

## ORGANISATION NOTE

*The Workshop proceedings were recorded and the report has been prepared from the transcript. The report is however not a verbatim record of proceedings to facilitate completeness and coherence the sequence of an intervention have been at times altered. It is more an effort at presenting the various views, which were voiced on the workshop themes.*

*For example if a delegate has expressed an opinion with regard to umbrella legislation in Session II, it has been shifted to the session in which the issue was discussed. The opinions and ideas of the participants have been left untouched and only necessary language editing has been undertaken.*

*Wherever possible to enhance the usefulness of the report, information on legislative provisions and case law have been added on.*

*Amita Dhanda*

## **INAUGURATION: SOME EXCERPTS**

### **Hazardous Substances and Processes: Legal Regime Mr.A.K Ganguli**

On 23rd of May 1986, Parliament enacted the Environment Protection Act of 1986. The Act was as a sequel to the International Convention at Stockholm on environment in which the world of passed a few very important resolutions. We had existing legislation, no doubt, but they were scattered. And the focus under the existing legislations were on specific topics, specific items of hazardous substances. A need for a more comprehensive legislation covering the general law of Environment was felt, as a result of which we had the 1986 Act. The more important aspect of this legislation was to make an attempt to some how ensure a functional unification of all the laws and their implementations rather than having a general dealt with radically and specifically on this particular aspect namely the transboundary movement of hazardous waste and their disposals. As a result of the resolutions passed at this convention legislative measures were taken in the form of rules framed under the Environment Protection Act.

### **Subordinate Legislation**

Two sets of rules were framed in 1989. All these measures undoubtedly gave a lot of protection to the existing degradation that was going on. It did bring about some kind of a halt.

### **Judicial Initiative in the Absence of Law**

The courts of law were consistently under some kind of a pressure or the other, by virtue of litigations brought before the courts. The court had the techniques that they had evolved from time to time to tackle those situations, whether or not there was a law, on a particular subject. Way back in 1983 when we did not have this Environment Protection Act of 1986, I recall an incident when the Hon'ble Supreme Court was called upon to pronounce on the right of the lime stone quarries to carry on their business in the Doon Valley.

The only law on which the store quarries could have been closed down was the violation of the Mining regulations or the provisions of the Mines Act. There was no such allegation, the allegations were that these limestones quarries had degraded the environment so much so that there were suspended particles and dust in the air. It was almost impossible for the inhabitants to breathe in the beautiful locale of the Doon Valley. Court was confronted with an absence of law situation.

The court took the aid of Article 21 of the Constitution, which guarantees life and liberty to all persons in this country. The court resorted to the old mechanism of appointing a committee and on the advice of the committee directed closure of most of the mines.

Rests of the mines were closed down subsequently in a phased manner. **This is the situation where in the absence of a law the court came to the rescue of the environment.**

### **The Problem of Enforcement**

Even when the laws have been enacted there were any amount of difficulties in their enforcement. **Not only for the lack of zeal but due to lack of coordination and in unity in the functioning of the various authorities.** The Ministry of Environment and Forest felt that there was an urgent need to have some kind of a consolidation of all the existing laws relating to environment.

### **Brief of the Indian Law Institute**

With that in view the Ministry approached the Indian Law Institute and requested the Institute to take up a project and suggest legislative measures by which such coordination decision could be brought about. There have been some deliberations between the responsible officers of the Ministry and the faculty members of the Institute and it was eventually thought that the better course of action would be to have a more focused attention to a more serious issues rather than having a general unification of all laws which may not achieve the real purpose. **Functional unification of various aspects is much more important than having a general law dealing with all aspects of the environment.**

The item on which there is immediate focus is the problem about the hazardous substances and waste and their management disposal and after care of the disposal sites.

### **The Developmental Process and Environment**

#### **Mr. T.K.A.Nair**

Environmental concerns are at the centre stage today. Concerns, which were perhaps not given the importance that they deserved in our developmental process, have now really become the heart of the problem of development. Even in the context of a poor country like ours, which is striving with all its resources, human, material and otherwise to catch up with the process of development. Faced with a very large-scale poverty, ignorance, disease the nation is struggling at its best how to tackle these problems. And in that process we have now painfully discovered that unless we give due importance to environmental concerns, our efforts at accelerating the process of development would be at our own cost. This lesson we have learnt very painfully and we are still in the process of learning.

Against that background it is no longer **development versus environment, it is how we integrate environmental concerns in the developmental process.** By now it is the accepted national policy of our country also but as we painfully realise from hour to hour on a day to day basis it is easier said than done. The Ministry of Environment and Forest, is an agency of government, which is entrusted in terms of with the responsibility of coordinating activities related to the protection of environment in the country. The life

support systems come under degradation, unless the developmental process takes due note of these concerns.

### **Hazardous Substances and Processes**

- The safe handling of hazardous substances in situations of rapid economic growth would have to be pursued on lines which include review of legislation and policy, constant improvement in enforcement, timely availability of relevant data and analysis, development of special programmes for high risk areas, establishment of training facilities, creation of awareness and mobilisation of resources and expertise.

### **Activities of the Environment Ministry**

The Ministry of Environment and Forest is:

- In the process of conducting feasibility studies for formulating projects to augment the infrastructure of implementing agencies.
- We are also setting priorities for preventing action for identifying concrete programmes.
- Environmental statistics we realise is a very weak area. A national system for data collection, analysis and dissemination has to be drawn up.
- At the same time, modalities have to be evolved to mobilise the resources of industries, non-governmental organisations and industry associations for the safe handling of hazardous substances and also for creating public awareness.

### **Workshop Themes**

- The question of harmonising definitions in the existing laws is important. Certain regulations were conceived as welfare measures but as they now have to serve the purpose of safety and health, suitable statutory amendments and commensurate strengthening of the authorities concerned would be required.
- While discussing siting and licensing of hazardous industries, it is necessary to take a close look at the norms or the criteria for licensing of different handling activities. The session on it could also consider the guidelines for siting of hazardous industries and examine the involvement of local government institutions which come in very critically when it comes to implementation of legislative measures.
- Discussion on the norms of safety and information may cover the inadequacies of Indian standards relative to modern developments in technology, fabrication course and other practices. This is a large area of discussion involving its use pertaining to industrial installation, storage, pipelines, hazardous waste disposal and the interface with human habitation.
- The session on import of hazardous substances and wastes may focus on authorisations, surveillance, labelling and packaging the regime at the customs

clearance and the ports and the question of inspection and coordination with the exporting countries.

Discussion on liability and compensation could address recent incidence arising out of the handling of the hazardous substances, and examining the capacity of our statutes to respond to real situations adequately. Recent developments in common law has provided us new insights. Liability and compensation is an importance aspect of our welfare regime and I feel that lack of dissemination of information has also perhaps handicapped the administration of our laws on this subject.

Consideration of enforcement mechanism and conflict resolution, which is of vital importance, I am sure, would focus attention on the strengthening of our institutional mechanisms. Importantly the State pollution control boards, the Centre-State division of responsibilities in our constitutional framework the interface between the various regulatory authorities set up in the country, industry growths and perhaps even a stock taking of the experiences gained in the cooperative working of common effluent treatment plants for the purpose of deriving lessons for common hazardous waste disposal facility

### **The World of Man and the World of Nature** **Justice Kuldip Singh**

The biggest challenge today before the mankind in general and the people of India in particular is the conservation and protection of environment. It is heartening to hear Mr.Nair say that the government of India is all set to meet the challenge. But the scenario as it exists today is a grim picture of environmental degradation in the country.

When we look at around the airs, the waters, and the soil is polluted to such an extent that a grave situation has been created for the people of the country. If you examine the history of environmental degradation in the country in the last five decades, you will without much difficulty find out the reasons. Prior to 1950 no one had heard of pollution any where. There was of course no development, at that time also. Whatever pollution was generated our eco systems were strong enough to absorb them. Every eco-system has its own cycle to wash off the pollution which it accepts.

After 1950 the country started development. For three decades rights from 1950 to 1980 there has been tremendous development in the economy. Industrialisation, urbanisation, population, all grew to a very large extent. Yet in these three decades the country was totally oblivious of the concept of environment protection.

We are three decades behind. I still remember after independence, as young students when we used to go out and we would see smoke coming out of some chimney we used to be very happy, the country is progressing, development is going on We were

happy, because the eco system at that time was absorbing but in three decades nothing has been done. Even the department of Environment was set up in the Government of India in 1980.

Actually the consciousness in this country so far as the environment is concerned, it only came only after a very powerful delegation from this country under the leadership of the then Prime Minister attended the environment conference at Stockholm in 1972. Later on some sort of procedures, some sort of laws were enacted.

The environmental problem which we are facing today, those are entirely different from what rest of the developed countries in the world are facing. Developed countries have already, controlled their industrial and municipal wastes. There is no pollution being generated from such wastes. Therefore, it is necessary for them to only acquaint themselves with hazardous wastes and hazardous substances. The position in this country is entirely different. The municipal waste goes untreated into the rivers, creeks, waters every where.

A realisation must go all over, that though we live on that earth, we inhabit two worlds. **One is the natural world the natural world of forests, of mountains, of animals, of airs, of water, which preceded man by millions of years and of which he is a part today. And the second world is the world which man created for himself, with his own artifacts, with his own science, with his own brain, this building etc, this materialistic world which you call development.** Now both the worlds are of man. The natural world, and the world which he has created by his hardwork and for his comfort. He is more proud of the world he has created but it is very important to remember that the materialistic world of man cannot exist without the natural world. **Today's industry, today's science can provide you with every thing, it cannot provide you with air and water. You will have to depend on the nature so far as the air and water is concerned.**

## **The Pollution Scenario**

### **Water**

The industry may some times provide you with masks that you may put on and move about if the pollution keeps on going at this rate probably a stage will come when we will have to do that. It requires Herculean effort in this country today to control the growing pollution in every field. You look at, the country's waters, 80 per cent of the country's population live in the basin area of fourteen perennial rivers including Ganga, Brahmaputra and Jamuna. And as the reports are today, all these fourteen rivers are highly polluted, highly polluted. And don't forget we draw our drinking water from these rivers. Take the example of Yamuna, even today, 80 per cent of Delhi's sewage, municipal sewage, industrial waste, household waste is being pushed into the Yamuna untreated. Of course the treatment plants are being set up. It may be, years before some thing is done. This is the position of almost every river in the country. Then take our most sacred river Ganges. It is almost polluted at the down stream. One of the

reports I was reading, said, so far as calipong counts, in Ganga are concerned, near about Varanasi they are 2000 thousands where the normal is 500. I take pity on all those who go and have a dip in that river in the name of god. I say some thing has to be done.

## **Air**

This is the case with water, now let us turn to the air in the country. Why go far look at the city where you are living Delhi. You have the distinction of living in the fourth most polluted, city in the world so far as the air atmosphere is concerned. There are more than three thousand industries. Three thousand out of are them hazardous. There are 2.5 million vehicles, running in this city which are producing almost 70 per cent of the pollution in the air. See what is happening, most of the industries, and most of the vehicles are not equipped with any pollution control devices despite directions from the court by the bench, presided over by the Chief Justice. Of course lead free petrol is there, but then most of the cars are still not using it catalytic converters. Some body has to see that these things are enforced. This is the position of the air every where in the country.

## **Soil**

This is the situation so far as our atmosphere is concerned. Same is the position with the soil. Go and see the forest. The forest, which you saw, or you must have seen about twenty years back if you go and see you hardly find the trees under which you worked at that time. Even if not more, at least 30 per cent of the soil is today environmentally affected for one reason or the other. This being the scenario in this country, we will have to see the type of laws, the type of functionaries who are necessary for us to have.

**There is ample legislation so far as we are concerned. You need not have conferences to codify or recodify the law. Our laws are perfect today. There is no dearth of social legislation, or even of Environment Protection legislation in the country. But unfortunately there is no body to implement those laws. What is required is coordination. Coordination in the functioning of these agencies.**

## **The Legal Regime**

With this background I take you to the legal regime which we have in this country. Hazardous substances and hazardous waste come in the country from **two** sources.

**One** : we generate from various sources in this country.

**And the second** we import from outside from the rich countries or the OECD countries as they call them. How the rich governments are violating the Basel ban despite being signatories to the Basel Convention, I will expand on a little later.

## ***Environment Protection Act 1986***

We have to control the generation of the hazardous waste in the country and the most important legal provisions in this regard are in the Environment Protection Act, 1986.

done earlier. There has to be a change in the thinking of the government, it is very necessary.

## **Environment Impact Assessment**

In January 1994 the Government of India issued a notification relating to environment impact assessment. One of the most important procedures, which you can take to ensure that there, is no generation of hazardous substance or hazardous waste. You must have an environment impact assessment so far as various hazardous industries, are concerned. The government of India issued a notification in January 1994 and listed twenty nine environmentally friendly industries in the country. That is what we thought but then lo, and behold, four months later in May, 1994 a further notification comes that **in public interest you can dispense with environment impact assessment. In other words in public interest you can permit the setting up of an industry which can kill people.** All these things the Government of India needs to look into. Environment impact assessment of every project is recognised the world over as the procedure to examine in an analytical manner the socio-economic conditions in a particular place.

No body wants to block development. **The concept that ecology and economic cannot go together is no longer good. That is buried.** Today development is a must, without development no country can survive and we need it much more than any body else. The answer is sustainable development. **You must develop in such a way both the worlds of man the natural world and the technical world remain in balance.** If you develop, you must also control pollution when you reach a stage when natural resources are going to be depleted stop that. You must leave the natural resources for the coming generation to come. **You are bound to keep before you inter-generational equity.**

## **What is sustainable development**

Sustainable development in simple language is to meet the development needs of the present without compromising with the need of the coming generation. You cant eat up every thing today, you can't pollute all rivers in the country, you can't pollute all atmosphere in the country today, leaving only poison for the next generation. You must have all these aspects before you. Development and pollution control must go side by side.

When you think of setting up twenty, fifty, two hundred projects, you do it. The country is happy but at the same time, you must have experts in environmental field who must assess its impact on the whole area. See, you can't permit the aesthetic qualities of the country's environment to be spoiled and destroyed by some sort of industries which are nothing but polluting. You will have to keep the balance in between the two.

## **The Problems of Law**

Coming back to law, the Environment Protection Act defines environment pollution, environment pollutants. It further defines the hazardous substances it includes in it, the hazardous wastes and hazardous chemicals. Under the Environment Protection Act 1986, we have a very wide, definition and under this provision, you can deal with every



thing provided you have good and proper functionaries. Then under this Act we have got this Hazardous Waste 1989 rules. These Rules about eighteen categories of Hazardous Wastes. Then there is what we call another set of rules the Manufacture, Storage and Import of Hazardous Chemicals Rules. It has given details of the chemicals which are considered to be hazardous. The scheme of the law in this country even as it is present is workable. Only the functionaries have to be brought together.

One lacuna which we are facing is that now under the Factories Act, a new chapter IVA has been brought in. Section 41-A to 41-H aim to control hazardous chemicals and industries. For the first time in these provisions a right to information has been given to the workers and to the people. But the unfortunate position is that under the Factories Act, it is the factories inspector in the State and the State government who are the concerned authorities but under the Environment Protection Act, it is the Central Government. Coordination is required between these functionaries.

**Today the two worlds of man, the biosphere of his inheritance and the technosphere of his creation, are out of bounds. They are going to clash with each other. If right steps are not taken at this point of time we are heading towards a catastrophe which probably humans in this country have never seen before.**

#### **A Clarion Call for the Rigorous Implementation of Environment Legislation's Chief Justice A.M. Ahmadi**

I come from a town which was known as the Manchester of India with a number of textile mills and I must say that unlike Justice Kuldip Singh I was not happy to see the billowing smoke coming out from various chimneys in Ahmedabad. The scenario was just the opposite of what it was perhaps in Punjab. The people there were perhaps more lucky than we were. Some of our old cities, which have forts, the area of the city which has forts is known as the fort area. Since the city has a fort encircling it, what happens is that when this smoke or pollution vehicles emit smoke now a days but in those days the chimneys of textile mills were billowing smoke, this smoke generally settles down particular during the winter on the ground level. And since you are living in a city with a fort all-round, it is virtually like living in a vessel. **Once the smoke settles down it has no way to go out, it doesn't spread out and the entire populace is breathing smoke at night when it is fast asleep totally oblivious to the fact that what they are breathing or inhaling is some thing which is very hazardous to health.** This is the reason why at one point of time the highest incidence of tuberculosis was found in Ahmedabad. This is the condition possibly in very many cities where there are fort areas. And that is now becoming even more acute with vehicular pollution.

#### **Unregulated Industrialisation**

Before independence this problem was not so acute. After we became independent our activity was more concentrated on the industrialisation projects. Industries began to grow without any regulation or control. Small-scale industries were encouraged. They were set up practically all over the country without any control whatsoever so far as

lead free petrol is available and sufficient outlets are created or setup all over the country. Or at least in metropolitan towns, tourist centre or Centres which people frequent with their families. All those places you must be provided with sufficient outlets of lead free petrol. So far as two wheelers and three wheelers are concerned, it is a very serious problem.

### **The Initiatives in China**

I was in China and I was so happy to see that in Beijing itself I was not able to find more than twenty or twenty-five two wheelers and a very few three wheelers. There most of the people young and old use bicycles. There is a fine lane for them totally safe. Mostly these cycles, with different types of gears etc. is easy to pedal and the atmosphere there is relatively free from vehicular pollution.

### **Implementation Strategies**

I think it is time that we concentrate on the implementation of certain programmes, strengthen the implementing machinery, ensure that those who violate the law and the rules are brought to book early. Thereafter you should also think in terms of what action should be taken to ensure that from the existing industries which are polluting or discharging effluents are effectively dealt with particularly by ensuring that they are given some financial assistance if required to set up treatment plants. It may be a one-time expenditure but it will be worth incurring it.

### **Need For An Independent Environment Expert**

Just as in the case of labour we have a labour welfare officer associated with it, who is an independent officer looking after the conditions of labour, labour management etc. Could we not think of making it necessary that an independent environmental expert be associated with an industry of a certain size and nature. He should be an independent person who even if paid by the industry would ensure what is in public interest so far as the setting up and future working of an industry is concerned. His entire effort must be to ensure that the industry functions in such a way that public interest is not jeopardised. One could also think in terms of the certification from an expert environmental body which would say that it has examined every aspect of the new industry proposed to be set up and certify that it is an eco-friendly industry. If we attend to these dual checks perhaps we may be able to ensure that the new industries which come up have built-in mechanisms which would take care to see that industry does not pollute the atmosphere or discharge effluents which would be hazardous to human life.

### **Implementation the Weak Point**

After the Stockholm conference of 1972 there was a spurt of legislation in India. Several laws were enacted and Articles 48A and 51A were introduced in the Constitution. Insofar as the laws are concerned, so far as the constitutional backing to the laws are concerned I think we have all that is required. We are very good at bringing in extremely fine laws, we may have been critical about the drafting but by and large we try to bring

bring heaven on earth. Having done that on paper we do not or are not able to translate into a reality. We have brought about so many laws, from 1972 onwards. The problem is of the implementation of these laws. **We have very weak machinery to implement strong laws. With the result that even strong laws get diluted in course of time.** Pollution boards have been set up all over the country, but let alone teeth, do not provide the machinery even with dentures. Result is that these pollution boards which are supposed to be the effective mechanism for carrying the law or translating the law into reality do not really bring about or achieve that goal.

The question is how do you ensure effective implementation of the laws. I am sure that these existing laws if they are effectively implemented perhaps quite a substantial part of our problem would be resolved. I was at a function the other day when I was in the midst, I was in the company of a Minister who almost said to me sir, you pass an order and we will see that it is implemented. I asked him don't you have a machinery to implement laws without our orders? Or has your machinery collapsed that you need our order to implement it. Why have you enacted laws and set up a machinery, if you want the motive power to come from the court. This is the attitude one has to deal with and get rid of. We are facing a crisis of character and unless we are able to effectively change the attitude of our people who are manning the machineries for the implementation of the laws, it will be very difficult to reach the objectives of these laws. You have to carry matters to the culmination point, you will not be able to reach this point by merely seeking orders from the court because then you are not discharging your duties and obligations under the law. You want some body else to do it for you.

### **Committee of Experts**

I think even after this workshop a committee of high level experts from different disciplines should be set up to ensure that these suggestions are refined. Ways and means for effective implementation of these suggestions should also be indicated to the Ministry.

I personally think that what we are facing today is as good as a national calamity. **We have to deal with it on a war footing.** The developed countries thought about pollution control in 1972 in the Stockholm Conference possibly after they reached the saturation point. Then they began to point fingers at others. However such like conduct should not be an excuse not to look into the serious problem. **It is no use our pointing our fingers at them. A concerted effort is required to be made by all of us.**