

# The Extent of Application of the Bengal Smoke Nuisances Act : A Case for Revision

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## Introduction

The questions as to how the use of land should be regulated or how the factories and other industrial establishments should dispose off their waste water and fumes are too important to be left solely to the local authorities. The problem of environmental pollution has assumed gigantic dimensions to call for national and global strategies to regulate certain activities so as to keep the environment reasonably clear.

It is indeed heartening to hear the President of the United States of America to say that "the day is gone when concern for the land, the air and the water was sole province of the conservationist, the wilderness enthusiast, the bird watcher, and the environmental scientist."<sup>1</sup> The President further adds in his message of December, 1974 to the Congress of the United States:

Instead, today, millions of our Citizens share a new vision of the future in which natural systems can be controlled, and our natural heritage will be preserved. The crusade to improve the quality of our human environment has begun—a crusade which has already led to great accomplishment over the past five years.<sup>2</sup>

He ends his message by saying that "no longer is concern for the environment the dream of a few. Instead, it is reflected in countless actions by many citizens, by industry, and by government at all levels every day."<sup>3</sup>

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1. *Environmental Quality*, The Fifth Annual Report of the Council on Environmental Quality. December, 1974, p. v.
2. *Ibid.*
3. *Id.* at vi.

The situation in India is not very different. While there has not been much legislative activity in this area, there is all round awareness for the need to protect human environment against various kinds of pollution. Municipalities and other local authorities have always regulated the use of land in urban areas within their respective municipal limits. But not much had been done to guard against pollution of air arising from waste water released by the factories and other industrial establishments. Indeed in some towns and cities, even today we don't have a hygienic sewage system and the domestic waste water is allowed to flow and even stay in open gutters which is posing a great health hazard to people living in such localities. Be that as it may, the authorities both at the local as well as national level are showing increasing awareness of the problem and action to combat the evil of pollution in all its forms is either being contemplated or is in the process of formulation and enforcement.<sup>4</sup>

### **Salient features of the Act**

The aim of this paper is to examine what, if any, action is taken by authorities in Calcutta to check the nuisance of air pollution by exhaust fumes and emissions of the type. We will begin the examination from the time the Bengal Smoke Nuisance Act, 1905 was passed. Of course, this Act of 1905 consolidated, codified and amended the law on the subject by providing for a machinery for 'the abatement of nuisances arising from the smoke of furnaces or fire places'.<sup>5</sup>

It should be noted here that the Act when originally enacted had limited application both in terms of territorial area covered as well as the nuisances it attempted to abate. When first brought into force with effect from 3rd May, 1905 it extended only upto Calcutta and Howrah. Subsequently it was extended to cover other municipalities in the district of 24-Parganas. At present the Act extends to whole of the State of West Bengal.<sup>6</sup>

Besides, as the preamble to the Act indicates the Act attempted to abate only those smoke-nuisances which arose from the furnace and fire places as defined in the Act. The smoke emitting from domestic fire places or other sources did not pose much of a problem. Of course the number of factories and automobiles was, relatively speaking, very low then.

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4. The National Committee on Environmental Planning is one such organisation at the national level to formulate the policies and draw up detailed programme for their implementation
  5. See the preamble to the Bengal Smoke Nuisances Act, 1905.
  6. The Act was thrice amended first by the Bengal Act of 1916, next by the Bengal Act IV of 1923 and then by the West Bengal Act VIII of 1953.

The definition of furnace as amended in 1916 first includes "any furnace or fire place used for working engines by steam or for any other purpose whatsoever."<sup>7</sup> However, by a proviso appended to the main clause, certain types of furnaces or fire places were exempted from the operation of the Act. Accordingly it provides that :

No furnace or fire place (i) used for the burning of the dead or (ii) used in a private house for bonafide domestic purposes shall be deemed to be a furnace or fire place within the meaning of the Act<sup>8</sup>

The Act provides for the constitution of a Commission as also for the appointment of a chief inspector of smoke-nuisances and several assistant inspectors of smoke-nuisances to carry out the purposes of the Act.<sup>9</sup>

The control mechanism provided by the Act proceeds first with giving the State Government power to prohibit by notification the erection or use of kilns or furnaces or the manufacture of coke in specified areas. All cases of erection and use of kilns or furnaces in contravention of the aforesaid prohibition are offences punishable with fine. The cases involving manufacturing of coke in contravention of the prohibition are more severely dealt with in as much as a recurrence of the offence attracts higher penalty. Likewise the owner or occupier of a building or land who allows any person to make coke thereon in contravention of such prohibition is liable to fine and the coke so made is liable to seizure by the Inspector pending the order of the Magistrate.<sup>10</sup>

The magistrate in addition to imposing fine for erecting or using a kiln, clamp, or furnace, may also order that the owner or occupier should demolish the kiln or furnace erected or used in contraventions of the prohibition. Failure to comply with the order of demolition further attracts the penalty.<sup>11</sup>

Another measure of controlling any nuisance arising out of emission of smoke is to prescribe by rules the density of emission in certain cases, the time of emission and the minimum altitude of chimney. If smoke is emitted from any furnace in greater density or at a lower altitude or for a

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7. S.3 (i) of the Bengal Smoke-Nuisances Act, 1905 (hereinafter referred to as the "Act.")

8. *Ibid.*

9. *Id.*, ss. 4-5 of the Act.

10. *Id.*, s. 6

11. *Id.*, s. 7.

longer time than is permitted by rules, the owner is liable to punishment laid down under the Act.<sup>12</sup>

The Act also provides that no furnace, flue or chimney shall be erected or the existing furnace flue or chimney shall be re-erected, altered or added to otherwise than in accordance with plans approved by the Commission. Any contravention of this provision is again met with punishment.<sup>13</sup> The Inspectors under the Act have been given wide powers to enter and inspect the premises containing furnaces etc., to test appliances used for preventing emission of smoke. The Commission is empowered to give suitable directions to the owners of furnaces to facilitate inspection by the Inspector and any non-compliance of such directions is met with punishment.<sup>14</sup>

The State Government has been empowered to make rules to carry out the objects of the Act. While the rule making power covers a wide range of aspects of controlling the smoke- nuisance, the following heads are important enough to justify reproduction here and they are :

- 1) prescribe a scale for the purpose of determining the density of smoke;
- 2) prescribe the density of smoke that may be emitted from a furnace;
- 3) prescribe the time during which smoke of such density may be emitted from a furnace;
- 4) regulate with due regard to the safety of shipping, the emission of smoke from the furnaces of vessels;
- 5) prescribe the altitude below which smoke may not be emitted from a furnace.<sup>15</sup>

#### Limited ambit of the Act

This is only a brief summary of the Act. It will be seen therefrom that the object of the Act was limited in as much as it was designed to control only that form of smoke- nuisance which arose out of a furnace, kiln or chimney. It was natural in those days when the Act was enacted. At that time nobody gave so much thought and concern to other forms of air pollution. Indeed the idea of controlling the air pollution in all its forms so as to

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12. *Id.* s. 8.

13. *Id.* s. 8A.

14. *Id.* s. 9.

15. *Id.* s. 10 (2) (c) (d) (e) (f) and (g).

preserve the environmental purity was not conceived or accepted as part of state functions. The laws providing for urban planning, zoning and requiring the corporations to take such measures as were necessary to preserve and promote public health and curb those activities which posed dangers to public health only indirectly attempted to achieve an environment free from pollution. But a programme designed expressly to control all sorts of air and for that matter water pollution so as to secure environmental purity was not thought of; indeed a plan of direct action to combat the menace of air pollution has yet to reach a take off stage.

At the time when the Bengal Smoke-nuisances Act was passed, the number of automobiles on the roads of Calcutta was not so large as to invite the attention of the legislators of the province to think of a remedy for its legal regulation. It is only of late that due to increasing industrialisation and consequent increase in the population of the city that the amount of smoke emitting from the automobiles has assumed dangerous proportions and has become a real health hazard and a menace to environmental purity. It is no exaggeration if one were to say that to see and feel clean air one will have to go outside Calcutta; even those who go for early morning walk around the lakes of Rabindra Sarobar get anything but clean air.

#### **New areas that need to be covered**

It is indeed heartening to note that the State Government has shown some awareness of the problem and has recently appointed a committee to consider means of abating the nuisance of air pollution arising out of exhaust smoke from motor vehicles. Commenting on the nature of nuisance and its ill effects or possible danger to human health, an editorial in a local daily, *inter alia*, observed :

Some forms of air pollution may be more pervasive, subtle and cumulative in their effects. But that which most immediately abrades itself on the eyes, the nose and the ears of the average citizen is exhaust smoke from motor vehicles. It has been calculated on the basis of a survey that more than half of these on the roads inadequately consume the hydro-carbons of their fuel, which both wastes scarce petrol or diesel and allows lethal gases, notably carbon monoxide to escape. In extreme instances the exhaust lets forth a black stinking and noxious cloud, reminiscent of chemical warfare during world war I, a danger to other drivers and a curse to all users of the road, including pedestrians.<sup>16</sup>

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16. *Amrit Bazar Patrika*, dated March, 1976.

The Committee appointed by the State Government to examine the nature of the problem and suggest means of abating the nuisance before submitting its report should in our opinion, analyse all the possible dimensions and ramifications of the problem. Before making final recommendations as to the means to be adopted to control air pollution arising out of exhaust fumes from motor vehicles, it will do well to study the provisions of the United States Clean Air Act and the various reports thereon of the National Committee on Environmental Quality. After deciding as to what particular measures are to be taken to ensure effective control of pollution in this area, the machinery to be adopted could be modelled on the lines of Smoke-nuisances Act with such modifications as have become necessary due to changed context and conditions of society today.

If what is said in the newspaper reports is correct, the committee has adopted a very mild and modest approach. It seems to think that the problem could be controlled merely by prescribing a check at the time of renewing the vehicle's tax token annually, when the injection system and exhaust will be checked.

It would be worthwhile to refer to American experience about the control of air pollution with a view to see if we could possibly and profitably adopt a few of the techniques developed there to solve the problem facing us here. In the American set up the National Council on Environmental Planning first prescribes the national standards of ambient air quality. The standards so prescribed are two, one is known as the primary and the other as secondary. The primary standard is designed to protect health and the secondary to protect the public welfare, specifically property vegetation and aesthetics. These standards are determined in relation to major air pollutants such as—sulfer dioxide, carbon monoxide, hydrocarbons, nitrogen oxide and photochemical oxidants.

It is in terms of these standards of ambient air quality that polluters are required to install control technology or take other steps so that new plants or existing plants undergoing major modification, meet performance standards achievable through the use of best demonstrated technology for reducing emissions.

It would indeed go a long way in ensuring effective implimentation of any measure adopted by the State Government to check air pollution if the National Council on Environmental Planning in New Delhi first adopt them and then persuade the States to implement the same with such modifications as are called for by the different local conditions. We can also avail ourselves of the financial assistance made available by the United Nations. It may be recalled here that the interest evinced by India and her leaders at the

Stockholm Conference of 1972 where the nation was represented by two ministers and the Prime Minister herself gave a key address was indeed very encouraging. We could avail ourselves of the facilities made available by among others the Environment Programme Secretariat and the Environment Coordination Board. The United Nation's Environment Programme has also established the Environment Fund to provide financial assistance to finance international measures to protect and improve the environment.

It must, however, be noted that any programme of pollution control we decide to adopt must be formulated after taking into account the natural, ecological and other atmospheric conditions peculiar to our country. The factors that affect directly the formulation and implementation of any such programme are the ones that generate or cause pollution of various sorts. In this respect it is not enough to know as to what causes pollution or what are the pollutant elements which need to be curbed but it is also necessary to know as to what measures to check the pollution would be most effective to control the menace without further giving rise to pollution of a different variety. In the United States of America the recent oil crisis brought about a major rethinking and review of the whole strategy of pollution control for a while suffered a set back and ever aggravated the problem when alternative modes of generating energy were resorted to. The planners then had to think of bringing about a balance between the programme of pollution control and the programme of generation and conservation of energy.

In India our peculiar problem is the use of a variety of fuel for domestic purposes. All the air pollution we see and feel in the city of Calcutta is not altogether from the chimneys of factories, furnaces, kilns or the exhaust fumes from motor vehicles. A substantial amount of smoke is emitted from the fire places of restaurants, eating houses, tea houses, coffee bars, private kitchens and even from those who cook on open pavements.

So far we have not reached a stage when we can possibly think of regulating by law the use and consumption of such fuel in such a way as to guard against any pollution of air. The problem is too complex to admit of regulation by law. Until the supply of other types of energy such as electricity and cooking gas is adequate enough to replace the use of coal and other forms of fuel, there is no way to check this particular form of air pollution. Even so, something has to be done to check it. We would, therefore, urge upon the planners to devise a comprehensive programme to combat the menace of air pollution which would cover all these polluting elements including the domestic stoves and fire places.

In a city like Calcutta, the number of charcoal stoves used on open

pavements is so large as to call for some action to guard against its ill effects on the environment of the town. In winter it is common for people every where in India to burn wood in open fire places without caring for chimneys and allowing the smoke to pollute the air. In Calcutta this form of pollution has assumed as dangerous proportion as the one arising out of exhaust fumes from motor vehicles owing to peculiar geographical conditions of the place. During the last winter Calcutta witnessed a great increase in smoke. It was not altogether due to general increase of civic pollution principally from exhaust of internal combustion engines but from other source of quite opposite origin arising not from waste of petrol but from lack of it. It has been pointed out in a newspaper report that because of the high price of cooking gas and kerosene many people have gone back to the old charcoal chula both for cooking and other domestic purposes as also for warming the place on cold nights. The fumes from these humble appliances combined with the mists arising off the Hooghly to produce a form of fog which is impenetrable, evil-smelling and throat-catching. This in the words of one observer gives Calcutta "worst of both worlds : the traditional and the modern."

We are aware of a recent innovation effected in bringing out a new variety of smokeless chula, smokeless coal and smokeless fuel for domestic use but that would hardly have any effect in reducing the incidence of air pollution from this source. What is, therefore, needed is a sound and effective system of regulating the emission of smoke and fume from all possible sources.

The foregoing analysis of the provisions of the Bengal Smoke Nuisances Act, 1905 and its working over the years shows that the Act operates in a limited area and curbs the pollution to a very limited extent. There is a strong case for a similar measure being adopted to curb pollution of the air from other sources. A central law, namely, the Water Pollution (Control and Prevention) Act, 1974, was enacted recently to curb pollution of the air from stagnant and waste water. A similar measure in the form of a central Act to curb the menace of exhaust fumes and emission of smoke from a variety of fire places and domestic stoves is urgently needed. The central law must prescribe certain national standards leaving it to the local governments to adopt them with such modifications as are necessary to suit the local conditions. The new law could perhaps also cover the areas at present subject to regulation by the Bengal smoke Nuisances Act. Thus, in our view, instead of enlarging the area of operation of this Act so as to extend it to new areas, this could be repealed and a new Act be passed which would apply uniformly to all those areas which are a source of causing pollution of the air from emission of smoke and fumes.