

Overlapping of norms and jurisdictions has been a constant point of concern in the workshop. This session again brought to the fore the conceptual and practical dimensions of this problem in the realm of enforcement and conflict resolution.

The chairperson Justice M.N.Rao raised questions on the sanctioning regime under the Environment Protection Act. This regime would have little effectiveness if sub-section (2) of section 24 accords primary to the punishments provided in other statutes.

Mr. Vaidyanathan was in his presentation focussed on the real-politic difficulties of attempting to address the issue of duplicating procedures i.e. even as there is continuous demand for single window clearances there is great reluctance to give up authority.

The thematic presentation by Mr. Furqan Ahmad described the authorities of enforcement and conflict resolution.

Remarks of the Chairperson Justice M.N.Rao

I wish to begin by drawing attention to sub-section (2) of section 24 which lays down that if a person is punishable for an offence both under the Environment Protection Act and any other Act then the person guilty of such offence shall be liable to be punished under the other Act but not under this Act. This proviso has taken away the entire efficacy of Section 15, which prescribes very harsh punishments.

For example: if the vehicles cause pollution by belching their dangerous smokes in excessive measure on the roads, the punishment prescribed under the Motor Vehicles Act 1988 is only 100 rupees fine. If the vehicle owner was to be tried for an offence under Section 15 of the EPA Act, he would have faced a fine of one lakh rupees and also imprisonment of up to five years in the first instance. Why for the same offence is he sentenced to a term of imprisonment or only to a fine of hundred rupees. There are several enactments in which such lenient punishments are prescribed because those

enactments were brought into force long before the hazards of pollution were contemplated. It was expected of the legislature to take care of such situations when they were making a law exhaustively covering this field. The entire intention of administering deterrent punishments for the offenders has been taken away.

Primacy to Environment Protection Act

Section 24 should be so amended as to accord primacy to EPA over all other laws. The section should lay down that the provisions of this Act, and the rules or orders made there in shall have effect notwithstanding anything inconsistent there with contained in any enactment other than this act.

Enforcement Authorities and Procedures of Enforcement

There are several administrative enforcement authorities under several enactments.

For example: the Central Government under the Environment Protection Act, the Chief Controller of Explosives under the Explosives Act, the Chief Inspector of Factories under the Factories Act, the Chief Controller of Boilers under the Boilers Act, the Central and State Pollution Control boards under the Water and Air Acts, the Municipal authorities under the various Municipalities Acts.

The next aspect that assumes relevance is how to secure the rights under these enactments, what is the forum. One forum is the high court, which can be approached by filing a writ of mandamus. The court can direct the authorities to comply with the statutory duties incorporated in the relevant enactments. Some times, parties can also approach the Civil Court for an injunction for restraining an offender from continuing the offence indulged in namely causing pollution to the environment. The National Environment Tribunal is vested with jurisdiction to award compensation for the victims. It operates only in the sphere of civil law. It has no jurisdiction to award sentences under the criminal law.

A tribunal with mixed jurisdiction

In the State of Andhra Pradesh, some years back a law called Prohibition of Land Grabbing Act was enacted. The tribunal constituted under that Act was empowered, with both civil and criminal jurisdictions. The tribunal was not required to follow any procedural laws. It was only required to follow the principles of natural justice. It could award compensation, it could direct eviction, and it could also sentence the offender to imprisonment. One of the defects in the present system is that it only takes care of compensation. What about criminal liability? I think this situation can be taken care of if the Tribunal is conferred with the jurisdiction to summarily try the offenders and sentence them to imprisonment. I think such a law will pass muster, I don't think it will be afflicted with any legal infirmity because Andhra Pradesh has such a legislation and it is working very well.

Theme Presentation: Mr. Furqan Ahmad

There are two important aspects, which are crucial for implementation of laws pertaining to hazardous substances and processes. These two aspects are: administrative machinery and adjudicative processes.

Administrative Machinery

- Environment Protection Act: Ministry of Environment and Forest through its respective state officers Directorate of Industrial Safety and Health.
- Factories Amendment Act: State Government through Chief Inspectors of Factories.
- Some times the same rules are enforced by different administrative regimes.

For example: for the implementation of the *Manufacture, Storage and Import of Hazardous Chemical Rules 1989* notified under the EPA, the following agencies are responsible: **the Factories Inspectors,, State Pollution Boards, Chief Controller of Explosives, the Chief Inspector of Dock Safety, the Atomic Energy Regulatory Board and the Director of Explosives Safety.**

- The enforcement of Public Liability Insurance Act 1991, rests with the State Governments and the collector is responsible to award the damages to victims of hazardous substances.
- The responsibility of establishing National Environmental Tribunal rests with the Ministry of Environment and Forest.
- The State Pollution Control Board is responsible for the implementation of Hazardous Waste Management and Handling Rules.

Issues:

How to streamline the functioning of these multiple authorities so that overlapping and accompanying confusion regarding implementation can be avoided.

- How to provide technical equipment and sufficient trained manpower to tackle complex measures of problems and processes.
- What are the various difficulties encountered by these administrative authorities.
- These difficulties can be variantly viewed from the perspective of the authorities industries and individuals.

Judicial and Dispute Resolution Authorities

Various fora of settling these disputes exist under different laws including of course Constitution of India.

- These may be: courts, tribunals, committees, collectors.
- Arbitration processes and the Lok Adalat system can be used in the settling of environmental issues.
- The extraordinary jurisdiction to the superior court to decide on environmental issues if they adversely impinge on fundamental rights. Public Interest Litigation is a creature of this jurisdiction.
- The efficacy of various fora as far as depends upon the remedies that is sought as well as the resources available to the litigants.
- If the object is to seek an injunction against conduct causing damage to the environment, then a writ petition under the Article 226 of the constitution is speedy.
- This procedure envisages that the petitioner has adequate legal and intellectual support as well as financial resources to attain the objective. Frequent invocation of writ jurisdiction for minor local infringements of environmental legislation would clog the dockets of higher courts.
- In a case of minor or localised problems it would be more helpful if judicial assistance is sought under Section 133 of the Criminal Procedure Code.
- For other local matters a proceeding under section 91 of the Civil Procedure Code may be considered as adequate.
- Criminal prosecutions are expected to be resorted to only as a matter of last resort. Otherwise it could be counter productive. Besides the burden of proof is heavier in criminal prosecution.

Special Tribunals

It needs to be mentioned that whenever the claim is for damages for harm caused by a particular accident, the legislature may consider it proper to create a special tribunal for the purpose. In fact this is what has been done in the National Environment Tribunal Act 1995. Here again the question may arise how far such a tribunal could be an effective substitute of normal judicial organs?

It is submitted that the intention to provide for a speedy procedure and to assign the matter to an exclusive tribunal is good. However the object of judicious disposal can be difficult to achieve without pruning the cumbersome procedural matters. The danger in creating too many tribunals is that there is a serious possibility of conflicting decision. More over there are bound to arise difficult questions as to which court or tribunal has jurisdiction over a particular controversy.

The next question regarding conflict resolution is what are the difficulties faced by people in seeking judicial remedies for the enforcement of their rights?

The enormity of problems encountered and their alarming nature at time poses major hindrances in implementation of judicial order be it mass shifting of hazardous industries or restricting developmental activities of coastal regulation.

People's Participation and Public Interest Litigation

It is imperative that there is genuine **public** participation in the making of environmental decision.

There is need to guard against Public Interest Litigation only for private purposes or as a matter of personal vendetta.

Where the government or the governmental agencies are indifferent and guilty of inaction; to obtain expect prompt and adequate attention public interest litigation may be desirable. Thus for example the manner in which the pollution boards have been functioning has left much to be desired. It was public interest litigation that came to the rescue of the environment.

Documents of Authorisation and Consent

P., V. Kulkarni: The power to grant import authorisation has been given to the Board under the Hazardous Substances Rules. Whenever the authorisation is to be given by the board, spot inspection and other local inspections are being made by the concerned environmental officers who study the situations at the storing place and also the nature of the hazardous substances that is being stored and handled. On the report of the concerned environment officer, the authorisation will be given. The period of authorisation will be usually mentioned in the authorisation letter. If the authorisation is for one year, the concerned importing authority is to act within that certain period and has to get the authorisation renewed year after year. If there are any complaints regarding the storage and mishandling of hazardous substances, the concerned authority or the Board will after studying the situation grant opportunity to the concerned importer before cancelling the authorisation. Against the refusal of authorisation or order of cancellation, the concerned importer can go to the High Court or the Supreme Court under article 226 or 32 of the Constitution.

Before admitting the writ petition, my humble suggestion is that the concerned importing authority should be asked to produce the previous year's authorisation letter so that the court will come to know when the authorisation expired. Without producing the authorisation letter before the court, the industry or the person who is importing will get a stay order. And by that the authorisation is being stayed, he will continue the activity. Thus even without authorisation the importer will go on importing the material which is hazardous. It must be made compulsory for the writ petitioner to enclose the authorisation letter alongwith his writ petition. On the expiry of the last date of the authorisation, the writ should become infructuous because the authorisation sanctioning power has been given to the board. The High Court or the Supreme Court cannot take the

role of the Board. May I mention some of the undue benefits obtained by writ petitioners under the Water or Air Act. Whenever the closure order is mentioned, is given by the board, the concerned industry will go to the court and get a stay. And the writ will continue for longer period. Even after the expiry of the relevant period, the industry shall be working on the strength of the fact that it has got a stay from the court. In my view as soon as the relevant period expires, the writ should become infructuous. And the concerned industry should be directed to go to the Board for getting the new consent for a new period. The writ petitions should be disposed of before the expiry of the consent or authorisation period.

Regarding the disposal of criminal cases, in lower courts the criminal cases will be filed by the concerned regional officers on the authorisation given by the concerned board on perusal of the inspection report and the spot inspection and laboratory analysis report. These cases will run for years together. Even for quick disposal it is not possible to make the arrangement because of the overload of work in the lower courts. In my view it is better to have courts try criminal cases at divisional levels. If the division consists of two or three or five districts, all the cases pertaining to the criminal cases can be handled by the one district court in regard to the criminal cases and so that all the cases of that particular district can be concentrated on and disposed off early. It may give an opportunity for the quick disposal of cases of criminal nature.

Whenever a stay is going to be given, the High Court or the concerned Supreme Court should also give instructions to the concerned industry to immediately stop the production or import of the concerned hazardous substances. **Only then will the industry make the effort to obtain the necessary consents**

Chairperson's: Intervention It can be brought to the notice of the court by the counsel that the authorisation was over and therefore, the writ has become infructuous. The court will immediately post it for orders and dismiss it as infructuous. The concerned counsel must be vigilant.

As regards making annexing of the authorisation letter compulsory it may not be open to a party approaching the court to insist upon the court making such a regulation. Whenever a case is filed an advance copy is served on the opposite side. Your lawyer will be in the know of the things, at the admission stage and can oppose the case.

A further question may be: Is the procedure of giving yearly authorisation correct or should it be for a longer duration?

Strategy to Address Overlapping Jurisdictions

Mr. G. Vaidhyanathan: To begin with I would submit that the problems of overlapping were sought to be ironed out by convening a working group. Its recommendations have been submitted to the Ministry of Labour.

Now overlapping jurisdiction of various enactments is there. It is likely to be for there for some more time, because the processes of consultation are not in place for law making.

Perhaps we need to have a kind of arrangement like the joint chiefs committee, in the Defence Ministry. **There should be a kind of standing arrangement by which the law made by one Ministry or department if it has some implications on the working of another law or enactment of another Ministry or Department, then the consultative process should be set in motion.**

There is an inter-ministerial consultation at the time of making the draft law. And most often at the inter-ministerial consultation either by oversight, or for some other reasons of the overlapping issues escape attention of the people, who are to enforce this requirement. The classic examples of this are the Factories Act and the Environment Protection Act are there.

Overlap between the Factories Act and the Environment Protection Act

Right from the time of amendment of Factories Act, in the year 1987, till date we are grappling with the sub section 5 of section 41A relating to the **Site Appraisal Committee**.

The Factories Act provisions says, **where the State government has granted approval to an application for the establishment or for expansion of a factory involving hazardous process, it shall not be necessary for an applicant to obtain further approval from the Central Board of the State.** There was a **vehement objection** to this provision, in the Factories Act and the Committee of Secretaries decided that it should be repealed from the Factories Act, **because one statutory authority cannot take away the functions of another.**

The whole process was again referred to the conference of Chief Inspectors of Factories, wherein it was decided that the purpose, for which the environment department would like to have the scrutiny of the proposals relating to site, was amply fulfilled because the department was very well represented. In the site appraisal committee, which got about five members, representing the interest of the environment.

In the Factories Act, hazardous process is defined as a process capable of causing general environmental pollution. In other words the Factories Act, after amendment is working in tandem with the Environment protection Act. With a view to

avoid duplication and to have a single window arrangement, this provision was thought of. This provision is being objected to and the proposal is there for the consideration of the Ministry. An amendment is being suggested to repeal this provision.

Like this provision there are other areas where there is lack of uniformity. Even in the few states where the site appraisal committee has been constituted the problem still persists. This is because these committees are not in a position to speedily issue the appraisals. One factor is the party concerned may be having factories in other states. It may come up with the contention that if the authorities start objecting to the site location in one particular state, it will have its ramifications in other States because theirs is an all India entity.

Where a public sector undertaking having different factories in different states, is not subjected to this kind of appraisal they also be so you should not subject us to this kind of appraisal and we should be exempted from it. Some States like Kerala, Tamil Nadu, etc. they have already gone ahead with the constitution of the committee. And in some States where the committee has not been constituted the citizens have taken it up to the court. In West Bengal I have been told that one such case is there where citizens have moved the court praying for directions to the authorities concerned to constitute a committee under the Act as envisaged.

Another example of lack of uniformity and overlapping jurisdictions creating enforcement problems is a section under the Factories Act. A section under which most of the dangerous operations were covered before the advent of the chapter IVA concerning hazardous process. Now this section 87 has about twenty-five and odd schedules dealing with various operations hazardous to the health and safety of the individual. But the difference between Section 87 and chapter IVA is that chapter IVA takes into consideration the environmental aspects. Now under this section we have one particular schedule dealing with solvent extraction plant.

Whose Authority is it anyway?

We had some fifteen years before a case wherein the factory inspector required a solvent extraction plant management to build a vapour barrier wall of 1.5 metre to a distance of 100 metres made of non-combustible material so that the vapour becomes lean and it would not cause any danger when it contacts the source of ignition. Now at that time, unfortunately the factory owner built that wall in the licensed premises of the explosives inspectorate for which a severe objection was taken by the Controller of Explosives. How dare you come and provide structures within the licensed premises of the Explosives and Petroleum rules. According to the enactment you should not erect any structure in this particular area. The occupier of the factory very cleverly said, no, no I did not do it, I was directed by the Factories Inspectorate and so I have built the wall. The Controller of Explosives wrote a very strong letter to the Chief Inspector who was very hurt by the strong worded letter. This incident occurred about ten to twelve years ago in the Southern States. What I am trying to say is these areas of conflict will be there; the need is for conflict resolution.

We as government agencies are not viewed in compartments or in ivory towers. The general public views us as one entity. The government is one single entity and they will not like or they will not bother as to whether they have the jurisdictional problem or whether they have got any other kind of ego problems. **The general public views the government machinery as one whole entity and it would not like one agency of the government to be working at cross purposes with another agency.** For this purpose there is **need to evolve a kind of permanent conflict resolution mechanism** so that this kind of issues can be addressed and a satisfactory solution reached at the national level. Most of the enactments but they are enforced by State Governments. There should be an arrangement, which is legally tenable and acceptable to all the State governments.

Hazardous Waste Management Rules

Mr. A. K. Saxena: Four things need to be incorporated in the rules:

- **First:** Identification of site within the plant premises for the disposal of hazardous waste. As per the regulation the site has to be identified by the State Government. Does it also mean that if any industry wants to develop a site within the plant premises such site has to be notified or identified by the State Government.
- **Second:** Standards for the disposal of hazardous waste on land. The National productivity Council has in several reports to the Central Pollution Control Boards as well as to the Ministry of Environment proposed standards for the disposal of hazardous waste on land.
- **Third:** Classification of land sites. We cannot have a uniform landfill facility for all types of wastes. Therefore, we need to derive and arrive at different classifications of landfill facilities for different types of wastes.
- **Fourth:** Standards for incineration. A number of incinerators are coming up. There are many industries that have incinerators, but there is no information on what type of incinerators, what temperature they have and what they are emitting.

Mr. N. Swaminathan: This is just to answer Dr. Saxena's questions. Standards for the incineration and landfill have been recently prepared by NEERI Nagpur for Central Pollution Control Board. The draft report is ready for submission.

Access to Information for Research

For informed legal research there is problem of access to information. And this access to information is impeded by the implementing agencies. This hindrance should be removed.

Implementation of Laws

The bane of Indian Legislation has always been implementation. Unless there is strong will and the administrative machinery to implement the laws, whatever the laws and howsoever stringent I think we can't achieve our object.

Chairperson: A constant refrain has been with regard to implementation drawbacks. If implementation is hundred per cent fool proof. Then the State will have to proceed further setting higher goals. Perhaps that is the reason why it always falls behind the requisite standards.