

AIR POLLUTION AND CHILD HEALTH : LEGISLATION AND ITS ENFORCEMENT

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AIR IS invisible ; and so is its pollution. For this reason, pollution of the air sometimes does not receive the attention that it deserves. Such legislation as exists on the subject has also remained somewhat unexplored. An attempt will be made here to deal with the theme from its legislative aspect, particularly in the context of the effect of such pollution on the health of children.

The background .

There has been an explosion of substantive knowledge and discussion about pollution, and rapid advances on all fronts of knowledge and development are having their impact upon the law. Pollution is one such area. The major question is - how should the law respond to environmental problems in the nature of air pollution, posed by a population explosion that may, in fifty years, place nearly eleven billion people on the earth? How should the legal system respond to the diminished quality of air, that the sheer volume of industrial and other activity by such a vast multitude is likely to lead to?

It is not that Indian cultural tradition was not aware of these issues. The fact that air is a vital element has been an implicit premise of Indian tradition. The Indian God of Strength, *Hanuman*, is, according to mythology, the son of another deity who symbolises wind or air. This mythological tradition reflects the essential realisation that it is air that gives the strength of life. The misconduct of polluting the air was not unknown to the law-givers of ancient India. There are specific mandates and prohibitions against such pollution of the resources of nature. It is possible that the problem did not assume a serious magnitude, because the population was sparse.

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1. An aspect which has been discussed in detail in the article by Jaakkola and others. See references at the end, item No.2.

Now that the situation has changed because of urbanisation and increase in population, the demands on the legislative apparatus have also increased. To a large extent, the challenge has been met by appropriate legislation. In fact, the Indian Penal Code, enacted as early as 1860, has fairly specific provisions to punish a variety of acts causing damage to the environment, including water and air. Preventive mechanism is also provided for in the law of criminal procedure, under which adequate powers have been given to the magistracy to grant injunctive measures against polluting or other activities that assume the magnitude of a public nuisance. Of course, with the growth of awareness of the magnitude of the problem of pollution and of the need to utilise scientific knowledge, more sophisticated legislation took shape. Thus, there was enacted the Air (Prevention and Control of Pollution) Act, 1981 which is a specific enactment concerned with air pollution and in 1986, Parliament enacted the comprehensive Environment (Protection) Act, 1986 to mention only two of the important measures relevant for the present purpose.

Impact on child health

It has been realised for quite some time that children are particularly vulnerable to the effects of air pollution. This is illustrated by the incidents of acute respiratory infection amongst children exposed to atmospheric pollution.

The pollution may arise from traffic induced emissions or from indoor pollution or from radiation or from seasonal effects. Its effects are felt through the onset of asthma and other acute respiratory infections. Occasionally, there are more disastrous consequences, such as leukaemia, particularly when the children are living around a nuclear facility. The problem is not confined to high level pollution areas and is known to be prevalent, even amongst children living in low level air pollution areas.¹

The situation is aggravated by the fact that even unborn children may be affected through the impact of air pollution on the pregnant mother.² Sometimes, the impact of pollution is not limited to an isolated number, but may affect a mass of children, as is evident from studies made about the health of school children.³

The impact of air pollution on children is not confined to direct injury to health. It leads to absenteeism from schools.⁴ Studies made on the subject relate to developing countries as well as developed countries.⁵ Places as far apart as Helsinki, Kuala Lumpur, Sao Paulo, Mexico City, Netherlands and Australia have been studied. It is also worth noting that occasionally, the effect of air pollution may be sudden, almost instant.⁶

Air Pollution Act

In India, the Air (Prevention and Control of Pollution) Act 1981 is the principal enactment directly concerned with air pollution and the discussion here will concentrate on that Act, as reasons of space will not permit a discussion of other legislative measures. Its main objectives are the following:

- (a) to provide for the prevention, control and abatement of air pollution;
- (b) to provide for the establishment of Boards, with a view to carrying out the aforesaid purpose; and
- (c) to provide for conferring on such Boards powers and assigning to such Boards functions relating thereto and for matters connected therewith.

2. *Id.*, item No.5, article by Houts and others.

3. *Id.*, item No. 7., article by Philen and others; item No.8, article by Hoppenbrowwers; item No.10, article by Hadder and others; item No.13, article by Frischers and others and item No. 25, article by Braun-Fahrlander and others.

4. *Id.*, item No. 14, article by Ponka and item No. 20, article by Romien and others.

5. *Id.*, item No. 1, article by Querios and others; item No. 14, article by Panka; item No. 15, article by Azizi and others; item No. 18, article by Sobrae; item No. 20, article by Romien and others and item No. 22, article by Pilotto and others.

6. *Id.*, item No. 16, article by Carpenter and others.

The Act was passed to implement the decisions taken at the United Nations Conference on the Human Environment held in Stockholm in June, 1972. This fact is recited in the formal preamble to the Act. The Act extends to the whole of India.

Scheme of the Act

The first chapter of the Act deals with preliminary matters, including definitions (sections 1 and 2). Chapter 2 deals with Central and State Boards for the Prevention and Control of Air Pollution, their composition, terms and conditions of service of members, their qualifications and delegation of powers, in sections 3-15. The powers and functions of the Boards themselves are dealt with in chapter 3 (sections 16-18). The really operative part of the Air Pollution Act begins with chapter 4 (sections 19-31A). That chapter is concerned with declaration of "air pollution control areas" (section 19), emissions from automobiles (section 20), restrictions on the operation of industrial plants in air pollution control areas (sections 21-27). It also provides for the establishment and recognition of "State Air Laboratories" and analysts for the purposes of the Act (sections 29-31). An important provision contained in section 31, gives a right of appeal to any person aggrieved by an order made by the State Board. Much more important is the provision contained in section 31A, inserted by the amending Act 47 of 1987, under which a "Board"-which means a Central Board or a State Board, as defined in section 2(g) - can give written directions to any person, officer or authority in the exercise of its powers and performance of its functions under this Act. This power (*vide* the Explanation to section 31 A) includes power to issue certain drastic directions, such as the closure, prohibition or regulation of any industry, operation or process, or the stoppage or regulation of supply of electricity, water or "any other service". It may be mentioned that by section 39 (as amended in 1987), whoever contravenes any of the provisions of the Act or any order or direction issued under the Act for which no penalty has been elsewhere provided in the Act, shall be punishable with imprisonment upto three

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months or fine upto Rupees 10,000 or both. The general provision as to offences by companies (section 40) applies to contravention of a direction issued under section 33A and punishable by virtue of section 39, as it applies to any other offence under the Act committed by a company.

Regulatory mechanism

Sections 19 to 31A (chapter 4) of the Air Pollution Act deal with the major regulatory mechanism contemplated by the Act. The pivotal section is section 19, relating to declaration of certain areas as "air pollution control areas" and providing for connected regulatory measures. Section 20 of the Act deals with automobile pollution - a matter now dealt with in detail by rules made under the Motor Vehicles Act, 1988. Section 21 provides for restrictions on the establishment of industrial plants in air pollution control areas without the consent of the State Board. Emission of pollutants in excess of the notified standards is dealt with in section 22. Section 22A creates an additional procedure, whereunder a Pollution Control Board can apply to the competent court to pass orders restraining a person from causing air pollution. Sections 23 to 25 deal with information, etc. Power to take samples of air, or of "emission", for analysis, is provided for in sections 26 to 30. Section 31 provides for appeal against orders made by a State Board. Section 31A empowers a Board to issue, in the exercise of its powers and performance of its functions under the Act, "directions". These directions must be complied with, on pain of penalty which can be imposed under section 37 of the Act.

Penalties

For the contravention of the substantive provisions of the Air Pollution Act, sections 37 to 39 of the Act lay down the penalties. Thus, under section 37 (violation of restrictions on the use of certain industrial plants or the discharge of air pollutants in air pollution control areas or violation of directions issued by the Board), the penalty is imprisonment for not less than one year and six months with maximum imprisonment upto six years and fine. The

section provides additional penalty for continuing offences. Sections 38 and 39 deal with other violations. In sections 40 and 41, there are appropriate provisions for offences by companies or by Government Departments, there being vicarious criminal liability imposed by the Act in both these cases.

Cognisance of offences

It is important to note at this stage, section 43 of the Air Pollution Act, which deals with the cognisance of offences. Under section 43(1), a court cannot take cognisance of an offence under the Act, except on a complaint made by the following :

- (a) a Board or any officer authorised in this behalf by a Board; or
- (b) any person who has given notice of not less than sixty days, in the manner prescribed, of the alleged offence and of his intention to make a complaint to the Board or officer authorised as aforesaid.

No court inferior to that of a Metropolitan Magistrate or Judicial Magistrate of the first class shall try any offence punishable under this Act.

It is further provided that the Board shall, on demand by such person, make available the relevant reports in its possession to that person. But the Board may refuse to make any such report available to such person, if the same is, in its opinion, against the public interest.

Reforming the law

For improving the present situation, two kinds of measures are needed. In the first place, for enforcing the existing provisions, we need more field staff who will be able to check not merely automobile emissions in the concentrated urbanised areas, but also adequate staff on the highways where traffic has increased tremendously during the last few years. As regards criminal prosecutions, the restriction against private complaints (section 43 of the Act) demands relaxation. At least, the provision which permits the board to withhold information needs a second look. Besides this there might

be some utility in giving adequate information about the law, not only to the industries concerned in the major sector, but also to minor industries, some of whom are not even aware of the legal provisions.

Administrative measures

Law reform only cannot do the job. The causes of air pollution lie outside the law and the remedies also will have to be sought to a large extent outside the law. Three extra-legal factors stand out, namely, concentration of industries in particular areas, increased transport activities and over-population. Ultimately, society will have to decide for itself what kind of environment it wants and how intense is its desire for a healthy environment.

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