

# An Introduction\*

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The book contains selected papers presented at the seminar held at New Delhi in May, 1977. The discussion at the seminar was concerned with the various problems of legal control of environmental pollution—water, air and noise. This necessarily entailed examination of the legislative relationship between the centre and the states. The participants felt the need for a central enactment covering environmental pollution without ruling out the state control. To this effect a suggestion was made to enact a new Entry on "Environmental Pollution" in the Concurrent List of the Constitution. An academic course on Environmental Pollution was also proposed for the Law Schools. Various issues were debated for all the three days and the discussion was really very informative and useful.

Dr. Jariwala, while commenting on the Forty-Second Amendment of the Constitution which provides for the preservation of environment, remarked that environmental problem needed careful attention when other social service programmes were underway especially in a socialistic pattern of society. It was good that Art. 31-C was amended to save laws giving effect to Part IV principles from the operation of Articles 14, 19 and 31. Article 51A(g) dealing with fundamental duty of a citizen to protect natural environment was a step in the right direction.

Dr. S.N. Jain discussed the United Nation's efforts in controlling and regulating human environment, and the legal principles and remedies against pollution under the common law and various Indian statutory provisions. His view was that these legal principles and remedies were out of date in the modern context when drastic action in the direction was called for. He pointed out that the Water (Prevention and Control of Pollution) Act, 1974 was a comprehensive legislation on the subject. There were of course, several ambiguities (e.g. overlapping between s. 24 and s. 25 or s. 26) and deficiencies in the statute and he mentioned the problems arising out of duality

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\* This is based on the seminar papers read by the participants highlighting points of controversy on various problems concerning environmental pollution.

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of control and multiplicity of authorities. He gave a number of suggestions to improve the provision of the Act.

Shri Gole and Shri Mahesh Chand of the Central Water Commission put forward certain technical deficiencies which hamper progress in water pollution control and they were of the view that the water resources problem with the concurrent population explosion and industrialisation is a matter of international concern and there may not be an immediate practical solution except the re-use of fresh water for all industrial, agricultural and recreational purposes, and it could be practised to degrees of varying dimensions.

Shri Tirath Ram felt that the boards under the Act of 1974 did not function effectively because of lack of funds and, therefore, some cess might be levied on industries the proceeds of which may be distributed among the boards. Secondly, the sole responsibility to put up the required treatment plant for treating the effluents have to be of the industry itself and not of the Board. The Board is only a policy making authority to lay down the standards so that the quality of receiving waters is not polluted further. The industry has to devise means and to ensure that effluents discharged by them are at the required level.

Shri Miakhan was of the view that water pollution control problems could not be dealt with in isolation. The cost of industrial water pollution abatement, amongst others may have to be directly reflected in the location of industries, increase in the costs of products and even restricting a particular industrial activity. Therefore, each case needed a careful study and appraisal on the basis of political, social and economic considerations.

Dr. Dholakia made a comparative study of American and Australian laws and suggested that in order to make the pollution control programme really effective, the government must have the best ecologists and experts as members of the boards. He suggested that levy of cess on industries, strict conditional issue of licenses, offering tax incentives and government subsidies to promoters of pollution control measures could be the solution to the problem.

Negating the contentions generally put forward by industries that the costs of pollution control were prohibitive and that the implementation of regulatory measures would cripple industrial growth, Mr. Visweswaraiiah observed that it was the responsibility of the industry to earmark some percentage of their capital investment for the purposes of proper treatment and cure of water pollution itself rather than to depend on government measures. Agreeing with Dr. Dholakia he said that the boards under the Act should have duly qualified technicians and ecologists and that there should be a strict check on industries from the point of view of pollution at the time of renewal of their licenses.

Shri Prem Varma pointed out that since the effluent quality standards are linked with the dilution capacity a knowledge of capacity of dilution in terms of quality and quantity of water is required to fix up the standards of effluents' quality. At present, this is done on the basis of standards laid down by the Indian Standards Institution which is a useless exercise because this agency does not take into account the stream, its flow, the volume of water available into which the effluent has to be discharged. It simply takes into account the percentage of effluent after the treatment of waste before it goes into the stream. The other aspect of importance, according to him, is that the pollution control technology is not sufficiently developed and therefore, no suitable methods are available to treat some kinds of effluents, and if at all, in certain cases, they are available, they are not economically and commercially feasible to adopt.

Shri M. Krishna Nair suggested that lawyers, administrators and technologists should meet and prepare case studies in this area and see whether the objectives of the legislation are implemented. Dr. C.K.N. Raja went slightly further and said that inspection, investigation and setting of standards under the Act must be done by expert technologists. Shri L.N. Mathur traced out the history of various legislative enactments to show that pollution was an age old problem which needed a scientific practical solution. Means should be developed for treatment of water to recycle it for human consumption.

Outlining the necessity of prevention of environmental deterioration Dr. Asit Bose emphasised on the need for a proper data collection and evaluation of the question as to how clean the environment should be and to what extent degradation be allowed for an optimum use of resources to evolve quality criteria and public policy. He suggested that some one should examine the feasibility of using criminal sanctions in addition to damages and administrative sanctions in an increasing manner to take action against massive pollution of land, water and air whether by industrial waste and domestic effluent or by chemicals. Dr. K.B. Agrawal agreed with Dr. Dholakia that tax incentives, grants and loans to industries should be liberally introduced to make the pollution preventive scheme most satisfying.

In the area of air pollution, the participants showed great concern on the lack of legal provisions, adequate data, technical personnel, equipment and laboratory facilities to control the menace. Shri M. Kurien of the Bharat Refineries explained the working of Mathura Refinery and said that the government was seized of the problem as to how to reduce the emission of pollutants and several investigations were underway to achieve the objective. Dr. Dholakia observed that because of the slow awareness, the industries have not provided any controls on the emissions from the factories resulting in abnormal heavy discharge per unit capacity. Further, the

location of industries have been haphazard intermingling with residential areas which has adversely affected public health. He was of the view that corporations, universities, industries as well as the government all together should pull their resources to arrange for continuous or periodical monitoring of the atmosphere to assess the pollution level and the seasonal variations. Need was expressed for a central legislation by Dr. Upadhaya on the pattern of the Bengal Smoke Nuisances Act of 1905 laying down certain national standards regulating air pollution. Dr. Kesari gave valuable suggestions for the framework of a Central Act, its scope and the ultimate objectives.

On noise pollution, deficiency of law to control its impact was noted and the need for having a comprehensive legislation on the subject was emphasised. The general view was that the noise danger had become acute, but there seemed to be complete complacency and lethargy in taking timely action by the administration to surmount this subtle danger. Shri H.G. Balakrishna, mentioning the importance of public health and the hazards that noise creates, explained that the ordinary legal remedies were absolutely inadequate and he emphasized the necessity for some urgent action by the government. Professor Kulshreshtha, by analysing the legal remedies available in other countries, remarked that in the light of Indian conditions, a separate legislation to control pollution was the urgent need of the day. In addition, there should be City Noise Control Code for all major cities in India on the model of the New York system which he very well explained in his paper. Shri R.K. Nayak projected the psychological and behavioural effects of noise pollution. The legal solution, according to him, could be in the form of private and public remedies—private remedy by way of individual law suits and public remedy through regulatory and remedial legislation.

Looking to general problems of environmental pollution, Dr. Jariwala suggested that 'Environmental Law' should be introduced as a subject of study in the Law School's curricular, a suggestion which was greatly appreciated by all the participants of the seminar.