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Book Review: Legal Regulation of Hazardous Substances (2009)

by

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LEGAL REGULATION OF HAZARDOUS SUBSTANCES** (2009). BY FURQAN AHMAD, DAYA PUBLISHING HOUSE, DELHI. PP 403. PRICE RS. 1300/-/\$65.

The Hazard Substance and Waste Law is yet to pick up a serious research exercise in India. It was in the year 2005, when I was at the National law Institute University, Bhopal, I advised my environmental law team mates to explore this fertile but barren field. Unfortunately at that time no body took the initiative in the matter. I am happy that on 3-4-2010 the NLIU is hosting an All India Mock Parliament to draft a Bill on regulation of the hazardous substances and waste. However, in this race Mr *Furqan* wins. He deserves all congratulations.

Furqan opens with the object and scope of study and the broad contour of the research work. The Second Chapter undertakes a difficult study for a law scholar of the conceptual treatment of hazardous substances. *Furqan* goes from the technological aspect to the legal regime. There are certain common terms which one comes across while researching in this area. They are briefly explained. The Book under review tries to give different shades of definition of the term "hazardous substance". In this exercise *Furqan* misses the final link: Which one is the most suitable for the Indian environment? A definition, in order to be most comprehensive and with no complexity, must look to three aspects: the characteristics, impact and direct or indirect combination.

The hazardous substance and waste have lately attracted the attention of the international community. *Furqan* starts the international journey from the "shared responsibility" to "Dirty Dozen". One will find a short history of hazardous substance and waste international law. The Basel Convention on the control of Transboundary Movement of Hazardous Wastes and their Disposal, 1989, signed by 105 nations, almost a unanimous approval, and the Basal protocol on liability and compensation for damage resulting from Transboundary Movements of Hazardous Wastes and their Disposal, 1999 are the most important Conventions in the present context which, it is suggested, should have involved due discussion in *Furqan*. Further, while discussing the Convention, Katharina Kummer has pointed out that the Convention provisions have not been followed strictly as was agreed rather they have been 'weakened or modified'.¹ This gives a research scholar an



exercise to find out as to what have we to do next.

It may be mentioned that at the inter-nations level attempts were made to regulate the hazardous substances and wastes. To name a few, the London Convention, Bamko Convention Waigani Convention, Central American Regional Agreement, etc. A discussion of the above could have been given a place in *Furqan* to compare the international position with the inter-nations position and could have seen the differences in the approach of nations at large and nations in groups. Further in the Chernobyl era there were roughly 62 bilateral treaties addressing aspects of nuclear

activities. The nuclear substances and wastes have very high potentiality of far reaching harm. This area, it may be suggested, needs a serious research.

Coming to the national legal control, the pre-independence legislations, starting from 1857 down to 1948 and the legislations from 1951 to 1981, have been narrated, an encyclopedia of legal controls. In this entire journey there are some laws which are relevant and some remotely related to the subject. But when one travels in this journey he will find that: first, it was under total control of the Central legislature and Central Government; two, the legal mechanism dealt primarily with industrial products or wastes; three, the concern was shown for the human health, only a part of component of environment; and lastly, looking to the effect of hazardous substances and wastes there were very minimal penalties. The discussions on ecologically fragile area, environment audit, National Environment Appellate Authority, environmental awards are some of the diversions in the research work on hazardous substances. Still further, apart from the legal control Chapter there is another Chapter on Safety legislation, it is suggested that this could have been dealt under one head of legal control instead of repetitions at different places. However, the beauty of the research work is that: one, one can find at one point all the informations and two, it gives food for thought to all those who will further explore this field.

It may be pointed out that the real regulation of hazardous substances starts with the Environment (Protection) Rules, 1986 and 1989, the Hazardous Wastes (Management and Handling) Rules, 1989, the Manufacture, Storage and Import of Hazardous Chemical Rules, 1989, the Manufacture, Use, Import, Export and Storage of Hazardous Micro-Organisms/Genetically Engineered Organisms or Cells, 1989, the Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008, the Chemical Accidents (Emergency Planning, Preparedness and Response) Rules, 1996, the Bio-Medical Waste (Management and Handling) Rules, 1998, etc.; which are the basic tools for the research work in the present field. Instead of dealing each one in detail and finding how far they will be of help in protecting the environment, *Furqan* has disposed of the core matter in just thirty pages.



In this regard the need for a researcher is to see: Firstly what are the lessons to learn and avoid from the foreign countries in this regard? Secondly, what are the main directions of the governmental actions in this regard? And thirdly, are these rules implementable in the Indian race of development process; and finally, what we need now? These are some of the questions which need answers through a detailed indepth research.

Then comes the discussion of "Liability and Compensation" *Furqan* deals in detail with the civil and criminal liability principles of liability and the criteria for determination of compensation. The basis of compensation are the two cases, the *Oleum Gas case* and the *Bhopal Mass Disaster case*. *Furqan* has narrated different parameters in fixing compensatory liability. He has also narrated the experiences in India under different laws and that of the American Court. In this narration *Furqan* once again misses to suggest a reasonable criteria to suit the conditions and sustainable development in India.

In both cases, it may be pointed out, the concern was for the loss or injury to human beings. But release of hazardous substances and wastes have far reaching consequences. The Bhopal Disaster is an evidence where not only the human beings were affected but also animals, plants, soil, underground water, property, etc. were also adversely affected. Moreover investments were necessary for regeneration of

depleted environment. As such, while determining the amount of compensation for environmental pollution, it must take into account all the above components. In this part one finds once again a discussion of the Statutes provisions with their merits and demerits which is out of place in this part. Moreover, it breaks the flow of the reading on liability and compensation.

As regards the criminal liability is concerned, *Furqan* has shown apprehension of implementation of criminal liability because of doctrine of mens rea. It may be pointed out that the doctrine of absolute liability and the polluters pay principle is now the law of the land and also there are express provisions in some of the statutes to this effect. As such the mens rea requirement of the Penal Code, 1860 is withering away. Further the enhanced penalty, from the Penal Code, 1860 to the Environment (Protection) Act, 1986, should be a measure not to be stored in the cold storage but to be brought into operation, otherwise the very efforts of Parliament will go a waste.

The next Chapter, Seventh Chapter discusses the Environmental law authorities, it may be pointed out, its appropriate place could have been Chapter Four dealing with legal control. The discussion of legal control cannot be complete without examining the role of the appropriate controlling



authorities in the same flow.

In the Second last Chapter, Chapter Eight, titled "Adjudicatory Mechanism", the book deals with different forums and processes including, the public interest litigations. In this part, *Furqan* could have added the merits and demerits of each of the mechanisms and could have suggested which is the best suited adjudicatory mechanisms in environmental litigations in India. In this discussion *Furqan* could have also dealt with as to what has been the contributions of the Indian Courts in the law relating to hazardous substances.

The judicial decisions show that the Supreme Court has taken seriously the management; handling and disposal of hazardous substances and wastes. The courts have not only propounded certain principles but also passed orders having for reaching consequence on the developmental side including the very existence of the occupiers/industries. The role of the court also raises certain questions: Is it environment or development friendly? What difficulties the courts faced while handling such technical matters? These matters need detailed research.

In the entire research exercise, the right to trade or business, right to sustainable developments, the place of the shape of the proposed Hazardous Substance and Waste law, the role played by the Department of Environment and Forest and the Central and State Pollution boards, how far the authorities constituted under the Rules, have implemented the provisions of the Rules, are some of the matters which do not find place in the present research work.

At the end comes the "Epilogue" which is divided into two Parts: conclusions, running into six pages and suggestions, spreading over three pages totalling nine pages epilogue. An epilogue is considered as the most important part of any research work and the long research exercise must culminate into a detailed findings. It is difficult to pin pointed any brainstorming conclusions. However the important directions which emerges from the reading are: need of public awareness, a coordinated approach in the multi-dimensional authorities and an umbrella legislation. They have to be appreciated and need particularly to be activated.

To sum up: At the outset it may be pointed out that the aforesaid critical appraisal

is made to add to the quality of the next edition. *Furqan* has tried to handle a difficult area of multi-disciplines and shown a way for the future research exercises to be undertaken by not only the legal and technocrate fraternities but also all the role players in management, handling, transboundary movement, manufacture, sale and purchase, import and export



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and storage of hazardous substances and wastes. Further *Furqan* has traded in an unexploited area and has tried to give all the informations a short encyclopedia. This will of a great help to the concerned information assimilators. And finally, *Furqan* will help in building up a course on the Hazardous Substance and Waste Law in India which has yet to find a place in the Law Curriculum. For these, *Furqan* deserves all appreciations *Furqan* will an useful addition to the libraries of the law schools and also that of the different disciplines.

Daya Publishing House is to be congratulated for the good getup portraying, through the photographs, the basic theme of the subject on the front and back cover page. But the price of Rs 1300 is at the higher side disappointing to the common man of their right to information, education and awareness.

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** Referred to as *Furqan*.

¹ Katharina Kummer, International Management of Hazardous Wastes, 47-48 (1995).

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