

Working of the Water (Prevention and Control of Pollution) Act, 1974

*Tirath Ram**

Throughout history, impure water has been a leading cause of serious diseases in man. Such water-borne diseases as typhoid, fever and dysentery were quite common even in Western countries less than a century ago. It was perhaps the great typhoid epidemic that swept London in the mid-nineteenth century that underscored the dangers of water pollution and the country launched the first organised steps to combat it. While in the developed countries of the West, water treatment and distribution methods have, in the most part, eradicated the transmission of bacterial water-borne diseases and they think now of water pollution not so much in terms of health, but of conservation, aesthetics and the preservation of natural beauty and resources, the conditions in the under-developed and developing countries are still far from satisfactory. For instance, in a country like ours, where, in most of the rural areas and in part of the urban areas, the population is without an adequate and safe water supply, water pollution has to be considered more in terms of health than of anything else. Considering the rising population and rapid industrialisation of our country and the general tendency among our people to consider that our rivers and streams have an infinite capacity to absorb all kinds of impurities, one shudders to think of the consequences that will follow unless timely steps are taken to prevent and control pollution of water in our town and cities.

Water is a subject in the State List of the Constitution of India. Entry 17 in List II of the Seventh Schedule to the Constitution reads as follows :

Water, that is to say, water supplies, irrigation and canals, drainage and embankment, water storage and water power subject to the provisions of Entry 56 of List 1.

*Officer on Special Duty, Control Board for the Prevention and Control of Water Pollution.

Entry 6 of the same List reads as follows :

Public health and sanitation ; hospital and dispensaries.

Though water pollution as such is not mentioned in any of the lists, from the reading of the above two Entries it is clear that any measure to control pollution of water has to draw its authority from the above mentioned two Entries. Moreover, the competence to make any legislation is also to be determined by the pith and substance of the legislation itself. As the water (Prevention and Control of Pollution) Act, 1974, affects matters which are mostly in the State List, the competence to make a law for the purpose should also rest with the States.

History

In early sixties, when the problem of water pollution was first felt in this country, the then Ministry of Health appointed an Expert Committee in October, 1962 to study the question and to prepare a draft legislation to deal with the water pollution from domestic and industrial wastes. The Committee, after examining all aspects of the question, recommended that a Central as well as a State Legislation on the subject may be enacted. The Central Council of Local Self Government, which considered the recommendations of this committee in their meeting held on 7th September, 1963, passed a resolution recommending the enactment of a single law by Parliament, so that the measures to control water pollution may be uniform throughout the country. The Government considered the recommendations of the Expert Committee and the opinion of the Central Council of Local Self Governments on which the Ministers in charge of Local Self Governments of all State Governments are represented, and decided to bring in a Central Legislation to Control pollution of water. Accordingly, a draft Bill was circulated to all the State Governments in December, 1965, with the request to pass resolutions authorising Parliament to enact the above law in their behalf as required in Article 252(1) of the Constitution.

In December, 1969, the Central Government introduced "The Prevention of Water Pollution Bill, 1969" in the Rajya Sabha after 6 States had passed enabling resolutions authorising Parliament to enact on their behalf. In August, 1970, the Rajya Sabha decided to refer the Bill to a Joint Committee of both the Houses, and the Joint Committee, after hearing several witnesses and after making on-the-spot inspections, examined the Bill thoroughly and modified it in many respects. The Joint Committee presented its report along with the modified Bill to the Parliament on 13th November, 1972. By the time the Parliament passed the Bill, 6 more States had passed enabling resolu-

tions. The Parliament passed the above Bill in early 1974 and the above Act received the assent of the President on 23rd March, 1974. The Act came into force from this date in all the 12 States, viz., Assam, Bihar, Gujarat, Haryana, Himachal Pradesh, Jammu & Kashmir, Karnataka, Madhya Pradesh, Kerala, Rajasthan, Tripura and West Bengal and all Union Territories.

As the intention of the Government was to extend the Act to whole of the country, a provision was made in the Act that any State which wanted to adopt the Central Act could do so and the above Act would come into force in that State from the date of their adoption *vide* Section 1(3) of the Act. Since then the States of Uttar Pradesh, Punjab and Andhra Pradesh have also adopted the above Act and, at present, all the provisions of the Act are applicable to these States also. The remaining States are being persuaded to adopt it, so that there may be uniformity of concerted action in the matter of water pollution control in the country.

Objectives of the Act

As is clear from the preamble of the Act, the objective of the Act is to prevent and control water pollution and also to maintain and restore the wholesomeness of water. There is some significance in the title of the Act itself. "Prevention" may refer to the new sources of pollution whereas "Control" may refer to the existing sources of pollution. It may be appreciated that an existing industry cannot be asked all of a sudden to stop its discharge of effluents to a water course, which they have been doing for years, without seriously dislocating their industrial activity. Such a drastic action will affect industrial production and will also create other social problems, such as unemployment, etc. What is, therefore, needed in respect of the existing sources of pollution is the gradual control of pollution without causing any serious dislocation to the industries. It is with this view that a separate provision has been made in Section 26 that the existing industries which are discharging effluents in the water course should apply for consent within three months of the constitution of the respective State Boards. This time limit is very necessary. But, in respect of new industries, standards can be laid down and enforced strictly so that arrangements are made well in advance for the treatment of effluents to the required standards before they are let out in the water course. Hence, in the case of new industries the concept of "prevention" can very well be applied. It is in this context that Section 25(1) lays down that no person shall, without the previous consent of the State Board, bring into use any new or altered outlet for the discharge of sewage or trade effluent into a stream or well, etc.

Scheme of the Act

For achieving the objectives of the above Act, there is a provision for the setting up of a Central Board for the Prevention and Control of Water Pollution and similar Boards in the States whose functions are described in Sections 16 and 17 of the Act. Besides advising the Central Government on matters concerning prevention and control of water pollution, the Central Board also coordinates the activities of the State Boards and provides them with technical assistance and guidance. The Central Board also acts as the State Board for all the Union Territories. The functions of State Boards established by the State Governments with representations from all concerned interests are more executive in nature. They are supposed to inspect the various industrial plants, to see that the effluents discharged are well within the permissible limits. Wherever the provisions of the Act are violated, they can prosecute the polluter. The Central Government and the State Governments have to establish the Central Water Laboratory and the State Water Laboratories which will serve as the reference laboratories, besides the Board Laboratory which every Board is supposed to have.

Approach to the problem

In view of the vastness of the country and its population, the problems that confront the Boards are immense and are bound to increase with more industrialisation and urbanisation. The approach is necessarily to be selective so that the major polluters are identified and corrective measures are taken. Generally, the most important pollution sources are the domestic sewage and industrial effluents. At present, most of the Boards are engaged in identifying the sources of pollution and also the extent of pollution. For this purpose, detailed inventories of domestic and industrial polluters are being made. Wherever the industries have not approached the State Boards for issue of consents as required under Sections 25 and 26 of the Act, necessary notices are being issued to the industries to apply for consents immediately. While giving consents, the Boards evolve effluent standards for each factory, taking the quality of the receiving waters and all other relevant factors into consideration. The Indian Standard Institution has already set up standards for the discharge of effluents which are being adopted for the purpose of the above Act by all the Boards till such time the Boards themselves will have their own standards.

Although the cost of providing a clean environment is enormous, the problem has to be tackled on a priority basis. In view of the immense resources and expertise required, it has to be substantially supported at the national level. The Government have already initiated action in this regard to provide sewage facilities in the larger cities and also to have schemes for

efficient collection and disposal of city garbage. A scheme for conversion of dry latrines into sanitary ones has been introduced to serve as a model for the smaller cities.

One of the important factors which come in the way of effective implementation of the provisions of the Act by the State Boards is the inadequacy of funds. It has been suggested that the Act may be amended to provide for the levy of cess, etc., on industries and others, the proceeds of which may be distributed among the Boards. The Governments are seized of the matter, and necessary measures are being worked out to enhance the resources of the State Boards, so that they can efficiently discharge their functions.

One more point may be added in this connection and that is that the responsibility to put up the required treatment plant for treating the effluents is that of the industry itself and not of the Board. The Board is only a policy-making authority. It can only lay down the standards so that the quality of receiving waters is not polluted further and gradual action is taken to improve the quality of water. It is for the industry, which discharges the effluents to take the advice of consultants etc., to devise the necessary treatment plants. In other words, an industry cannot take the plea that as the Board has not given them advice regarding the treatment methods, it cannot be blamed for the effluents which may possibly exceed the permissible limits. The Board can only lay down the standards taking into consideration the technological improvement that has taken place and the quality of receiving waters. It is upto the industry to devise means to ensure that effluents discharged by them are at the required level.

In some of the meetings of the Chairman and the Member Secretaries of the State Boards, it was suggested that the Chairman of the Board should be given summary powers to punish the offending industry. For obvious reasons, it could not be agreed to. The Boards being prosecuting agencies cannot also be the judges and they have to move a Court of Law wherever there are infringements of the provisions of the Act.

In the implementation of the above provisions of the Act, certain drawbacks have come to notice and the Government is thinking of introducing an amending legislation in Parliament. The Amending Bill has to be circulated to all State Governments and at least two third State Legislatures have to pass the enabling resolutions as required under Article 252(2) of the Constitution. The procedure being somewhat lengthy, it will take some time before the Bill is finally enacted by Parliament.