

## INTRODUCTION

*The National Workshop on Legal Regulation of Hazardous Substances and Processes was organised around the six themes and the following issues were to be considered under each of the themes.*

### **Theme I - Legislative Regulation of Hazardous Substances and Processes**

**Issues:** Regulation of Industries - existing or new - Need for a Uniform Legislative definition of hazardous substances - extent and application Of the law - whether uniformly applicable or certain matters left with the states - Norms for pollution control

### **Theme II - Location Siting and Licensing of Hazardous Industries**

**Issues:** Norms for licensing - feasibility of having uniform licensing Policy - Location and Siting of Industries - shifting of Industries - problems of

### **Theme III - Norms of Safety and Information**

**Issues:** Norms of safety - procedure of formulation - Norms of Information - responsibility of industry in dissemination Of information - responsibility of government - Rights of workers and local populations

### **Theme IV - Import of Hazardous Substances and Waste**

**Issues:** Norms for import and handling of hazardous substances and Processes - Authority regulating import - Expertise of enforcement Authority - Norms for import of hazardous wastes - management of hazardous waste

### **Theme V - Liability and Compensation**

**Issues:** Of Liability - strict of fault based - upon failure to observe norms - upon accident upon disaster - Basis of Compensation- paying capacity of industry - Earning capacity of sufferer - volume of harm caused: To individual, to local population - to population at large and to environment compulsory insurance- extent of compensation - mandatory minimum compensation - proportionate to harm suffered - Immediate and long term harm suffered

## Theme VI - Enforcement Mechanism and Conflict Resolution

- **Issues:** Administrative enforcement authorities - Technical support needed for enforcement - Problem of overlapping jurisdictions - Monitoring of enforcement authorities - Difficulties encountered By enforcement authorities - Forums of dispute settlement: courts, tribunals, committees, collector - Judicial intervention - Implementation of judicial orders - difficulties encountered - People's participation in dispute settlement - Efficacy of various forums

*The workshop on Legal Regulation of Hazardous Substances and Processes did not just provide inputs on the special area of study which have been detailed in the accompanying report, it also yielded insights on lawmaking and enforcement generally. It is those insights, which are being expatiated upon in this introduction.*

### *I The Demand for an Umbrella or Comprehensive Legislation.*

*The feasibility of enacting Umbrella Legislation on Hazardous Substances and Processes was one of the central issues at the Workshop. An umbrella or comprehensive legislation it is found is demanded to deal with the problem of conflicting norms and overlapping authority. In focussing on the feasibility or otherwise of this demand, more fundamental questions on the occurrence of such conflicts are not raised. Questions on the procedure lawmaking process. For surely a new enactment is in conflict with existing laws then the conflict should be resolved before the new law is made. If one or more authorities seem to have jurisdiction in a matter then their inter-se powers should be sorted out before not after a law is made.*

*The interventions also show that even as overlapping and replication is much bemoaned, rectification of the situation is far from easy. This is because no authority is willing to give up a power once it has been conferred upon it. The tangle between the Factories Inspectorate and the Ministry of Environment is a case in point.*

Secondly it needs to be noted that a demand for a comprehensive legislation is often a demand for unification of norms. These objectives are often presented as good in themselves. It is not considered necessary to find out whether diverse objectives need varied definitions. It is often not appreciated that the parts could be more than the whole. Interestingly the advocacy for umbrella legislation was countered on just this rationale in the workshop.

## II Enforcement of Law

Expressing satisfaction on the legislative framework and bemoaning the absence of implementation is an oft-expressed sentiment on legal regulation. In this workshop too right from the inauguration this view was voiced often enough. Fresh inputs however came on the process of implementation. A number of interventions asked for the focus to shift from enforcement to compliance. It was desired that instead of an inspectorate or a monitoring authority enforcing norms, observance should be obtained through voluntary compliance. This it was believed could be done through education, information dissemination and mutually agreed upon guidelines. It is revealing that this shift from enforcement to compliance being suggested when legal norms have to be enforced against industries. A similar sensitivity is notable by its absence in laws affecting the less endowed sections of our polity. All the same it is significant that the key to effective enforcement of legal norms is seen in their internalisation and acceptance by the target group and not by their enforcement by an outside agency. An insight which needs to be built upon in all social change legislation's.

The stress on compliance does not spell an abandonment of enforcement. Even as official upon official confessed on the absence of facilities of inspection and evaluation there is a constant reluctance to give up the regulatory power. The absence of safety standards and quality control measures though much decried did not result in a foundational interrogation of the policy of promoting hazardous industries.

*It is another matter that these responses make a case for a re-examination of our policy of industrial development.*

### *III Power Relations in Law making*

*The relative power of the beneficiaries and target groups significantly influence the induction of legislative norms has been dramatically brought to the fore especially by the interventions in the session on Compensation and Liability. The influence of a multinational company can result in the incorporation of a clause by an amendment in the Factories Act 1948, which absolves them from Liability (Section 7B(5) Factories Act). The Public Liability Insurance Act 1991 had to be amended within a year of its enactment because Insurance companies were not agreeable to accept unlimited liability.*

*A number of interventions however have questioned the inevitability of this process. Suggestions came to the fore, which showed how more pro-victim legislations could be formulated. The suggestions at root ask for statutes to be so made that they enhance the bargaining positions of vulnerable groups. An insight again which is not confined in its applicability to legislations on Hazardous Substances and Processes alone.*

*Amita Dhandra*