

LEGAL CONTROL OF UNTREATED SEWAGE IN INDIA

*K.P.S. Mahalwar**

SEWAGE IS the liquid waste emitting mainly from houses and industries. Domestic effluents consist of filthy water of toilets, kitchens etc. and may contain soap, toxic elements or harmful micro-organisms. It may be detrimental to the plant kingdom only when it contains synthetic detergents in higher concentration. Normally domestic sewage is free from the substances which can prove to be toxic to the plants. Domestic sewage is used for irrigation purpose also in the area around municipal limits which is always in greater demand for its fertility. Use of sewage in farming has been in vogue in the past also. Municipal sewage may sometimes become a health hazard for the inhabitant. Due to rapid urbanisation and population increases, quantity of domestic sewage is contributing the largest share in water pollution.

Besides domestic sewage, accelerated industrialisation has become another source of hazardous sewage in the form of industrial sewage, which is full of poisonous elements injurious to life and the environment on globe. It is a well known fact that evergrowing population, haphazard growth of metro towns for many reasons, intense industrial activities, materialistic life leading to consumerism have made life on the planet miserable and worthless so far as hygienic environment is concerned.

Although our law makers have always been careful on this aspect of water pollution due to untreated sewage, still our society is suffering a lot. Contamination, adulteration or fouling the water of public spring or reservoir is an offence and punishable under Indian Penal Code. To ensure that industrial emissions and effluents do not cause hazards to life or environment, the Industrial (Development and Regulation) Act 1951 provides that license may be refused if the unit will cause pollution. Where sewage disposal or untreated industrial effluents cause

annoyance, contaminate any water channel, pollute environment or cause public nuisance a suit for appropriate orders may be instituted in the civil court in accordance with Section 91 of Code of Civil Procedure. Nowadays distillery industry is the largest industry in India causing pollution of terrestrial and aquatic eco-system due to untreated effluent waste, e.g. untreated effluents flowing into Niva river, have done irreparable damage to aquifers under Niva river bed, a number of wells were decolourised and have fallen from ISI/WHO standards.

Water pollution may be caused by numerous factors wherein untreated sewage coming from industries and houses is the major contributor. Water (Prevention and Control of Pollution) Act, 1974 was enacted to ensure that domestic and industrial effluents are not allowed to be discharged into the water courses without adequate treatment as such discharges would render the water unsuitable as source of drinking water as well as for supporting fish life and for use in irrigation. Though public health and water are State subjects, the Water Act has been enacted by Parliament under article 252 with the consent of States. This Act tends to provide for prevention and control of water pollution and maintaining or restoring of wholesomeness of water; for the establishment, with a view to carrying out the purposes aforesaid of Boards; for the prevention and control of water pollution; and for conferring on and assigning to such Boards, powers and functions relating thereto. It was enacted to establish unitary agencies in the Centre and States to provide for the prevention, abatement and control of pollution of rivers and streams for maintaining or restoring the wholesomeness of such water courses and for controlling the new discharge of domestic and industrial wastes. It seeks to establish a Central Board for prevention of pollution and one Board in each State for the said purpose. Main function of the Central Board is to promote cleanliness of streams and wells in different areas of States. It may advise the Central Government on any matter concerning

* Reader in Law, MDU, Rohtak, Haryana.

the prevention and control of water pollution; it may coordinate the activities of State Boards and resolve disputes among them; it may provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution; it may plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control, abatement of water pollution; it may organise comprehensive programmes through mass media regarding the prevention and control of water pollution; it may publish information regarding water pollution and the measures devised for its effective prevention and control and prepare guidelines for treatment and disposal of sewage and trade effluents; it may lay down standards for streams or wells and the Board may establish laboratories for analysis of samples of water from streams laboratories for analysis of samples of water from streams or wells or of samples of any sewage or trade effluents.

Similarly State Pollution Control Boards are also empowered:

- (a) to plan a comprehensive programme for the prevention, control or abatement of pollution of streams and wells in the State and to secure the execution thereof;
- (b) to encourage, conduct and participate in the investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (c) to advise the State Government on any matter concerning the prevention, control or abatement of water pollution;
- (d) to collect and disseminate information relating to water pollution and the prevention, control or abatement thereof.
- (e) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of water pollution and to organise mass education programmes relating thereto;
- (f) to inspect sewage or trade effluents, works and plants for the treatment of sewage and

trade effluents and to review plans, specifications or other data relating to plants set up for the treatment of water, works for the purification thereof and the system for the disposal of sewage or trade effluents or in connection with the grant of any consent as required by this Act;

- (g) to lay down, modify or annul effluent standards for the sewage and trade effluents and for the quality of receiving waters (not being water in an inter-state stream) resulting from the discharge of effluent and to classify water of the State;
- (h) to evolve economical and reliable methods of treatment of sewage and trade effluents, having regard to the peculiar conditions of soils, climate and water resources of different regions and more especially the prevailing flow characteristics of water in streams and wells which render it impossible to attain even the minimum degree of dilution;
- (i) to evolve methods of utilisation of sewage and suitable trade effluents in agriculture;
- (j) to evolve efficient methods of disposal of sewage and trade effluents on land as are necessary on account of the predominant conditions of scant stream flows that do not provide for major part of the year the minimum degree of dilution;
- (k) to lay down standards of treatment of sewage and trade effluent to be discharged into any particular stream taking into account the minimum fair weather dilution available in that stream and the tolerance limits of pollution permissible in the water of the streams after the discharge of such effluents;
- (1) to make, vary or revoke any order-
 - (i) for the prevention, control or abatement of discharges of waste into streams or wells;
 - (ii) requiring any person concerned to construct new system for the disposal of sewage and trade effluents or to modify, alter or extend any such

existing system or to adopt such remedial measures as are necessary to prevent, control or abate water pollution;

- (m) to lay down effluent standard to be complied with by persons while causing discharge of sewage or sullage or both and to lay down, modify or annul effluent standards for the sewage and trade effluents;
- (n) to advise the State Government with respect to the location of any industry the carrying on of which is likely to pollute a stream or well;
- (o) to perform such other functions as may be prescribed or as may from time to time, be entrusted to it by the Central Board or the State Government.

State Board or any officer authorised by it shall have power to take samples of water from any stream or well or sample of any sewage or trade effluent which is passing from any plant or vessel for the purpose of analysis, which is sent to the laboratory for analysis and cost of getting the sample analysed is recovered from the occupier of plant or his agent as arrears of land revenue. State Boards have vast powers of entry and inspection of the plant, etc., for discharge of various functions under the Water Act. State Boards watch that streams or wells are not used for disposal of any poisonous, noxious or polluting matter. Consent of the Board is required to bring into use any new or altered outlet for the discharge of sewage or trade effluents into a stream or well or sewer, or on land, or begin to make any new discharge or sewage or trade effluents into a stream or well or sewer or on land. Boards may impose conditions on the consent order regarding discharge of effluents, etc., and shall maintain a register, containing such particulars of the conditions imposed in relation to outlets or in relation to effluent from land premises in its jurisdiction, which may be inspected at all reasonable hours by any person interested in or affected by the outlet. Board may refuse to grant its consent for new or altered outlets or may even withdraw it in case of non-compliance of the condition. Where conditions have been

imposed by the Board on any person for bringing into use any new or altered outlet for discharge of sewage or trade effluent and such work has not been done within specified time, the Board may serve a notice for execution of work and if the person fails to execute it, the Board may execute it at the cost of the defaulter person. If the Board feels that any poisonous, noxious, or polluting matter is present in any stream or well or has entered into that stream or well due to any accident or other unforeseen act or event, and it is of the opinion that it is necessary or expedient to take immediate action, it may for reasons to be recorded in writing carry out such operation as it may consider necessary. Board may make an application to a court of first class magistrate to restrain apprehended pollution, if it considers that water in the stream or well is likely to be polluted by reason of disposal of any matter therein or otherwise. For violation of the consent orders or standards fixed by Board, stiff penalties namely imprisonment upto six years and fine may be imposed on the defaulters. Non-compliance of the directions of the Board or of the court are punishable with imprisonment upto 3 months or with fine upto Rs. 5000/- or with both and Rs. 1000/- per day during which such failure continues after the conviction for the first failure. Defaulter companies and departments of the Government are also liable under the law. Courts can take cognisance of offences under this Act on complaint made by or with the previous sanction in writing of the State Board. An individual can not initiate proceedings under the Water Act, whereas under EPA any individual can complain after giving 60 days notice to the wrongdoer.

The Air Act, enabled the Boards constituted under the Water Act, to discharge the functions of Boards for prevention and control of air pollution, i.e., to keep check on the kind of fuel, use of appliance for pollution control, standard of emissions in automobiles, use of certain plants etc. Certain industries specified in the schedule of the Air Act cannot be operated without the consent of Board and the Board if thinks fit may impose conditions regarding control equipments, chimney or technology etc. Boards under the Air Act have similar powers regarding inspection, samples, etc., as under the

Water Act and violation of provisions of the Air Act are punishable with imprisonment or fine or with both as under the Water Act. It is well known that the Ganga (Prevention) and Control of Pollution) Authority has not been able to achieve its objectives and its directions for installation of treatment plants by the industries have not been enforced, for whatever may be the reasons.

An overview of the legislative measures adopted by the Govt. finds that tooth and nail efforts have been made by Parliament for promotion, preservation and protection of the environment by establishing various legal devices to cope with the problem, at centre as well as state level. Each state has set up a Pollution Control Board. Before the enactment of EPA, each state was free to lay down effluent standards which could vary from state to state, but now the Central Government has been conferred powers to lay down the standards for the quality of environment and for emission of environmental pollutants. It will reduce the load of State Boards and help in bringing uniformity in all states, but the implementation of policies and law has to be done by the State Board. State Boards themselves carry the policies through department of Public Health, inspector of Factories and local bodies etc. Moreover the State Boards have to abide by the State Govt. State Governments have been empowered to supersede the Board policies etc. in certain cases and we can very well understand that state Govt. orders are likely to be tainted with absurd considerations which drag the Board to a subservient position. The Boards must have independent status to ensure achievement of the goals and also to enable them to strongly deal with government departments and public undertakings. Environmental problems can be dealt with concerted efforts of all persons and all wings of the state i.e. executive, legislature and judiciary. Legislature has not lagged behind in making very dynamic laws and the judiciary has played a tremendously innovative role by issuing suitable orders against the industries and also Govt. in numerous cases including social action litigation. There has been laxity and slackness on part of the executive in

formulating policies on environment and their implementation. In this regard we may submit that the Government must formulate the broader policies and development schemes in consonance with the environmental problems. Much of the pollution is being caused by uncontrolled haphazard industrial development in the cities, despite State Boards being armed with power to restrain the installation or continuance of hazardous plants and factories. The Boards are very ineffective in this regard. Under EPA also the Central Govt. may prohibit or restrict the location of industries and the carrying on of processes and operations in different areas. The solution of this problem lies in strictly stopping the industrial operation in the inhabited localities. Haphazard installation of industries must be restrained and the government should earmark the industrial zones for factories etc. By doing this much the whole of noise, water or air pollution will automatically shift from inhabited areas. Effluents and emissions from all these industries can be collectively treated by community treatment plants installed there, equipped with laboratory, and expenses be borne by all beneficiaries of the plant. It will save the heavy expenditure on control equipments by the industrialists which inhibited them and secondly they would not mind paying the petty amount levied on them for the said purpose. When all discharges are treated in the industrial zone itself, the treated water can be used for irrigation and solid wastes can be used as manure, which can be a source of income to the plant. One more important factor which will increase efficiency of the department is that it will not have to keep vigil on scattered industries individually but only on the community plant, which will itself reduce the number of prosecutions and thus upgrade the efficiency. In selection of the site of industrial zones the government will have to be very careful so that hazardous activities do not influence human life.

The government must encourage and facilitate the adoption of low pollution potential fuels, more efficient production processes, more efficient recycling of hazardous by-products etc. by making them less expensive and

providing monetary incentives. For example in big cities facing the acute problem of pollution, sulphur free fuel be provided for domestic use, for brick kilns and foundries etc.

Control equipments used for cleaning the effluents and emissions must be sufficient so that the discharge to the environment can be cleaned to the maximum extent. At the same time the staff operating the equipments should be strictly penalized for their inadvertence or omission in discharge of duties because environment is more precious than the job of a man.

Since the ordinary courts of law now dealing with the causes of pollution control laws consume a lot of time to finalise it, separate courts may be constituted in all States to effectively adjudicate upon the environment matters. It will be equipped with expert, unbiased opinion about the scientific developments and decide the cases expeditiously.

It has been noticed that industrial units installing pollution control equipments are harassed in giving them clearance for starting operation of the plant. Boards should not delay in giving consent or clearance, and must shun their obscurantist attitude. Their motto must be to serve and not to impede.

The government must also be sincere in formulating and executing the policies concerning environment. It has hitherto been indifferent and callous.

Desired goals can be achieved only with sincerity and devotion in the enforcement machinery, which is seldom visible as evident from the mass media.

Though our legislators have enacted different laws for preventing the water pollution,

our apex court and high courts have also acted enthusiastically in this regard. In *Ratlam Municipal Council v. Vardhi Chand*¹ there were no proper drains for smooth flow of sewage which resulted into accumulation of filthy water making it a breeding place of mosquitoes. Learned Justice Krishnan Iyer lashed at Ratlam Municipal Council to make them realize this duty towards sanitation so as to prevent environment pollution caused by domestic sewage. This landmark decision was an eye opener to the world, awakening people to fight against the malaise. Again in *U.P. Pollution Control Board v. Modi Distillery*² case, effluents of Modi distillery were polluting the Kali river with highly toxic effluents which attracted prosecution, but prosecution could not proceed as complaint was lodged against the industrial unit, therefore top management of the unit was not liable for prosecution. Supreme Court directed CJM to proceed with the trial of Modi distillery with the observation that :

It would be a travesty of justice if the big house of Modi industries is allowed to defeat the prosecution launched and avoid facing the trial on technical flow.

The most glaring example of judicial activism is *M.C. Mehta v. Union of India*³ wherein river Ganga flowing through Kanpur was being polluted by sewage and trade effluents of tanneries through 17 *nallahs*, making the water toxic and hazardous for health. Supreme Court issued time bound directions to the administration for stopping the sewage effluent, and installation of treatment plants. Unfortunately, inactive administration kept on ignoring the directions. These cases highlighting the active role of courts are only tip of the iceberg. Mostly it has been observed that there are legal safeguards and punitive provisions against water pollution and courts have also been very actively striving for restoring the wholesomeness of water but governments and the officials have not been sincere in their endeavours or discharge of obligations.

1. A.I.R. 1980 S.C. 1622.

2. U.J. (S.C.) 1987(2), 595.

3. (1987) 4 S.C.C. 463.

