having the jurisdiction to entertain the case under the Mandamus writ of the Article 32¹ of the Constitution of Aryavarta, 1950.²

¹ Article 32 of the Constitution of Aryavarta, 1950.

- (1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.
- (2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrant and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

Mandamus: *To direct a public official or authority to perform a duty they are legally bound to perform.*

² The Laws of Aryavarta are Parimateria of the Laws of India.

STATEMENT OF FACTS

1. Global Chemicals Corporation (GCC) plant in Varanagri, Aryavarta, a multinational company headquartered in the United States of Atlantica. On the night of March 15-16, 1992, Global Chemicals Corporation experienced a catastrophic gas leak, releasing 50 tons of toxic ethyl cyanide (EC) gas into the surrounding areas.

2. The highly lethal gas spread through densely populated urban settlements, affecting over 600,000 residents. The immediate and long-term consequences were:

2.1. Over 4,000 people died instantly, while unofficial estimates place the total death toll at 18,000-25,000 over the following years.

2.2. More than 600,000 individuals suffered from severe injuries, including respiratory diseases, vision loss, neurological disorders, and birth defects in later generations.

2.3. Toxic contamination of groundwater and soil remains a severe hazard, impacting residents' decades after the disaster.

3. Causes of the disaster: The gas leak resulted from multiple failures in safety protocols, maintenance negligence, and poor risk management, including:

3.1. Negligence in Storage and Safety Systems:

3.1.1. The refrigeration system for storing EC gas was deactivated to reduce expenses, allowing the chemical to overheat.

3.1.2. The gas neutralization scrubber (designed to neutralize leaked gas) was non-operational on the night of the tragedy.

3.1.3. The flare tower (meant to burn off escaping gas) had been dismantled, making emergency containment impossible.

3.2. Water Contamination Leading to the Leak: A large quantity of water entered EC storage Tank V-420, triggering a dangerous exothermic reaction, creating high internal pressure, and ultimately leading to a massive rupture.

4. Failure in Emergency Response and Public Awareness:

4.1. No official evacuation protocol was in place, leaving residents unaware of how to react.

4.2. Hospitals were not prepared to handle cyanide gas exposure, leading to higher casualties due to mismanagement and lack of antidotes.

5. Government's Legal Action Against Global Chemicals Corporation (GCC):

5.1. In response to the tragedy, the Republic of Aryavarta passed the Varana Gas Disaster (Claims & Accountability) Act, 1993, granting itself exclusive rights to represent victims in legal proceedings.

5.2. In 1996, the Supreme Court of Aryavarta approved a settlement of \$500 million between the government and GCC, effectively dropping all civil and criminal liability against the company.

5.3. Survivors and activists vehemently opposed the settlement, arguing that it grossly underestimated the long-term medical, environmental, and economic damage.

6. On December 3, 2024, marking the 40th anniversary of the disaster, the Varanagri High Court mandated the cleanup of the contaminated site within a month. This directive led to the subsequent waste removal operations in January 2025. However, activists and local residents remain sceptical about the effectiveness and comprehensiveness of these measures.

7. In January 2025, authorities initiated the removal of toxic waste from the Global Chemicals Corporation (GCC) plant. Approximately 337 metric tons of hazardous waste were transported in leak-proof containers to a facility in Pithampur, located about 230 kilometres from the city, for incineration. It was claimed the operation was conducted under heavy security measures to ensure safe disposal.

8. Despite these efforts, local activists and environmental groups have criticized the cleanup as inadequate. They argue that the removed waste represents only a fraction of the total contamination, leaving significant environmental and health hazards unaddressed. Concerns have also been raised about the incineration process in Pithampur, with fears of further toxic exposure to nearby communities.

ISSUES RAISED

- 1. Whether the settlement of \$500 million between the Republic of Aryavarta and Global Chemicals Corporation (GCC), considering the long-term medical, environmental, and economic damages caused by the gas leak disaster was just and adequate compensation for the victims or not?**
- 2. Whether the partial removal and unscientific incineration of toxic waste at Pithampur, despite concerns raised by activists regarding further environmental and health hazards, constitutes a safe and scientifically sound method of disposal and violates the right to a clean and safe environment under Article 21 of the Constitution?**
- 3. Whether the negligence and failure of the State in enforcing adequate safety measures while the incineration of toxic wastes, amounted to deprivation of the victims of their fundamental right to life, health, and a safe environment and the violation of Article 21 of the Constitution or not?**

SUMMARY OF ARGUMENTS

Issue 1: Whether the \$500M settlement was just and adequate compensation?

1.1. The settlement was grossly insufficient given the long-term health, environmental, and economic damage caused by the gas leak. There are health and environmental impacts. (NIH studies).

1.2. Reports:

1.2.1. The Bhopal disaster remains a continuing environmental and human tragedy, causing suffering across generations while the responsible corporations thrive unchecked. (Harvard studies).

1.2.2. UCC evaded full responsibility, resulting in a low settlement, inadequate victim compensation, and ongoing environmental contamination. (ICMR report)

1.3. Polluter Pays Principle violated:

1.3.1. The responsibility for repairing the damage is that of the offending industry (*M.C. Mehta v. UoI*)

1.3.2. If by the action of a private entity, environmental degradation is caused, and the State failed in its regulatory duty. (*Enviro v. UoI*)

1.4. State's Absolute Liability:

1.4.1. The State should bear the absolute and non-delegated duty to ensure the safety of the community with no exceptions allowed (*Oleum Gas Leak Case*)

1.4.2. Even if the State was not directly handling the hazardous substances, its failure to prevent or mitigate the risks associated with such substances can render it liable. (*Sankareswari case*)

Issue 2: Whether incomplete removal and incineration at Pithampur violates Article 21?

2.1. The unsafe and unscientific incineration of toxic waste shall endanger lives of the communities residing there. (*R.K. Gupta case*)

2.2. **Gujarat protest:** Local residents objected to the transport and incineration of hazardous Bhopal waste in their state, citing environmental concerns. (*Gujarat v. UoI*)

2.3. **Precautionary Principle:** Where there are threats of irreversible damage, lack of scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation. (*Vellore Citizens' Forum*)

2.4. Hazardous Waste Rules, 2016: Environmental protection laws must be strictly enforced and that mere administrative assurances are meaningless without actual compliance. (*Paryavaran Suraksha Samiti*).

2.5. Violation of Basel Convention: Ignored by the State:

2.5.1. Such action of disposing the hazardous waste requires environmentally sound management. (*Netherland v. Belgium*)

2.5.2. State denied prior informed consent of whose health and livelihood are threatened. (*Research fond. v. UoI*)

Issue 3: Whether State negligence violates Article 21?

The State's failure to ensure safety deprives victims of Article 21.

3.1. Violation of Right to life due to:

3.1.1. Exposure of communities to toxic emissions (*Subhash Kumar v. Bihar*).

3.1.2. Denial of public participation (*A.P. Pollution Board v. Nayudu*)

3.1.3. Ignoring safer alternatives for the disposal of hazardous waste (*Almitra v. UoI*)

3.2. DPSP obligations:

Arts. 47 & 48A State must protect health and environment, the environmental protection and public health are constitutional mandates, not mere policy choices. (*Karnataka Industrial Board*).

ARGUMENTS ADVANCED

Issue 1: Whether the settlement of \$500 million between the Republic of Aryavarta and Global Chemicals Corporation (GCC), considering the long-term medical, environmental, and economic damages caused by the gas leak disaster was just and adequate compensation for the victims or not?

1.1. Long term and Continuing effects:

The settlement of \$500 million between the Republic of Aryavarta and Global Chemicals Corporation (GCC), was not just and adequate compensation for the victims. The compensation must be proportionate to the extent of harm considering the long-term and continuing effects of the Bhopal gas leak on health, environment, and economy, the amount was insufficient.

1.1.1. Health, Environmental and Economic effects: National Institutes of Health (NIH), an official website of the U.S. government agency³:

The methyl isocyanate (MIC) gas leak from the Union Carbide plant at Bhopal, India in 1984 was the worst industrial disaster in history. Exposure estimates of gas concentrations in the area range from 85 to 0.12 ppm. Of the approximately 200,000 persons exposed, 3598 deaths have resulted as of November 1989.

Chronic inflammatory damage to the eyes and lungs appears to be the main cause of morbidity. Reproductive health problems in the form of increased spontaneous abortions and psychological problems have been reported. Questions about the nature of MIC toxicity have been raised by the persistence of multi-systemic symptoms in survivors.

Animal studies using radio-labelled MIC given by the inhalation route have shown that the radio-label is capable of crossing the lung membranes and being distributed to many organs of the body. This paper reviews health effects of gas exposure from published studies and discusses some of the clinical and epidemiological issues being debated.

1.2. Reports on Bhopal gas leak tragedy:

1.2.1. Harvard T.H. Chan School of Public Health of Harvard University⁴ – "40 Years After Bhopal Toxic Gas Leak, Suffering Continues":

³ Report of the National Institutes of Health (NIH)

⁴ Study of Harvard University

Although the disaster happened decades ago, survivors and their children are still dealing with the fallout, including health, environmental, and economic problems. The disaster still continues to kill and to disable a new generation. And the perpetrators responsible for this continue to enjoy happy and rich lives. The corporations continue to do business as usual.

“We want the world to know that the disaster is continuing an environmental disaster that keeps unfolding and finding new people to victimize and poison.” – Victims.

1.2.2. Down To Earth – "Bhopal Gas Tragedy at 40: ICMR Study Reveals Long-term Health Impacts⁵:

After the Bhopal gas disaster, Union Carbide Corporation (UCC) tried to avoid responsibility by blaming its Indian subsidiary (UCIL) and suggesting sabotage, though these claims were dismissed. Legal battles began quickly, with a major lawsuit filed in the U.S., but a 1985 Indian law made the Indian government the sole legal representative of the victims. ***The Bhopal gas leak disaster (Processing of claims) act, 1985⁶***. Eventually, the case moved entirely to Indian courts, disadvantaging the victims.

In a Supreme Court-mediated settlement, UCC accepted moral responsibility and paid \$470 million, based on disputed casualty figures. This amount was far less than what UCC might have paid under U.S. standards. Despite compensation being given to many victims, the amounts were very low.

Moreover, the plant site was never properly cleaned. Toxic chemicals continue to leak into groundwater, adding long-term environmental damage to the tragedy's legacy.

1.3. The principle of 'Polluter Pays':

1.3.1. State Liability under the Polluter Pays Principle for Continuing Environmental Harm:

The Polluter Pays Principle demands that the financial costs of preventing or remedying damage caused by pollution should lie with the undertakings which cause the pollution. Despite being aware of the toxic waste left behind after the Varanagri gas leak tragedy, the State failed to take adequate steps for its containment, neutralization, or safe disposal. This inaction and continued negligence have allowed the pollution to persist, contaminating the soil,

⁵ Study of Indian Council of Medical Research (ICMR)

⁶ The Bhopal gas leak disaster (Processing of claims) act, 1985

groundwater, and harming public health for decades.

The State of Aryavarta has a constitutional and statutory obligation to protect the environment and safeguard public health.

In *M.C. Mehta v. Union of India (Oleum Gas Leak Case)*, AIR 1987 SC 965⁷, the Hon'ble Supreme Court emphasized that:

“The ‘Polluter Pays’ principle is a part of the environmental law of the country. The responsibility for repairing the damage is that of the offending industry. *Polluter Pays is non-negotiable.*”

1.3.2. State's Shared Liability Due to Regulatory Failure:

The State must bear the cost of environmental remediation, medical care, and long-term rehabilitation under the Polluter Pays Principle, especially when it has assumed responsibility for the site and failed to act effectively.

While the immediate polluter (GCC) has fled jurisdiction and evaded full liability, the State becomes liable in its capacity as the trustee of natural resources and guardian of its citizens' rights under *Article 21 of the Constitution*⁸. The State is effectively the polluter in present times.

In *Indian Council for Enviro-Legal Action v. Union of India (1996) 3 SCC 212*⁹, the Court clarified that:

“If by the action of a private entity, environmental degradation is caused, and the State failed in its regulatory duty, both the polluter and the State are liable under the principle of absolute liability.”

So, if the State was negligent in monitoring, enforcing environmental laws, it shares financial and legal responsibility.

1.4. The Principle of Absolute liability:

1.4.1. State's Accountability for Persistent Hazard under Absolute Liability Doctrine:

⁷ AIR 1987 SC 965

⁸ Constitution of India, 1950

⁹ AIR 1996 3 SCC 212

The doctrine of absolute liability applies to enterprises directly engaged in hazardous or inherently dangerous activities. Thus, since the toxic gas leak continues to affect public health due to the hazardous gas EC, it is the State's absolute liability to compensate.

In *M.C. Mehta v. Union of India (Oleum Gas Leak Case)*, AIR 1987 SC 965¹⁰, the Hon'ble Supreme Court emphasized that:

"The court moved beyond the strict liability principle and established principle of Absolute liability for industries engaged in hazardous word activities. It was held that these industries should bear the absolute and non-delegated duty to ensure the safety of the community with no exceptions allowed."

1.4.2. Indirect Possession of Hazardous Substances Attracts State Liability:

However, in the present case, the facts indicate that the State has become the custodian of the hazardous waste at Varanagri. By continuing to keep the toxic waste in storage for decades without safe disposal, the State is now in possession and indirect control of a hazardous substance.

In *Sankareswari v. The District Collector & Ors.* 20.01.2023¹¹, The State can be held absolutely liable when:

Hazardous substances are improperly managed or disposed of by private entities. The State fails to enforce environmental regulations or monitor compliance effectively.

Therefore, even if the State was not directly handling the hazardous substances, its failure to prevent or mitigate the risks associated with such substances can render it liable under the principle of absolute liability.

Issue 2: Whether the partial removal and unscientific incineration of toxic waste at Pithampur, despite concerns raised by activists regarding further environmental and health hazards, constitutes a safe and scientifically sound method of disposal and violates the right to a clean and safe environment under Article 21 of the Constitution?

The State's decision to incinerate the remaining hazardous waste from the GCC plant at Pithampur has drawn criticism for failing to ensure environmental and public safety. This method lacks transparency, scientific backing, and proper risk assessment. Incineration of

10 AIR 1987 SC 965

11 20.01.2023

hazardous chemicals like EC can release dioxins, furans, and metals such as lead, mercury, cadmium, particulate matter and other toxic gases, etc, causing irreversible harm to human health and ecosystems.

2.1. Unsafe and Scientifically Unjustified Incineration at Pithampur Violates Environmental and Constitutional Safeguards:

The National Green Tribunal (NGT) in *R.K. Gupta v. State of Madhya Pradesh (2022)*¹² directed the scientific disposal of 337 metric tonnes of hazardous waste from the abandoned Union Carbide plant in Bhopal, emphasizing strict compliance with environmental safeguards and rejecting unsafe incineration due to risks of toxic emissions and groundwater contamination. The tribunal ordered the Madhya Pradesh government and the Bhopal Gas Tragedy Relief Department (BGTRRD) to remediate contaminated soil and groundwater under a time-bound plan, while imposing penalties for non-compliance.

The NGT upheld that hazardous waste cannot be recklessly incinerated without proper risk assessments. Thus, incinerating Varanagri's waste without robust safeguards violates this binding precedent and endangers lives.

2.2. Gujarat Protest: Bhopal Waste Disposal Concerns:

Following a PIL filed by activist Alok Pratap Singh in the Madhya Pradesh High Court in 2004, seeking accountability from Dow Chemical and urgent clean-up of the Bhopal Union Carbide site, the Court constituted a Task Force chaired by the Secretary, Department of Chemicals and Petrochemicals, Government of India. In 2005, Central Pollution Control Board (CPCB) experts identified the Bharuch Enviro-Infrastructure Limited (BEIL) facility in Ankleshwar, Gujarat, as a suitable site for safe disposal of the toxic waste.

However, as reported by *The Indian Express*¹³ a prominent Indian English-language newspaper and digital news group, widespread protests erupted in Gujarat in 2007. Local residents objected to the transport and incineration of hazardous Bhopal waste in their state, citing environmental concerns and invoking:

Rule 12 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016¹⁴, which prohibits the unauthorized transportation and disposal of hazardous waste across State borders without obtaining proper approvals from both the originating and receiving State authorities.

¹² 362/ 2021,

¹³ Article from the Indian Express

¹⁴ Hazardous and other wastes (Management and Transboundary Movement) Rules, 2016

In *State of Gujarat v. Union of India*, (2011) 7 SCC 545¹⁵, the Supreme Court addressed the dispute between Madhya Pradesh and Gujarat. Recognizing the environmental and legal objections raised, the Court directed that the waste be incinerated at Pithampur, Madhya Pradesh, after ensuring environmental clearances, technical trials, and necessary safety precautions, thus emphasizing the need for consent, local participation, and strict compliance with hazardous waste management laws.

Thus, both the public protests and the judicial ruling reaffirm the constitutional and statutory mandate to prioritize environmental safety and community health in hazardous waste management

2.3. Precautionary Principle: State Must Prevent Potential Harm:

If an action or policy might cause serious or irreversible harm to the environment or public health, and there is no scientific certainty yet, preventive steps should still be taken by the State.

In *Vellore Citizens' Welfare Forum v. Union of India* (1996)¹⁶, the Supreme Court held:

“Environmental measures must anticipate, prevent and attack the causes of environmental degradation. Where there are threats of serious and irreversible damage, lack of scientific certainty shall not be used as a reason for postponing measures to prevent environmental degradation.”

In the present case, the State’s plan to incinerate the waste, without disclosing proper risk assessments or adopting alternative safer methods, violates the essence of this principle. Even if there is no conclusive scientific data proving that incineration at Pithampur will certainly cause harm, the possibility of irreversible damage to public health and the environment mandates precautionary measures.

2.4. The Environment (Protection) act, 1986 read with rule Rule 4 of Hazardous and other wastes (management & transboundary movement) rules, 2016¹⁷: No ESM and risk assessment:

The State’s actions in the present case clearly violate Rule 4 of the Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016, framed under the Environment (Protection) Act, 1986

15 AIR 2011 7 SCC 545

16 AIR 1996 7 JT 375 SC

17 Environment Protection act, 1986

Rule 4 imposes a statutory obligation on the occupier here, the State to ensure that hazardous waste is managed in an “environmentally sound manner” to avoid adverse effects on human health and the environment.

Despite being the legal custodian of the toxic waste at the Varanagri site, the State failed to ensure timely, scientific, and complete disposal of hazardous material. Instead, it removed only a portion of the waste to Pithampur and proposed its incineration without sufficient safeguards, such as dioxin filters or ash containment systems, thereby heightening the risk of secondary contamination. This approach contravenes Rule 4, which mandates proactive steps to contain, treat, and dispose of hazardous waste safely and responsibly.

In *Paryavaran Suraksha Samiti v. Union of India*, (2017) 5 SCC 326¹⁸, the Hon’ble Supreme Court emphasized that environmental protection laws must be strictly enforced and that mere administrative assurances are meaningless without actual compliance. The Court warned that non-compliance with environmental safeguards warrants strong judicial action against responsible officers.

Thus, the Petitioners respectfully submit that the State’s failure to manage the Varanagri waste scientifically and its move towards unsafe incineration at Pithampur constitute a grave breach of statutory duties, justifying judicial intervention and the imposition of personal liability on the concerned State authorities

2.5. Disposing of the hazardous waste against the Basel Convention:

The proposed incineration of 337 metric tonnes of ethyl cyanide (EC) waste from the Varanagri Gas Tragedy in Pithampur violates multiple provisions of the Basel Convention on the Control of Transboundary Movements of Hazardous Wastes and Their Disposal (1989), to which Aryavarta is a signatory.

2.5.1. Violation 1: Failure to Ensure "Environmentally Sound Management" Art. 4(2)(a)¹⁹:

Each Party shall take the appropriate measures to ensure that the generation of hazardous wastes and other wastes within it is reduced to a minimum, taking into account social, technological and economic aspects. Thus, the State must prioritize recycling/neutralization over incineration.

¹⁸ AIR 2017 5 SCC 326

¹⁹ Basel Convention, 1989

*Netherlands v. Belgium (PCA, 2003)*²⁰: Held that incineration without ESM violates Basel, even if waste doesn't cross borders.

In the present case, mixed is being incinerated which may increase toxic ash at Pithampur. Also, bioremediation and chemical neutralisation are not explored.

2.5.2. Violation 2: Illegal Disposal Without "Prior Informed Consent" Art. 6²¹ & Principle 10 of Rio Declaration:

The State's unilateral decision to incinerate Varanagri's toxic waste without consulting affected communities violates the Basel Convention's Prior Informed Consent (PIC) requirement Article 6 and Principle 10 of the Rio Declaration, which guarantees public participation in environmental decisions. There is absence of public hearings or transparency in the Pithampur incineration plan.

In *Research Foundation for Science v. UoI (2005) 10 SCC 510*²² affirmed that no hazardous waste activity can be permitted without meaningful participation of those whose health and livelihoods stand threatened.

Issue 3: Whether the negligence and failure of the State in enforcing adequate safety measures while the incineration of toxic wastes, amounted to deprivation of the victims of their fundamental right to life, health, and a safe environment and the violation of Article 21 of the Constitution or not?

State's negligence and failure in enforcing adequate safety measures while the incineration of toxic wastes, amounted to violation of Article 21²³ of the Constitution.

3.1. Right to life includes right to safe environment:

3.1.1. Right to Pollution-Free Air and Water: Violation due to exposing communities to toxic emissions:

The continued existence of hazardous toxic waste at the Varanagri site, despite the passage of decades, poses a severe and ongoing risk to human health, soil quality, and groundwater reserves. Such persistent contamination infringes the fundamental right to life under Article 21, which guarantees the right to live in a clean and pollution-free environment.

20 PCA, 2003

21 Basel Convention, 1989

22 AIR 2005 10 SCC 510

23 Constitution of India, 1950

In *Subhash Kumar v. State of Bihar*, AIR 1991 SC 420²⁴, the Hon'ble Supreme Court recognized that the right to life includes the right to clean air and water, and held that any industrial pollution causing environmental degradation or health hazards constitutes a direct violation of this right. The Court further affirmed that citizens are entitled to approach the judiciary under Public Interest Litigation (PIL) to prevent environmental harm, thus empowering the affected communities of Pithampur to seek relief and protection under the Article 21.

Therefore, the Petitioners respectfully submit that the failure to remediate the toxic waste has led to a prolonged infringement of the right to a pollution-free environment, warranting urgent judicial intervention.

3.1.2. Right to Public Participation in Environmental Decisions: Violation due to denying public participation:

In the present case, the State's decision to transport and incinerate hazardous waste at Pithampur was taken without involving or consulting the affected communities or local environmental experts. There was no public notice, no public hearing, and no disclosure of risk assessments before initiating the disposal operation. Such non-transparent action clearly violates the principle laid down in:

In *A.P. Pollution Control Board v. Prof. M.V. Nayudu* (1999)²⁵, which held that denial of public participation violates Article 21's right to a healthy environment. Here the Hon'ble Supreme Court emphasized that public participation is a necessary component of the right to a healthy environment under Article 21. By excluding the public from the decision-making process concerning the incineration of highly toxic materials, the State has failed to safeguard the fundamental rights of the people.

3.1.3. Improper Waste Management as a Breach of Article 21: Violation due to safer alternatives:

The State's decision to proceed with the incineration of 337 MT of ethyl cyanide (EC) waste at Pithampur without adhering to scientific best practices, proper emission controls, or adequate community safeguards reflects a failure to fulfil constitutional duties under Article 21. Unscientific waste management methods aggravate environmental harm and expose vulnerable populations to heightened risks.

24 AIR 1991 SC 420

25 AIR 1999 SC 195

In *Almitra Patel v. Union of India*, (2000)²⁶, the Hon'ble Supreme Court categorically held that proper and scientific waste management is a constitutional obligation stemming from Article 21, not a matter of administrative discretion. The Court directed municipal authorities to adopt modern and safe waste disposal techniques to protect public health and the environment.

Thus, the Petitioners respectfully submit that the adoption of hazardous and outdated methods for disposing of toxic waste amounts to a grave violation of Article 21, necessitating judicial directions for immediate, scientific, and community-protective cleanup operations.

3.2. Violation of the Directive principles of the State:

Articles 47, 48A of the Directive Principles of State Policy (DPSP) and Fundamental Duties, respectively, deal with environmental protection and public health.

3.2.1. Article 47²⁷:

This article, part of the DPSP, directs the state to focus on improving public health, including raising the level of nutrition and standard of living, and taking steps to prohibit intoxicating drinks and drugs that are injurious to health.

3.2.2. Article 48A²⁸:

This article, added by the 42nd Amendment, is another part of the DPSP that emphasizes the state's responsibility to protect and improve the environment and safeguard forests and wildlife.

The Directive Principles of State Policy, though non-justiciable, serve as fundamental guiding values for the governance of the country.

In *Karnataka Industrial Areas Development Board v. C. Kenchappa* (2006) 6 SCC 371²⁹ the unchecked industrial expansion was threatening ecology. The Court directed that ecological balance must be preserved under the mandate of Articles 47 and 48A.

The Hon'ble Supreme Court emphasized that Articles 47 and 48A, mandating the State to improve public health and protect the environment, must be given due importance when interpreting constitutional rights under Article 21. In the present case, the State's inaction and unscientific waste disposal methods violate these mandates, thereby infringing upon the fundamental right to a clean and healthy environment. Thus, DPSP provisions, although not

26 AIR 2000 SC 583

27 Directive Principles of State Policy

28 Directive Principles of State Policy

29 AIR 2006 6 SCC 371

enforceable alone, acquire binding force when read with Article 21, and must guide judicial decisions ensuring environmental justice.

Hence, The Hon'ble Supreme Court has consistently harmonized Articles 47 and 48A with Article 21 to recognize that environmental protection and public health are constitutional mandates, not mere policy choices.

4. Conclusion:

The present matter is a direct continuation of the aftermath of the Bhopal Gas Leak Tragedy, as addressed in *Union Carbide Corporation v. Union of India*, (1991) 4 SCC 584³⁰. The Supreme Court recognized the urgent need for compensation, cleanup, and the enforcement of accountability. Decades later, the toxic waste remains, and public health continues to be at risk. The State, now in control of the site, is therefore bound by the same principles and obligations laid down by the Hon'ble Court.

Thus, *for 40 years, the State has betrayed Varanagri's victims—first by permitting GCC's negligence, now by proposing lethal incineration. This Hon'ble Court must enforce their constitutional right to life by mandating scientific remediation and full compensation.*

PRAYERS

Wherefore in the lights of the facts and circumstances of the case, issues raised, arguments advance authority cited council on the behalf of petitioner humbly prays to the Supreme Court to grant relief:

- **To** order enhanced compensation and health rehabilitation measures for the affected communities.
- **To** direct immediate cessation of unsafe incineration activities and mandate scientific remediation of the contaminated site.
- **To** fix accountability on the State for failure to protect the environment and public health.

Or pass any other order it deems fit in the interest of justice, equity and good conscience.

For the above kindness counsel for the petitioner shall forever be obliged and grateful.

Petitioner