EVALUATION OF THE CONCEPT OF LIABILITY AND DISPUTE REDRESSAL MECHANISM

Environmental liability is a legal concept whereby through the rule of law, damage to the environment can be determined, assessed and redressed. Pollution and nuisances and the consequences of irrational use of environmental resources or technologies for which environmental legislation creates obligations gives rise to liability for environmental damages. The basis of environmental liability in India by and large favours strict liability principle. Gradually through judicial activism, in case of hazardous industries the principle of absolute liability evolved. Subsequently, the apex court has also followed the polluter pays principle and precautionary principle based on the concept of Sustainable Development.

The engrafting of the concept of these liabilities into the Environmental Statutes is required to be analysed, to understand the concept of environmental liability in India, with special reference to air. Based on these liabilities and doctrines the legislative enactments on redressal have been framed. The effect of such enactment shall also be analysed.

The criminal sanction for environmental violations has been sanctified in all countries, which have legislations dealing with environmental matters. Indian Parliament has also enacted three major laws on environmental pollution as control mechanism. Indian environmental Statutes, though impressive in range and coverage are more often observed in breach than in practice. The deterrent theory of punishment employed under strict and absolute liability principle has achieved some degree of success. The Fault liability and vicarious liability is applied to auxiliary offences and offence against enforcement. The basis of liability is required to be examined to understand whether it could achieve the desirable consequence.

6.1. Concept of Environmental Liability in India

6.1.(i). Strict Liability

Under the Environmental Statutes, Offences relating to core prohibitions mainly employ strict liability principle. The following provisions under Environment Act are based on strict liability mainly because of difficulty in proving *mens rea* and protection of wide social interest:[1]

a) discharging, emitting or permitting to be discharged or emitted any environmental pollutant in excess of such standard as may be prescribed.
b) handling or caused to be handled any hazardous substance except in accordance with such procedure and after complying with such safeguards as may be prescribed under the Act.
c) fails to comply with or contravenes any of the provisions of the Act, or the rules or the orders or directions issued thereunder.

Under Air Act, the strict liability is being circumstanced under the following provisions:

a) Whoever, fails to comply with the provisions of Subsection (5) of section 21 or section 22 of any industry specified in the Schedule in an air pollution control area (section 37).
b) Whoever contravenes any provision of this Act such as standard for emission from automobile etc.

Among these provisions section 22 of Air Act is an illustration which prescribes fir strict liability; it provides No person operating industrial plant in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of standard laid down by the State Board.

6.1.(ii). Fault Liability

Mens rea and *actus reus* are necessary constituents of fault liability. There are certain offences under Environment Act and Air Act that favour fault

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[1] See Md Zafar Mahfooz Nomani, Law relating to Environmental Liability and dispute redressal: Emergence and dimension, Indian Bar Review, Vol 23 (3 & 4) 1996, p 144.

liability. Sections 16 and 17 of the Environment Protection Act 1986 and 40(2) and 41 of the Air Act provide that the principal officer and officers shall be liable for the offence committed by the Company or Government departments.

Section 40(2) of the Air Act provides that where an offence under the Act has been committed by a Company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on any part of any Director, Manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly. Similar provision is provided under Section 16 of the Environment Protection Act, which lays down where any offence under the Act has been committed by a Company, every person who, at the time the offence was committed was directly in charge of and was responsible to the Company for the conduct of the business of the Company, as well as the Company, shall be deemed to be guilty of the offence and shall be liable to be proceeded and punished accordingly.

Section 17 of the Environment Protection Act and Section 41 of the Air Act make the Heads of the Departments guilty of the offence in the same way as principal officers of the Company are accountable for environmental violations. These Heads can also avoid their liability in the like manners by proving that the offence was committed without their knowledge and that they exercised due diligence to prevent its occurrence. They can also rebut the presumption of consent, connivance and negligence.

6.1.(iii). Vicarious Liability

Whatever may be the nature of offence, the corporate entities and persons in-charge of the affairs of the company are to be held vicariously liable for strict or fault liability-offences. This deeming fiction has been incorporated under section 16 of Environment Act and section 40 of Air Act. But the director, manager, secretary and other officer in charge of the conduct or the business of the company can avoid liability on the following grounds:

a) the offence was committed without knowledge, or

b) he exercised all due diligence to prevent the commission of offence.

c) The offence has been commited without his consent, connivance and any neglect on his part.

d) He is not directly incharge and responsible to the company.

Thus employment of criminal sanction under various principles of liability has proved ineffective. The increase in penal sanction and dose of punishment has not brought desired effects. Enhanced magnitude of fines has also not financially deterred erring polluting industries. During the years, the enterprise engaged in hazardous process also grew to assume serious proportions. The devastating effect on the environment and lives of innocent people volcanised in *Union Carbide* and *Sri Ram* can be cited to bring home the point.

The use of criminal sanctions for environmental violations has proved ineffective. Environmental laws contemplate deterrent value in the imposition of punishment on the violators. Imperfection in definitions of environmental offences and the complexities involved in the prosecution of such offenders has forced the pollution Boards to go for preventive action rather than prosecution. But ineffective enforcement has reduced any threat of punishment. There has been marked increase in the penal sanctions but mere increase in the dose of punishment will not bring the desired effect. The laws providing coercive punishment are not enforced with any regularity or certainty. The criminal activity tends to increase because the people feel that a threat has been removed. Environmental laws are more followed in their breach than in their observance.[2]

Alongwith these concepts of liability another new concept i.e., the concept of absolute liability has evolved in our country.

6.1.(iv). Absolute Liability

[2] Mohd. Zakia Siddiqui, "Environmental law and the limits of Criminal Sanctions", Indian Bar Reviw, Vol 21(4) 1994, p.43.

The concept of Absolute liability for the harm caused by industry engaged in hazardous and inherently dangerous activities is newly formulated. It is free from the exceptions to the strict liability rule in England. The Indian rule was evolved in *M.C.Mehta* v. *Union of India*[3], which was popularly known as the oleum gas leakage case. In Oleum Gas leakage Case, Chief Justice P.N.Bhagwati stressed on the need to develop a law recognizing the rule of strict and absolute liability in cases of hazardous or dangerous industries operating at the cost of environment and the human life.

The learned Chief Justice observed that- We in India cannot hold over hands back and I venture to evolve a new principle of liability which English Courts have not done. We have to develop our law and if we find that it is necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy, there is no reason why we should hesitate to evolve such principle of liability merely because, it not been so in England[4].

Therefore, on the Substantive law, it was emphasized that the principle of absolute liability should be followed to compensate victims of 'hazardous and inherently dangerous activity'. Industries engaged in hazardous and inherently dangerous activity are 'absolutely liable' to compensate those who are effected by the harm arising from such activity.[5] It is a newly formulated doctrine free from the exceptions to the strict liability rule in England. The principle of strict liability evolved in England more than a century ago, in *Ryland* v. *Fletcher,* was watered down to a large extent in that country by adding exceptions such as act of God, act of default of the plaintiff, consent of plaintiff, independent act of a third party and Statutory authorization for tort.

The Supreme Court of India[6] opined that such exceptions to *Ryland* v. *Fletcher* were not applicable in India in cases of determining liability for

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[3] AIR 1987 SC 1086.
[4] Id 1089.
[5] Id 1099.
[6] Ibid.

hazardous and inherently dangerous industry. The Court did not stop here it went further and observed that- The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in the carrying on the hazardous or inherently dangerous activity by the enterprise.[7]

This is found necessary because of its deterrent effect on the behaviour of the industry. The Indian Supreme Court, no doubt, was developing an indigenous jurisprudence free from the influence of English law. The Court took its inspiration from Article 32 of the Constitution of India, which guarantees the right to move the Supreme Court for 'appropriate' directions, orders or writs. The scope of the power conferred on the Court was so widely interpreted as to include formulation of new remedies and new strategies for enforcing the right to life and awarding compensation in an 'appropriate' case.[8]

However some jurists outside India criticized the Mehta dictum of absolute liability as imposing a liability, regardless of general principles, which would undermine the credibility of Indian courts and lead to accusation of bias by foreign investors.[9] According to an Indian jurist, the dictum suffers from a misconception of the role of industry as exploiter and ignores its role as contributor to the economy. The Court saw only thorns and forgot roses.[10] The Union Carbide Corporation (UCC) had hinted that the Supreme Court had UCC in mind and prejudged their 'absolute liability' when the Mehta principle of absolute liability was evolved even before the question of compensation to the victims of Bhopal tragedy reached the Court. Rejecting the contention, the Supreme Court made the comment that- The criticism of the Mehta principle, perhaps ignores the emerging postulate of tortuous liability whose principal focus is the social limits on economic adventurism. There are certain things

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[7] Supra note 3.
[8] Supra note 3, p 1091.
[9] PT Muchlinski, 'The right to development and industrialization of less developed countries: The case of compensation of major industrial accidents involving foreign-owned corporations', (1989) *Human Rights Unit Occasional Paper*, Commonwealth Secretariat.
[10] Jayaprakash Sen, 'Liability without responsibility: A problem of justice', (1992) *Cochin University Law Review*, 155, pp 163,164.

that a civilized society simply cannot permit to be done to its members, even if they are compensated for their resulting losses.[11]

6.2. REMEDIES UNDER ENVIRONMENTAL LAWS IN GENERAL

In *Vellore Citizens' Welfare Forum* v. *Union of India*[12], the Supreme Court traced the source of the Constitutional and Statutory provision that protect the environment to 'inalienable Common law right' of every person to a clean environment. The Court held that since the Indian legal system was founded on English Common law, the right to pollution-free environment was a part of the basic jurisprudence of the land.[13]

Therefore, a study on redressal would be incomplete without mentioning the common law remedies and the law evolved under Criminal law and other laws in India. However, these remedies have been dealt in the previous chapter[14]. Here we would mention the crux of other remedies.

The law of easement guarantees beneficial enjoyment to the owner of a land, free from air, water or noise pollution, without disturbing the natural environment.[15]

In all cases where environmental assault amounts to private nuisance, the law enables an aggrieved person to challenge such act of pollution by moving the court under the Code of Civil Procedure.[16] The court can give different remedies such as damages, injunctions, interim orders, declarations and decrees[17].

Only when the harm is of such a nature, that it may affect a lot of people, does it attain the character of public nuisance, but the extent of harm may not be ascertainable. Nor will it be easy for the court to quantify the damages and apportion them. The court may also find the problem as a

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[11] *Union Carbide Corporation* v. *Union of India*, AIR 1990 SC 273 (283).
[12] AIR 1996 SC 2715.
[13] Id., at 2722.
[14] Chapter III.
[15] The Indian Easement Act 1882, Sec 7 illus. (b) (f) and (h), See also Chapter III.
[16] Code of Civil Procedure, Section 9, See also *
[17] Sections 94 and 95 as well as under Order 39 of C.P.C., and Sections 37 to 42 of the Specific Relief Act, See also Chapter*

standing hurdle. To overcome such crisis, there are techniques tailored into our legal system. One method is found in the Code of Civil Procedure[18], under which the Advocate General, or with the leave[19] of the Court, two or more persons, can institute a suit, whether or not special damage is caused to such persons.[20] Nowadays, however this action is less frequently taken by the Advocate Generals or the Collectors since in many instances, the local bodies or other authorities may have adequate statutory powers to deal with such situations.

These remedies are more prominent when the environmental disturbance amounts to private nuisance. However, the new era poses challenge as to how these remedies can be rendered in instances when the disturbance has a wider impact on the rights of more persons than one. Section 133 of the Code of Criminal Procedure is notable in this respect. A district magistrate or a Sub divisional magistrate specially empowered in this behalf may take the initiative in removing public nuisance. Therefore, the Code enables the common man to avail quick remedy against public nuisance.

6.3. DOCTRINES

The doctrines and the evolution of various principles of environmental jurisprudence have resulted in the formulation of National Environmental Policy and resulted in the Parliament enacting comprehensive laws in the field of Wildlife protection and water pollution. In the early 1980's the nationwide forest conservation and air pollution laws were also passed. Subsequently, the Bhopal Gas tragedy led to the enactment of Environment Protection Act of 1986, followed by amendments tightening the laws relating to air and water pollution.

The Public Liability Insurance Act, the National Environmental Appellant Authority Act 1997, was formulated to ensure environmental justice,

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[18] Under Section 91 of C.P.C.

[19] Ibid., Formerly, it was with the leave of the Advocate General. However, if the member of a class suffer some special damage, the action is maintainable even without the consent of Advocate General (*Faquirchand* v. *Sooraj Singh*, AIR 1949 All 467.) The 1976 amendment made it possible for two or more.

[20] P.Leelakrishnan, *Environmental Law in India*, 2nd Reprint 2002, p.34.

rehabilitation, speed and independent investigative capabilities. These legislations were enacted in the wake of the Bhopal tragedy to adopt stronger environmental policies for industries engaged in hazardous activities.

The Legislations on environmental redressal usually have their basis on the doctrines evolved at the International Convention. These doctrines have also found place in the environmental jurisprudence in India. Doctrines formulated at International Conference are still to find place in the environmental legislation in the country. However, the apex Court through an ingenious juristic technique has filled up this deficiency at times. The Constitution of India indicates the procedure on how decisions made at International Conferences and Conventions are incorporated into the legal system. This is done by enacting a parliamentary legislation. The Air and Environment Acts are the result of such exercise.

Indiscriminate growth of industrialization coupled with application of ultra modern technologies unmindful of their catastrophic consequences in our environment has done enormous damage to our ecosystem pushing us to a strange stage where we can spare neither development nor a clean environment, both being inextricable interconnected. The problem has given rise to a debate on right to livelihood versus protection of nature or environment. Thus the problem cropped up how to balance the right to development and protection of environment. The answer to this question may come from present thinking of 'sustainable development'. Sustainable development has a fixed set of goals though approaches any means to achieve them can differ. These goals are:

(1) Basic needs of all human beings –i.e. food, clothing, shelter, health, education, security and self-esteem must be met adequately. Priority must go to these needs.

(2) Development process should be so articulated that ecological balance and environmental purity is least disturbed, if at all; and

(3) All nations and people must join hands to support each other and work with each other to create a world in which the above two

goals are optimized. Each country should find ways and means to promote this interdependence.[21]

Therefore, the traditional concept that development and ecology are opposed to each other is no longer acceptable, due to the development of the concept of sustainable development. In the international sphere, 'Sustainable development' as a concept came to be known for the first time in the Stockholm Declaration of 1972. Thereafter, in 1987, the concept was given a definite shape by the World Commission on Environment and Development[22].

6.3.(i).SUSTAINABLE DEVELOPMENT

"Sustainable development' as defined by the Brundtland Report means 'development that meet the needs of the present without compromising the ability of the future needs'.

The concept of sustainable use of earth's resources is an ancient one. The Coyce declaration in the 70's first used the term under it. The principle first received impetus with the adoption of Stockholm Declaration in 1972, World Conservation Strategy prepared in 1980 by the World Conservation Union (IUCN) with the advice and assistance from the United Nations Environment Programme (UNEP) and the Worldwide Fund, the World Charter for Nature of 1982, Report of the World Commission on Environment and Development (Brundtland Report) and the document Our Common Future of 1987, the document Caring for the Earth: A Strategy for Sustainable Living developed by the second world conservation project comprised of the representatives of the IUCN, UNEP and the Worldwide Fund for Nature. The concept of sustainable development is the foundation stone of the Montreal

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[21] Dr.N.K.Chakrabarti, "Right to livelihood and Environmental Protection", Indian Bar Review, Vol. 23 (3 & 4) 1996, p.59.

[22] The Commission was Chaired by the then Prime Minister of Norway, Ms G.H.Brundtland and as such the report is popularly known a 'Brundtland Report'.

Protocol for the protection of the ozone layer of 1987 and the instruments adopted at the Earth Summit at Rio in 1992.[23]

In the quest for sustainable development, International law is an increasingly important mechanism. The States were held responsible for the damage resulting from the trans boundary pollution to the other States or the property of persons therein under the Trail Smelter Arbitration.[24] A United Nations Conference on Human Environment was held at Stockholm in 1972 putting forth a Declaration containing 26 principles, which opened the floodgates for, subsequent developments for the protection and promotion of the environment. Under the auspices of the Stockholm Conference, the United Nations Environment Programme was also established. To achieve sustainability the Vienna Convention followed by the Montreal Protocol of 1987 served a framework and laid down broad guidelines on the basis of sustainable development. In 1992, United Nations Conference on Environment and Development (UNCED) was held wherein more than 170 Governments participated. To put the world on a path of sustainable development, which aims at meeting the needs of the present without compromising the ability of future generations to meet their own needs, was the UNCED's mission.[25] To provide the principles of economic and environmental behaviour for individuals and nations was the view with which the Earth Summit was held. As a matter of fact, premised on the interconnectedness of human activity and the environment, UNCED heralded a new global commitment to sustainable development.[26]

The degree to which a nation can prosper depends on its productivity, which is the efficiency with which it is able to utilize the natural resources of environment to satisfy human needs and expectations. If gains in productivity are to be sustained resources must also continue to be available for all times to

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[23] P.S.Jaiswal, Nishtha Jaiswal, Environmental Law, 2000 at 79-80.
[24] Trail Smelter Arbitration, III United Nations Report of International Arbitral Awards, 1949 at 1907.
[25] Patti L. Petesch, North South Environment Strategies, Costs and Bargains, WASHINGTON: OVERSEAS DEVELOPMENT COUNCIL, 1992 at 7.
[26] Kathi Sessions, Building the Capacity for Change, EPA JOURNAL, Vol 15 (April-June) 1993.

come. This requires that while providing for current needs, the resources base be managed so as to enable Sustainable development[27].

The Supreme Court of India in *Vellore Citizens Welfare Forum* v. *Union of India*[28], elaborately discussed the concept of 'Sustainable development' which has been accepted as part of the law of the land, and observed:

> "We have no hesitation in holding that 'Sustainable development' as a balancing concept between ecology and development has been accepted as a part of the customary international law though its salient features have yet to be finalized by the International law jurists".

Some of the salient principles of 'Sustainable development' as called out from Brundtland Report and other international documents are intergenerational equity, use and conservation of natural resources, environmental protection, the precautionary principle, 'Polluter pays' principle, obligation to assist and co-operate, eradication of poverty and financial assistance of the developing countries. However, the 'precautionary principle' and the 'polluter pays principle' are essential features of ' Sustainable development'.[29]

The U.N. Commission on Sustainable Development (CSD) was established through which Governments would review progress towards the goals of sustainable development and integrate economic and environmental decision-making and would serve as a permanent forum. The CDS were to recommend further actions to promote sustainable development and review reports from Governments and international organizations of their efforts to implement Agenda 21 and discuss financial and technical issues. The success of CSD would depend heavily on the participation from national governments including the reports and information they provide, the technical expertise and political authority their delegates bring, and to the degree to which these governments reinforce CSD decisions through representatives to other international for a. The Commission can greatly strengthen their collective

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[27] See. Seventh Five year Plan: 1985-90, Planning Commission, Government of India (1985).
[28] AIR 1996 SC 2715.
[29] Id at 2720 and 2721.

capacities to tackle environment and development problems, if the States use the Commission to build consensus on global sustainable development goals and thereafter the States reinforce that consensus through their national and international efforts. This has been followed under the Montreal Protocol. The text of the Protocol provides for the plan of action and accordingly different countries have framed laws, rules and regulations to integrate these guidelines into their framework of laws.

The concept of Sustainable development has grown since its inception at the international forum and has acquired new dimensions in terms of economic growth, development and environment protection. The salient features as deduced from the international arena of environmental documents are as under:

1) *Common but differentiated responsibility*

This principle under the Rio Declaration on Environment and Development provides for, "In view of the different contributions to global environmental degradation, States have a common but differentiated responsibility". Under this principle those States which are responsible for causing environment degradation should do something so that the damage done by them is restored for the present as well as future generations. It is their duty to help the developing countries so that even they do not walk on their footsteps and cause environment degradation. It is this principle for the developed countries under the Montreal Protocol for help in the Article 5 countries with all assistance to restore the ozone layer and meanwhile they will stop their uses of ODS within their respective countries.

2) *Intergenerational equity*

The ethical principle of equity, particularly intergenerational equity, is central to the concept of sustainable development. Yet Governments all over the world are adopting sustainable development policies that reinforce existing inequities and create new ones. They involve monetary valuation of the environment and the use of financial incentives aimed at using market mechanisms to allocate scarce environmental resources. However, these

policies tend to remove decision-making power from the community and cause some sections of the community to bear more than their fair share of environmental burdens.

The central ethical principle behind sustainable development is equity and particularly intergenerational equity. Equity is about fairness: Equity derives from a concept of social justice. It represents a belief that there are some things, which people should have, that there are basic needs that should be fulfilled, that burdens and rewards should not be spread too divergently across the community, and that policy should be directed with impartiality, fairness and justice towards these ends. Equity means that there should be a minimum level of income and environmental quality below, which nobody falls. Within a community it usually means that everyone should have equal access to community resources and opportunities. Therefore, for the benefit of the future generations the use of ODS should be stopped.

Equity includes both intergenerational equity (relating to the rights of future generations and our obligations to them) and intragenerational equity (relating to members of generations existing today). The principle of intergenerational equity reflects the view that as the members of the present generations while deriving benefits from the natural resources of this earth, hold the earth in trust for future generations. All generations from a partnership that extends across time in relation to their human environment. The principle includes three components: quality, options and access to the environment. These must be comparable across generations.

The theme of the theory of intergenerational equity is the right of each generation of human beings to benefit from the culture and natural inheritance of the past generations as well as the obligation to preserve such heritage for future generations. Intergenerational equity requires conserving the diversity and quality of biological resources, and of renewable resources such as forests, water and soils[30]. The idea behind not reducing the ability of future generations

[30] Armin Rosencranz, Shyam Divan and Mathal L. Noble, *Environmental Law and Policy in India*, 1991 at 60.

to meet their needs is that although future generations might gain from economic progress, those gains might be more than offset by environmental deterioration. Most people would acknowledge a moral obligation to future generations, particularly as people who are not yet born can have no say in decisions taken today that may affect them.

There are two different ways of looking at the need to ensure that future generations can supply their needs. One is to view the environment in terms of the natural resources or natural capital that is available for wealth creation, and to say that future generations should have the same ability to create wealth as we have. Therefore, future generations will be adequately compensated for any loss of environmental amenity by having alternative sources of wealth creation. This is referred to as 'weak sustainability'. The other way is to view the environment as offering more than just economic potential that cannot be replaced by human-made wealth and to argue that future generations should not inherit a degraded environment, no matter how many extra sources of wealth are available to them. This is referred to as 'strong sustainability'.

There are various reasons why strong sustainability may be preferable to weak sustainability. Closely related reasons are 'non-sustainability', 'uncertainty' and 'irreversibility'. There are many types of environmental assets for which there are no substitutes: for example, the ozone layer, the climate-regulating functions of ocean phytoplankton, the watershed protection functions of tropical forests, the pollution-cleaning and nutrient-trap functions of wetlands. For those people who believe that animals and plants have an intrinsic value, there can be no substitute. We cannot be certain whether or not we will be able to substitute for other environmental assets in the future.

Scientific knowledge about the functions of natural ecosystems and the possible consequences of depleting and degrading them is at best uncertain. The depletion of natural capital can lead to irreversible losses, such as species and habitats, which cannot be recreated using man-made capital. Other losses are not irreversible but repair may take centuries, for example, the ozone layer and soil degradation. Losses of species and ecosystem types also reduce

diversity. Diverse ecological and economic systems are more resilient to shocks and stress.

3) *Environment protection*

Keeping various principles in mind, it is generally perceived that, the right to development must be so fulfilled, to equitably meet development and environmental needs of present and future generations. The States have the right to exploit their own resources, but it is also indicated that the global environment is a common concern of humanity. It is therefore with the help of various legislation and regulations every country must do something to preserve its environment not only for future generations but also for those living now to be provided with a healthy environment. The adverse effects of ozone depletion have more grave health and other extinction of species effect.

Without adequate environment protection, development is undermined: without development, resources will be inadequate for needed investments, and environment protection will fail. Strong legislation in various countries would reinforce sustainable development. As an environmental concern this would help the ozone layer recover faster.

4) *The polluter pays principle*

The legal requirement of the 'polluter-pays' principle is that the person responsible should bear the consequential as well as other costs of pollution for causing pollution and environmental degradation. However, the meaning and its application to various cases and situations is subject to interpretations; particularly the circumstances in which the principle can be subject to exceptions and regarding the nature and extent of costs involved. According to the principle as interpreted by decision-makers, the polluters must pay for:

--- The pollution abatement costs,

--- The environmental recovery costs and,

---The damages caused to victims due to pollution and their compensation costs.

Particularly regarding various aspects of liability, the practical implications of the polluter principle are remarkable in its allocation of economic obligations as for environmental damaging activities. The use of economic instruments can be inspired by the polluter pays principle, and the application of rules relating to competition and subsidy. Examples of specific applications of the polluter-pays principle include adjusting fees or taxes payable by hazardous installations, to cover the cost of exceptional measures taken by public authorities to prevent and control accidental pollution, charging to the polluter the cost of reasonable pollution control measures. Particularly to avoid the spread of the damage or to limit the release of pollutants, or their ecological effects usually called the rehabilitation measures, such measures can be taken when an accident occurs.

The scope of the polluter-pays principle can be understood by rules of environmental liability and through compensation mechanisms to victims of environmental damages in the framework. These include a range of issues to be considered in the application of the principle, such as – the nature of conceptual problems encountered in incorporating these rules into the legal system. However, to achieve and maintain a cleaner environment is the primary goal of the polluter-pays principle. For an appropriate remedy to victims of damage from environmentally harmful activities, the polluter-pays principle is particularly valid. The environmental lawyer presumes that the permission to carry on an activity is conditional on the enterprise absorbing the cost of any pollution arising from the activity. However, other questions arise concerning the consideration of- the extent of environmental damages, -the need for a reasonable and better compensation for such damages, -the adoption of promotional measures or preventive approaches for better management of environmental resources. As it involves many approaches underlying environmental planning, the scope of the polluter-pays principle depends on the policy-making context. It is commonly understood taking into account its preventive effects, as a mechanism for compensation of damage.

Holding a person liable for trespassing on others rights to an healthy and free environment has been held good by the Indian Judiciary in various case where it has given sound judgements that a person responsible for causing pollution, holds the liability to resurrect and pay for the damage caused. In *Indian Council for Enviro Legal Action* v. *Union of India*[31], it was held that once the activity carried on was hazardous or inherently dangerous, the person carrying on that activity was liable to make good the loss caused to any other person by that activity. In this case the industries located in Bichhri village in Udaipur (Rajasthan) were discharging highly toxic effluents which percolated deep into the earth and polluted the water down below, which not only made it unfit for drinking but also spread diseases, death and disaster. This principle has also been followed in the case of *Vellore Citizens Welfare Forum* v. *Union of India*.

This principle also has been discusses at length in the case of *M.C.Mehta* v. *Kamal Nath*[32], where lease was granted by the State Government of riparian forest land for commercial purposes to a private company having a Motel located at the bank of river Beas, which was questioned through a Public Interest Litigation (PIL). The Motel management was interfering with the natural flow of the river by blocking natural relief/ spill channel of the river. Applying the polluter pays principle, enumerating the provisions of the Water Act, Air Act and the Environment protection Act 1986; the Court contemplated the cognizance of offences under them. It said that, "a person guilty of contravention of provisions of any of the three Acts which constitute an offence has to be prosecuted for such offence and in case the offence is found proved then alone he can be punished with imprisonment and fine or both. The *sine qua non* for punishment of imprisonment and fine is a fair trial in a competent court. The punishment of imprisonment or fine can be imposed only after the person is found guilty".

5) *The precautionary principle*

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[31] AIR 1996 SC 1446.
[32] (1997) 1 SCC 388.

The 'Uncertainty' of scientific proof and its changing frontiers from time to time has led to great changes in environmental concepts during the period between the Stockholm Conference of 1972 and the Rio Conference of 1992. Earlier the concept was based on the 'assimilative capacity' rule as revealed from Principle 6 of the Stockholm Declaration of the UN Conference on Human Environment, 1972. The said principle assumed that science could provide policy makers with the information and means necessary to avoid encroaching upon the capacity of the environment to assimilate impacts and if presumed that relevant technical expertise would be available when environmental harm was predicted and there would be sufficient time to act in order to avoid such harm. But in the 11th Principle of the UN General Assembly Resolution on World Charter for Nature, 1982, the emphasis shifted to the 'Precautionary Principle', this was reiterated in the Rio Conference of 1992 in its principle 15, which reads as follows:

> "In order to protect the environment, the precautionary approach shall be widely applied by the States according to their capabilities. Where there are threats of serious or irreversible damage; lack of full scientific certainty shall not be used as a reason for proposing cost effective measures to prevent environmental degradation".

This principle plays a significant role in determining whether developmental process is sustainable or not. The growing recognition of the need for precautionary action on environmental issues despite the existence of scientific uncertainty presents society with substantial new public policy challenges. Examples of this problem include global warning and concerns that numerous toxic substances may be posing endocrine-disruption throughout the biosphere.

What is particularly vexing about these problems is that in the absence of conclusive proof about the magnitude of impacts or precise casual mechanisms, they may demand dramatic readjustments of human economic activities. Profound levels of investment by society may be required for the efforts to shift behavior. Under such circumstances, the Precautionary Principle

is a policy principle to nevertheless promote action. It states "When an activity raises threats of harm to human health or the environment, precautionary measures should be taken even if some cause and effect relationships are not fully established scientifically". This precautionary approach is advanced by attempts of various existing and proposed mechanisms. The approach range from outright action forcing measures such as bans and phase-out of substances suspected of causing the harms to promoting additional societal study of the activities of concern, to shifting burdens of proof, to providing incentives for preventive behavior.

In *Vellore Citizens' Welfare Forum* v. *Union of India*[33] a three Judge Bench of the Supreme Court referred to these changes, to the 'Precautionary Principles' and the new concept of 'burden of proof' in environmental matters. Kuldip Singh, J. after referring to the principle evolved in various International Conferences and to the concept of 'Sustainable Development', stated that the Precautionary Principle, the polluter-pays principle and the special concept of onus of proof have how merged and govern the law in our country too, as is clear from Article 47, 48-A and 51-A (g) of our Constitution and that, in fact, in the various environmental status, such as the Water Act, 1974 and other statutes, including the Environment (Protection) Act, 1986, these concepts are already implied. The learned Judge declared that these principles have now become part of our law.

Recently in *A.P. Pollution Control Board* v. *M.V.Nayudu*[34], a Division Bench of the Supreme Court further elaborated the concept, as it observed:

> "Inadequacies of science are the real basis that has led to the Precautionary Principle of 1982. It is based on the theory that it is better to err on the side of caution and prevent environmental harm, which may indeed become irreversible.... The principle of precaution involves the anticipation of environmental harm and taking measures to avoid it or to choose the least environmentally harmful activity. It is based on scientific uncertainty. Environmental protection should not only aim at protecting health, property and economic interest but also protect the

[33] Supra note 18.
[34] AIR 1999 SC 812.

> environment for its own sake. Precautionary duties must not only be triggered by suspicion of concrete danger but also by (justified) concern or risk potential".

The Precautionary principle serves as a tool to guide legislators, where adoption of an appropriate action is required where there are potential threats to human health and environment. When there is likelihood that some serious or irreversible damage to health and environment may occur, this is applied. It is also applied, when there is reasonable suspicion of harm, lack of scientific certainty or consensus must not be used to postpone preventive action. Accidental harm may be caused in turn as new technologies have reaped great benefits for the advancement of mankind. As pollutants have been inculcated in the mainstream of human lives, pollution has become personal. The alarming increases in the incidence of certain diseases have been suspected of having links to environmental pollution. The question derived from this is as to how careful mankind should be about introducing innovations, which have the potential to affect human health and the environment. It sounds more like common sense rather than a revolutionary idea: better safe than sorry; look before you leap or a stitch in time saves nine. It requires scientific and technical specialization for properly understanding the phenomena.

6) *Eradication of poverty*

The vicious circle of poverty as spoken of by economists cannot make the economy progress as it pulls down the economy. The state of poor economy of any country is shown by poverty. In order to revive any economy, economic growth is essential, although not at the cost of environment. Eradication of poverty forms an integral part of sustainable development as it reduces the outlook of people to use their resources in a sustainable manner. Poverty would mean one is "feeding" away one's resources without realizing any damages, which may be caused as its end result. Sustainable development forms development as an essential for bringing changes for the betterment of economy. In case poverty exists there would be no development as people would be more engaged in the vicious circle of poverty as they could strain

their resources to meet their basic needs. In case poverty continues to exist, the article 5 countries would not realize the depletion of ozone.

7) *Financial assistance to the third world countries*

The developing countries do not have the finances or the technology to bring changes suggested under the Montreal Protocol or any other environment problem facing the world. Finances are an important part, which to a lot of extent determines a country's status. Developing countries because of many inherent problems or by reason of under-development cannot make good to the people, the idea of development without indulging in environment damaging activities. In order to achieve sustainable development equity must be brought for development to take place. Therefore under any significant environment call, the transfer of finances as well as technology from the developed to the developing world is always called for.

In order to achieve sustainable development, environment protection shall constitute an integral part of the development process and cannot be considered in isolation from it. Pollution knows no boundaries; therefore the global community has to work together to counter issues and threats facing our environment. Without these and even the missing of any one of these, the principle would be rendered as useless and baseless as the elements have to form an integral part of sustainable development. It points to those principles or obligations for global conventions, charters, documents and treaties, which seek to protect the well being of posterity. It brings forth the need for a guardian or series of guardians who would speak on behalf of future generations.

To represent future generations at various international for a, those decisions would affect the future and who would argue the case on behalf of future generations, the world should have an authorized guardian. To counter the firmly established attitude of our civilization to discount future, bringing out the long-term implications of proposed actions and proposing alternatives; the role would not be to provide, but to plead for future generations. Where, who and what the guardian should be are some of the questions, which are

raised. Should they be housed in a non-governmental organization, federal government bodies and/or the United Nations? Should the guardian(s) be scientists, lawyers and/or policymakers or an advocate who urges the living to leave few risks, little poverty and a healthy ecosphere for future generations? In common usage, different meanings have been assigned to the term and among the present generation some (loosely) regard children as being included in future generations, while others only consider those who would follow the present or living generation to constitute future generations. Since the present generation, its successor, as well as, in turn, every following generation constitute a continuum in generations complications arise in considering discrete future generations as it is well nigh impossible to separate specific collective persons from a continuum.

The principles of distributive justice bind the concept of intergenerational and intra-generational equity. This interpretation calls for greater equality among generations. It recognizes the intra-generational dimension that all members of the present generation have an equal right to use and benefit from the planet.

Moreover, the proposal is of the United Nations as a guardian for future generations. The United Nations Charter, the chief document of International law, possesses permanent and continuous legal force. Interestingly its main goal is to give consideration to the interests of the coming generations and to prevent suffering by these generations.[35]

6.3.(ii).THE PUBLIC TRUST DOCTRINE

In protecting the environment and checking its degradation and pollution, the judiciary has played a vital role. Keeping in view the dangerous consequences of environment pollution, the judiciary has profounded some theories to keep strict vigilance and control on the environmental polluters and offenders. The judiciary has engrafted several principles into the environmental

[35] Reviewed by: Tim Boston, Review Essay: Future Generations and International Law, Future Generations and International Law (Law and Sustainable Development), 1998 at 206.

jurisprudence. The principle of public trust is one of these important doctrines, which recently has drawn much attention of the Supreme Court.

In *M.C.Mehta* v. *Kamal Nath*[36], the apex court has quoted with approval an article entitled 'Public Trust Doctrine' in Natural Resource Law. In this case the court reviewed a number of U.S. decisions and held that the Public Trust Doctrine primarily rests on the principle that certain resources like air, sea, waters and the forests have such a great importance to the people as a whole that it would be wholly unjustified to make them a subject of private ownership. The said resources being a gift of nature, they should be made freely available to everyone irrespective of the status in life. The doctrine enjoins upon the Government to protect the resources for the enjoyment of the general public rather than to permit their use for private ownership or commercial purposes. According to Professor Sax the Public Trust Doctrine imposes the following restrictions on governmental authority:

'Three types of restrictions on governmental authority are often thought to be imposed by the public trust: first, the property subject to the trust must not only be used for a public purpose, but it must be held available for use by the general public; second, the property may not be sold, even for a fair cash equivalent; and third the property must be maintained for particular types of uses.'[37]

The ancient Roman Empire developed a legal theory known as the 'Doctrine of the Public Trust'. It was founded on the ideas that Government held certain common properties such as rivers, seashore, forests and the air in trusteeship for the free and unimpeded use of the general public. Our contemporary concerns about 'the environment' bear a very close conceptual relationship to this legal doctrine. Under the Roman law these resources were either owned by no one (*res nullious*) or by every one in common (*res communious*). Under the English common law, however, the Sovereign could own these resources but the ownership was limited in nature, the Crown could

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[36] (1997) 1 SCC 388.
[37] AIR 2002 AP 256 at 268.

not grant these properties to private owners if the effect was to interfere with the public interests in navigation or fishing. Resources that were suitable for these uses were deemed to be held in trust by the Crown for the benefit of the public.

According to Prof. Sax, the Court has articulated a principle that has become the central substantive thought in public interest litigation. When a State holds a resource, which is available for the free use of the general public, a Court will look with considerable skepticism upon any governmental conduct, which is calculated either to relocate that resource to more restricted uses or to subject public uses to the self-interest of private parties.[38]

In *M.I.Builders Pvt. Ltd.* v. *Radhey Shyam Sahu*[39], the resolution of the Lucknow Nagar Mahapalika permitting M.I.Builders Pvt Ltd to construct an underground shopping complex was quashed and set aside by the High Court. Aggrieved by the order the appellant went for an appeal. The Supreme Court opined that Mahapalika is the trustee for the proper management of the park. When true nature of the park, as it existed, is destroyed it would be violative of the doctrine of public trust as expounded by the Supreme Court in *Span ResortCase*[40]. Public doctrine is part of Indian law.

The Court held the facts and circumstances when examined point to only one conclusion that the purpose of constructing the underground shopping complex was a mere pretext and the dominant purpose was to favour the M.I.Builders to earn huge profits. In depriving the citizens of Lucknow of their amenity of an old historical park in the congested area on the specious plea of decongesting the area, Mahapalika and its officers forgot their duty towards the citizens and acted in a most brazen manner.

The Court also observed that construction of shops will bring in more congestion and with that the area will get more polluted. Any commercial activity now in this unauthorized construction will put additional burden on the locality. Primary concern of the Court is to eliminate the negative impact the

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[38] Ibid at para 37.
[39] AIR 1999 SC 2498.
[40] Supra note no 36.

underground shopping complex will have on environment conditions in the area and the congestion that will aggravate on account of increased traffic and people visiting the complex. There is no alternative to this except to dismantle the whole structure and restore the park to its original condition leaving a portion constructed for parking. The Court was aware that it might not be possible to restore the park fully to its original condition as many trees have been chopped off and it will take years for the trees now to be planted to grow. But beginning has to be made.

The Public Trust doctrine has vast potential and the doctrine should be effectively used against the consent orders granted to air polluters. Since, the State, as a trustee is also under a legal duty to protect the air and atmosphere along with other natural resources.

6.4.STATUTORY REGIME OF DISPUTE REDRESSAL

In India, the concept of compensation for environmental pollution can be traced from the common law remedies. *J.C.Galstaun* v. *Dunia Lal Seal*[41] is an illustration of a case where substantial sum was awarded as compensation against persistent pollution in Calcutta. Usually the remedies available for pollution were injunction or fine for causing nuisance. This situation existed till the special laws for environment protection were enacted. Compensation to the victims of industrial mass disaster was awarded, of late, in Bhopal Mass Disaster.

It was not possible for the court to make quick decisions relating to the compensation of victims of accidents in the worst industrial disaster in human history. The interests affected were various and the intensity of damage and sufferings varied. Therefore, the assessment of the quantum compensation was an arduous task. The aftermath of Bhopal disaster disclosed the realities about the burden of industrialization on the shoulders of a developing nation. It also threw a challenge to the Indian legal system. *Union Carbide*[42] and *Sri Ram*[43]

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[41] 1905 9(CWN) 612.
[42] *Union Carbide Corporation* v. *Union of India* , AIR 1987 SC 273.

have not only given warning signal to the country's environmental sustainability but also exposed the loopholes in the existing environmental legislations.

Day-to-day pollution of water, air and atmosphere paved the way for social auditing of environmental compliance. Rehabilitation, compensation and perpetual agony of the valiant victims resulted in passing of the Public Liability Insurance Act (PLI) in 1991. Besides that the Parliament passed the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985. The Bhopal case evolved the doctrine of *Parens patriae* in Mass tort action.

Doctrine of Parens patriae

The doctrine of *Parens patriae* connotes the rights of a person, real or artificial, to sue and to be sued on behalf of another who is incapacitated to take up the case before a judicial forum as effectively as the former can. The Bhopal Act[44] conferred on the Union of India the responsibility of suing *Parens patriae* on behalf of the victims.

Forum non conveniens

Acting as *Parens patriae*, the Union of India had to select the forum where it should sue for compensation on behalf of victims. The doctrine of *forum non conveniens* allows a court to decline jurisdiction when there is an alternative more convenient forum which can give adequate and satisfactory relief. The Union of India thought that a US court would be the most appropriate forum for adjudication of the claims. They tried to justify their choice of forum on the following grounds: Indian courts have not reached full maturity to protect the interests of victims suitably and to decide the issue of compensation in the best possible manner. Indian law of torts is in its infancy. Hence a just and speedy decision was not possible. The Union Carbide Corporation (UCC), on the other hand, argued that the Indian legal system was so well developed, that its courts could try the cases and protect the interests of victims. The American court accepted the stand of the UCC and rejected the

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[43] *M.C.Mehta* v. *Union of India*, AIR 1987 SC 965.
[44] Bhopal Gas Leak Disaster (Processing of Claims) Act 1985.

contentions of the Union of India. Holding that an Indian court is the most appropriate forum, Judge Keenan of the US District Court, Southern District of New York, observed that to retain the litigation in this forum as plaintiffs request would be yet another example of imperialism, another situation in which an established sovereign inflicted its rules, its standards and values on a developing nation.

The judge pointed out that the Union of India was a world power in 1986, and that its courts had the proven capacity to mete out fair and equal justice. Judge Keenan also observed that to deprive the Indian judiciary of this opportunity to stand tall before the world and to pass judgment on behalf of its own people would be to revive a history of subservience and subjugation from which India has emerged. India and its people can and must vindicate their claims before the independent and legitimate judiciary.

After the dismissal of the suits in America, the Union of India filed a suit in the district court of Bhopal. Since 1985, public interest litigation has played an important role in majority of environmental pollution cases and it has significantly contributed to the development of the law relating to environmental compensation. The Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 was one of the early enactments, which was passed to grant compensation as a remedial measure to the victims of Bhopal gas tragedy.

The Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 'to confer certain powers on the Central Government to secure that claims arising out of or connected with, the Bhopal Gas Leak Disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and for matters incidental thereto'. Section 3 of the Act confers on the Central Government, the exclusive right to represent and act in place of every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person. Section 9 empowers the Central Government to frame a scheme for registration of claims and their processing, for creation of fund for meeting expenses in connection with the administration of the scheme and for the

utilization by way of disbursal of any amounts received in satisfaction of the claim.[45]

6.4.(i).THE PUBLIC LIABILITY INSURANCE ACT 1991

The recent times, the miseries caused by industrial disasters have engaged the attention of the government in terms of providing immediate relief to the victims of industrial accidents. For this purpose the Public Liability Insurance Act, 1991 was passed by the Parliament in June 1991, and a Bill was also introduced in the Lok Sabha in August 1992 to ameliorate the miseries of the victims and to provide expedious disposal of cases involving hazardous substances by constituting environmental tribunals.

The Public Liability (Insurance) Act was enacted in 1991 to provide for public liability insurance for the purpose of providing immediate relief to the persons affected by the accident occurring while handling any hazardous substances and matters connected therewith or incidental thereto.

The Public Liability Insurance Act, 1991 consists of 23 sections and one Schedule. Short title and commencement of the Act are dealt with in section 1, while section 2 contains several definitions. The substantive provisions of the Act are mainly contained in sections 3 and 4. Section 3 incorporates the principle of liability without fault for death or injury to any person (other than a workman) or damage to any property, resulting from an accident.

Definition of Accident

Section 2 defined 'accident' as an accident involving a fortuitous, sudden or unintentional occurrence while handling any hazardous substance resulting in continuous, intermittent or repeated exposure to death of, or injury to any person or damage to any property but does not include an accident by reason only of war or radio activity. (This definition replaced the earlier one by the 1992 amendment).

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[45] Ramaswamy Iyer, *The Law of Torts*, Ninth Edition, 2003, Butterworths, p.735.

Section 3(2) says that in any claim the claimant shall not be required to plead and establish that the death, injury or damage in respect of which the claim has been made was due to any wrongful act, neglect or default of any persons. It imposes a kind of strict liability on the owner of hazardous substances to pay compensation.

Insurance Policy

Section 4(2A) and succeeding sub-sections make certain detailed provisions as to contents of the policies. No insurance policy taken out or renewed by an owner shall be for an amount less than the amount of the paid up capital of the undertaking handling any hazardous substance and owned or controlled by that owner, and more than amount, not exceeding fifty crore rupees as may be prescribed. Paid up capital means the market value of all assets and stocks of the undertaking on the date of contract of insurance, in case of an owner not being a company. Every owner shall also, together with the amount of premium. Pay to the insurer for being credited to the relief fund not exceeding the premium. By section 4(3), the Central Government is empowered to grant exemption from the duty to take out an insurance policy.

Application for Claim and Establishment of Environment Relief Fund

Sections 5 to 7 of the Public Liability Insurance Act deal with the preliminary formalities and procedure for applications for claims for relief under the Act. Section 5 requires the Collector to verify the occurrence of an accident, if it comes to his notice, and to cause publicity to be given to it for inviting applications for claims for relief. Section 6 deals with the manner of making such applications and also prescribes a time limit of five years for making such applications

Section 6 provides for application for the claim for relief, which can be made by the person who has sustained the injury or owner of the property, which was damaged. In case of death, the legal representatives of the deceased have to make application. Or a duly authorized agent can make application.

Section 7A (inserted in 1992), provides for the creation of Environment Relief Fund by the Central Government.

Award After Inquiry

On receiving the application, the Collector shall after giving notice of the application to the owner and after giving the parties an opportunity of being heard, hold an inquiry into the claim and make an award.

Within 30 days of announcement of award, the insurer shall deposit that amount as prescribed by the collector. The collector shall arrange to pay from the relief fund, in terms of such award and in accordance with the scheme. The collector shall have the powers of the civil court in conducting the inquiry for giving the award. If the owner or insurer fails to deposit the award amount, within the period specified, such amount shall be recoverable from the owner or insurer as arrears of land revenue or of public demand.

Claim for relief in respect of death of or injury to any person or damage to any property shall be disposed of as expeditiously as possible and every endeavour shall be made to dispose of such claim within three months of the receipt of the application.

Section 8 saves any other right to claim compensation in respect of death, injury to person or damage to property under any law for the time being in force. Certain powers necessary for the working of the Act are dealt with, in sections 9, 10 and 11, relating to calling for information, entry and inspection and search and seizure.

The Central Government has power to call for information[46] or any person authorized by the Central Government shall have a right to enter premises where a hazardous substance is handled for purposes of examining the compliance of provisions of the Act, rules or directions issued under this Act[47]. The Central Government has power of search and seizure[48] and power to issue directions[49].

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[46] Section 9, Public Liability Insurance Act.
[47] Section 10, Public Liability Insurance Act.
[48] Section 11, Public Liability Insurance Act.
[49] Section 12, Public Liability Insurance Act.

A very important provision, contained in section 12, is to the effect that the Central Government may issue written directions "for the purposes of the Act", to any owner any other person and regulating the supply of "electricity, water or an other service". By section 13, the Central Government or an authorized person is also given power to apply to the court for an order restraining the owner handling any hazardous substance in contravention of Act.

Offences, Penalties and Procedures connected therewith

Sections 14 to 18 deal with offences, penalties and procedural provisions connected therewith. Section 14 provides for penalty of imprisonment for a term not less than one year and six months which may extend to six years with a fine not less than Rs one lakh or both for contravention of sub-sections (1) or (2), (2A), (2C) of section 4[50] or for failure to comply with any direction given under section 12. For a second offence, the punishment is imprisonment not less than two years but which may extend to seven years and with fine which shall not be less than one lakh rupees.

Section 15 provides for punishment with imprisonment, which may extend to three months or with the fine, which may extend to ten thousand rupees or with both if any owner fails to comply with direction issued under section 9[51] or fails to comply with order issued under 11(2) for search and seizure.

Section 16 says that if the offences are committed by the company, the persons directly in charge of and responsible to the company for the conduct of the business, as well as the company, shall be deemed to be guilty. However, the provision under this section exempts the officer who had no personal knowledge of the offence or when he exercises due diligence to prevent it. If the offence is committed with the connivance of or is attributable to the neglect on the part of any officer, such officer shall be liable to be proceeded against and punished accordingly.

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[50] Duty of owner to take insurance policies.
[51] Calling for information.

Section 17 says that if the government department commits the offence, the Head is deemed to have committed it. Two exemptions are provided to the Head of department from the punishment if it is proved that he was not having personal knowledge or tried to prevent the offence with due diligence.

Section 18 provides that the court shall take cognizance of the offence only on complaint made by the Central Government, or its authorized officer or by any person who has given 60 days advance notice of his intended complaint.

By section 19, the Central Government is empowered to delegate its powers under the Act, excepting the rule making power. Section 20 protects action taken in good faith under the Act.

Public Liability Insurance Advisory Committee

Section 21 provides for an advisory committee on matters relating to insurance policies under the Act. The section provides for constitution of an advisory committee with three officers representing the center, two from the insurers, two from owners and two from amongst the experts of insurance or hazardous substances. The Central Government has powers to appoint such a committee, to which one of the representatives of the Central Government will be the chairman.

Power to Make Rules

The Central Government has rule making powers under section 23 to provide detailed rules for maximum amount for which an insurance policy may be taken by an owner, amount to be paid into relief fund by every owner, the manner and period in which amount is remitted by insurer, for establishment and maintenance of fund, procedure for holding inquiry, to give powers of civil court to collector, the manner in which notice of intention of complaint has to be made, and any other relevant matter. Every rule or scheme made by the Central Government under the Act has to be approved by the Parliament.

Schedule of Compensation

The Schedule to the Act gives a tariff of compensation to be awarded as result of the liability provided for in section 3(1) of the Act. Following are some of the prescribed amounts:

1. Reimbursement of medical expenses up to Rs 12,500 in each case.
2. Relief of Rs 25,000 per person for fatal accidents, in addition to medical expenses.
3. In addition to medical expenditure reimbursement, cash relief on the basis of percentage of disablement as certified by an authorized physician as to be paid for permanent total or permanent partial disability or other injury.
4. For loss of wages or reduction of earning capacity, a fixed monthly relief not exceeding Rs 1,000 per month up to a maximum of three months has to be provided.
5. Up to Rs 6,000 depending upon the actual damage, for any damage to private property.

Rules

Under section 23, the Public Liability Insurance Rules were passed in 1991. These rules provided detailed procedure for application, documents to be attached with application seeking relief, powers of collector to conduct summary inquiry, establishment and administration of fund, manner of giving notice of intention to complain, extent of liability, contribution of owner to environmental relief fund and prescribed forms for application for compensation and notice.

Notifications

The Government of India issued a notification through the Ministry of Environment and Forests, in 1992 listing out the industries dealing with hazardous substances, and directed the owners of such industries to take out compulsory insurance, in case the quantity of the hazardous substance exceeds the limits prescribed under this notification. By another notification in 1993, the Central Government authorized some officers with specific jurisdiction to perform duties under the Act. The state government and district collector

among others are authorized. The Central Government delegated under section 19 its powers to the state government and Central Pollution Control Board.

6.4.(ii). ENVIRONMENTAL DISPUTE REDRESSAL THROUGH TRIBUNALS

The limitation of the existing rule of civil law sanctions and particularly, the rule on civil liability and compensation to effectively deal with environmental cases has been judicially noticed. This made the court to bring forth the idea of establishment of environment court, environmental protection council and an autonomous environment protection authority. The courts called upon the Government to consider the establishment of the court. This was called upon because the environmental cases required the appraisal and assessment of scientific and technical data, which could be resolved only by the help of professionally competent experts.

The courts have also recognized that it is undesirable to leave the resolution of complicated environmental disputes to officers drawn from the executive.

This has set the stage for the preparation of Environment court. The Bill entitled National Environmental Tribunal Bill was introduced in Lok Sabha on August 5, 1992. With some minor changes, the Bill was finally passed by both the Houses of Parliament and received the assent of the President on June 17, 1995.

6.4.(iii). THE NATIONAL ENVIRONMENTAL TRIBUNAL ACT 1995

The National Environmental Tribunal Act, 1995 is a comprehensive piece of legislation dealing with the disposal of compensation petition by the valiant victims of environmental catastrophe. Five chapters and 31 sections broadly envelop rubrics of glossaries; liability to pay compensation and its procedure; composition of tribunal; jurisdiction, penalties and other miscellaneous provisions. The preamble asserts that it owes genesis to the

United Nations Conference on Environment and Development held at Rio de Janeiro in 1992.

The preamble suggests 'to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance'. To achieve this purpose the tribunal will 'effectively and expeditiously' dispose of the cases by giving relief and compensation for damages to person, property and environment.

The National Environmental Tribunal Act passed after four years of enactment of the Public Liability Insurance Act, is more a repetition than an improvement.[52]

Scope of the Act

National Environmental Tribunal Act (NETA) gives a descriptive interpretation to the term accident, but the scope of the Act has been restricted to handling any 'hazardous' substance. Under section 1(a), "Accident means an accident involving a fortuitous or sudden or unintended occurrence while handling any hazardous substance resulting in continuous or intermittent or repeated exposure leading to death or injury to any person or damage to any property or environment but does not include an accident by reason only of war or radioactivity". In his respect, the definition of 'handling' is also important. Under section 1(e), 'handling' in relation to hazardous substances means the manufacture, processing, treatment, packaging, storage, transportation by vehicle use, collection, destruction, conversion, offering for sale, transfer or the like, of such hazardous substance.

The above two definitions illustrates the narrow scope of the Act and its limited applicability. This means that people, who are exposed to daily intake of pollutants due to effluents discharged, will not be covered, as that would not amount to 'accident'. In case of exposure to radioactivity, no adverse effect is noticed immediately, the toxic effects taking time to manifest.

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[52] Md. Zafar Mahfooz Nomani, "Law Relating to Environmental Liability and Dispute Redressal: Emergence and Dimension", Indian Bar Review, Vol 23(3 & 4) 1996, p.133 at 157.

For the sustenance of claim for compensation for death and injury to person and damage to property and environment, two types of proofs are required. Firstly, the death, injury and damage have resulted out of accident while handling hazardous substances. Secondly, such death, injury and damage should fall under all or any of the heads specified in the schedule.[53] The ground stated under the schedule broadly covers the pecuniary and non-pecuniary damages; mitigation of loss to private and non-private properties, reimbursement of relief, aid, rehabilitation and litigational expenses of Government; and preservation of biological diversity.

The Act provides for liability to pay compensation in certain cases on the principle of 'No fault Liability' under section 3 of the Act, as for claiming compensation, the petitioner is not required to plead and establish that the death, injury and damage were due to wrongful act, neglect or default of any person, but the Act excludes workmen from its preview. Further, section 3(3) of the Act, which deals with apportionment of liability for compensation in case of combined effect of several activities, gives arbitrary powers to the Tribunal to quantity the amount of compensation. However, it is expected that a proper application of this provision would ensure a fair deal to every section of society.[54]

Under section 4(1) of the said Act[55], though the principle of *locus standi* is liberalized, section 4(1) (e) restricts the scope. It gives powers to any representative body or organization functioning in the field of environment and recognized by the Central Government under all or any of the heads specified in the Schedule, to make an application for claim of compensation, which means that the Central Government may recognize or derecognize anybody for the purpose of making an application, according to its whims and fancies. Application for claim of compensation has been provided under section 4 of the Act. It provides that an application for claim may be made (a) by any person

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[53] The National Environment Tribunal Act, Section 3(1).
[54] Vinod Shankar Mishra, "Emerging Right to Compensation in Indian Environmental Law", Indian Bar Review, Vol 28 (4) 2001, p. 67.
[55] The National Environment Tribunal Act

who has sustained injury, (b) by owner of the property to which damage has been caused, (c) where death has resulted from the accident, by all or any of the legal representative of the deceased, (d) by any agent authorized by the owner whose property is damaged or any of the legal representative of the deceased, (e) by any representative body or organization, functioning in the field of environment, recognized by the Central Government or (f) by the Central Government or a state government or a local authority under all or any of the heads specified in the schedule.

The enumeration of grounds in the schedule takes a holistic account more especially by virtue of protection clause of non-pecuniary compensation and relief. Any other claim arising out, or connected with, any activity of handling hazardous substances[56], further broadens the scope of relief. This makes the schedule illustrative as well as exhaustive. Another notable feature is the incorporation of the provision relating to public participation in espousing the cause of victims[57]. Incentive to community participation will go a long way in influencing the trial through meaningful debate, public opinion, media spotlights and public pressures in an expeditious and effective manner. In this way, the concept of 'social auditing'--- hitherto not well recognized under environmental law--- will receive a momentum. To keep the ferment of social litigation in high esteem, the Act provides free of cost maintainability of suit from persons and representative bodies having a meager income[58]

The Tribunal can also initiate *suo moto* actions under section 4(2). Under section 4 of the Act, the application for relief has to be made within five years of the occurrence of the accident. The limited period of five years from the time of the accident means that those cases of slow pollution or cases where the after-effects of an accident are seen after five years, should be outside the purview of the Act.

Under section 4(3), the tribunal has jurisdiction in respect of matters specified in the Public Liability Insurance Act, and reference to the collector

[56]Id., Section 3(1), The Schedule (n).
[57]Id., Section 4(e).
[58]Id., Section 4(5).

shall be construed as including reference to the tribunal, which means that the tribunal and the collector have concurrent jurisdiction.

The tribunal being a civil court will primarily guided by the Code of Civil Procedure; the provisions of this Act and above all the principle of 'natural justice'[59]. It may also award interim relief in exceptional circumstances to mitigate losses and damages[60]. Regarding the jurisdiction of the tribunal certain qualms exist. It owes to the concurrent jurisdiction of Public Liability Insurance Act and National Environmental Tribunal Act. The power of tribunal has been put at par with that of collector under Public Liability Insurance Act. The tribunal shall have the power in respect of matters specified in the Public Liability Insurance Act as the collector has and may exercise, for this purpose, the provision of that Act shall have effect subject to the modification that the references therein to the collector shall be construed as including reference to the tribunal[61]. However, the jurisdiction and power of tribunal and collector are overlapping, repetitive and somewhat ambiguous. Public Liability Insurance Act has been saved under section 30 of National Environmental Tribunal Act but in case of inconsistency in the former the latter has precedence.

Section 9, talks about the compensation of the tribunal. According to this section, the tribunal will consist of a vice chairperson, a judicial member and a technical member, and in certain cases a single member bench may also be constituted. Thus the composition of the National Environment Tribunal (NET) and its benches would not vest on a uniform pattern. Section 9(4) of the Act which gives power to any person to hear a case and decide it, would imply that even a technical person who is not proficient in the field of law and whose job is basically to assist in conducting research and other investigations, would be given the power to dispense justice. It, therefore, leaves room for arbitrary decisions.

The composition of tribunal viz., chairperson, vice-chairperson and members is an unsavoury mixture of judicial, technical members and

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[59]Id., Section 5.
[60] Id., Section 6.
[61] Id., Section 4(4).

bureaucrats. The chairperson will be a member of higher judiciary but for a vice-chairperson the deck has been cleared for the bureaucrats having knowledge and experience in legal administrative, scientific and technical aspect of environment. Going by the qualification specification, the bureaucrats are *persona grata* as they alone possess the repository of legal, administrative, scientific and technical acumen. The most debilitating provision is the composition of bench where in exceptional circumstances, the chairperson may authorize the vice-chairperson (which may be a technical member) and to a technical member to adjudicate on intricate environ-legal or techno-legal issues[62]. In these circumstances, even a technical person who is not proficient in law and whose job is basically to assist in conducting research and other investigations would be given the power to dispense justice. It, therefore, leaves room for arbitrary decisions.

Penalties

Under section 25, whoever fails to comply with any order made by the tribunal shall be punishable with imprisonment for a term which may extend to three years, or with a fine which may extend to ten lakh rupees or with both. The sum is too meager to comprehend and several big industries might escape from the clutches of the Act, by paying the paltry amount.

Section 26 provides for offences by company and lays down the principle of vicarious liability for the principal officer. The proviso to section 26 provides that nothing contained in this sub-section shall render any person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Conclusion

On July 17, 1995, the National Environmental Tribunal Act (NETA) came into being. This Act is based on the provisions of Article 253 of the

[62] Id., sections 9(3)(c); 9(4).

Constitution of India, which had been resorted to earlier bi Parliament to formulate the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (Protection) Act, 1986. The Act specifically states that it is intended to give effect to the recommendations made at the United Nations Conference of Rio de Janeiro in 1992. The object of the Act is to provide for strict liability for damages arising out of any accident occurring while handling any hazardous substance, and for the establishment of a National Environment Tribunal for effective and speedy disposal of cases arising from such accidents.

6.4.(iv).THE NATIONAL ENVIRONMENT APPELLATE AUTHORITY ACT OF 1997

This statute requires the Central Government to constitute a national environment appellate authority for hearing of appeals against orders granting environmental clearance in areas which restrictions are imposed on setting up any industry or carrying on any operation or process. The Act[63] requires the Union Government to establish a body known as National Environment Appellate Authority (NEAA), chaired by a retired judge of the Supreme Court or a Chief Justice of a High Court and has its head office at Delhi[64]. The National Environment Appellate Authority authorized to exercise the powers conferred upon it and to perform the functions assigned to it under the Act[65].

Constitution of the Authority

The authority consists of a chairman, a vice-chairman and up to three other members as the Central Government deems fit[66]. The Central Government is empowered to determine and provide categories of officers and other employees to assist the National Environment Appellate Authority, as it deem fit under section 5(4) of the Act. The officers and employees of the authority are required to discharge their functions under the superintendence of

[63] National Environment Appellate Authority Act, 1997
[64] Id., Section 3(2).
[65] Id., Section 3(1).
[66] Id., Section 4.

the chairperson[67]. The chairperson of the National Environment Appellate Authority is empowered to exercise financial and administrative powers, as may be vested in him under the rules framed under the National Environment Appellate Authority Act 1991[68]. However, the chairperson may delegate his financial and administrative power, as he deems fit to the vice chairperson, or any other officer of the National Environment Appellate Authority, subject to the condition that the delegate must exercise the delegated powers under the direction, control and supervision of the chairperson[69]. The chairperson, vice chairperson and other members shall hold office for a term of three years from the date of assumptions of office and eligible for re-appointment for another term of three years[70]. However, a chairperson is not entitled to hold office after he has attained the age of 70 years[71] and a vice chairman or other member cannot hold office after he has attained the age of 65 years[72].

Jurisdiction and Procedure of the Authority

No civil court or other authority has jurisdiction to entertain any appeal in respect of any matter which the National Environment Appellate Authority ('the Authority') is empowered to deal with under the National Environment Appellate Authority Act 1997[73].

In addition to its statutory jurisdiction the Authority may play an advisory role in respect of the scientific and technical issues referred to it by the Supreme Court[74] or the High Courts in environmental cases[75]. The opinion rendered by the Authority is subject to the approval of the referring court[76].

The National Environment Appellate Authority is not bound by the procedure laid down in the Code of Civil Procedure 1908 and is required to act

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[67] Id., Section 5(1) (a).
[68] Id., Section 6(1).
[69] Id., Section 6(2).
[70] Id., Section 7.
[71] Id., Section 7 proviso (a).
[72] Id., Section 7 proviso (b).
[73] Id., Section 15.
[74] See Articles 32 and 136 of the Constitution of India.
[75] See Article 226 of the Constitution of India.
[76] *Andhra Pradesh Pollution Control Board* v. *M V Nayudu*, AIR 1999 SC 812.

in accordance with the principles of natural justice. The Authority is empowered to regulate its own procedure including fixing the venue, the time of its inquiries and whether to hold an inquiry in public or in private.

The Authority is conferred with the same powers as are vested in a civil court under the Code of Civil Procedure 1908 with regard to the trial of a suit in respect of the following matters[77] namely:

(1) summoning and enforcing the attendance of any person and examining him on oath;

(2) requiring the discovery and production of documents;

(3) receiving evidence on affidavits;

(4) requisitioning any public record or document or copy of such record or document from any office;

(5) issuing commissions for the examination of witnesses or documents;

(6) reviewing its decisions;

(7) dismissing a representation for default or deciding it ex parte;

(8) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and

(9) any other matter which is to be or may be prescribed by the Central Government in the rules.

All proceedings before the Authority are deemed to be judicial proceedings within the meaning of the Indian Penal Code[78].

Penalty

A person who fails to comply with an order made by the National Environment Appellate Authority is punishable with imprisonment for a term that may extend up to seven years or with a fine up to Rs 1,00,000 or both[79]. Where the offence has been committed by a company, every person who at the time when the offence was committed was directly in charge of and was

[77] Supra note no. 63 at Section 12.
[78] National Environment Appellate Authority Act Section 16. See Sections 193, 219 and 228 of the Indian Penal Code 1860.
[79] Supra note no. 63 at Section 19.

responsible to the company for the conduct of its business, as well as the company, is deemed to be guilty of the offence and is liable to be proceeded against and punished[80]. However, where a person proves that the offence was committed without his knowledge or that he exercised due diligence to prevent the commission of the offence, he may not be liable to any punishment[81].

Where an offence is committed by a company and it is proved that the offence was committed with the consent or connivance of or was attributable to any neglect on the part of any director, manager, secretary or other officer of the company, the person is also deemed to be guilty of the offence and is liable to be proceeded against and punished[82].

A suit, prosecution or other legal proceeding cannot lie against the Central Government, the chairperson, vice-chairperson, other member of the National Environment Appellate Authority or any other person authorized by the chairperson, vice-chairperson or other member for anything which is done or intended to be done in good faith in pursuance of the National Environment Appellate Authority Act 1997 or the rules framed under the Act.[83]

Appeal

Section 11 of the National Environment Appellate Authority Act requires an appeal to be filed within 30 days of the impugned order granting conditional or unconditional environmental clearance or where the delay is explained, within 90 days. The appellate jurisdiction is restricted to cases where environmental clearance is granted and does not extend to cases where clearance is refused. The categories of 'aggrieved persons' who are conferred a right of appeal are enumerated in section 11(2). They include a person likely to be affected by the environmental clearance and an association of persons 'likely to be affected by such order and functioning in the field of environment'. The Appellate Authority is required to dispose of the appeal

[80] Id., Section 20(1).
[81] Id., Section 20(1) proviso.
[82] Id., Section 20(2).
[83] Id., Section 18.

within 90 days of its filing. Section 15 of the National Environment Appellate Authority bars a civil court or other authority from entertaining any appeal in matters falling within the jurisdiction of the Appellate Authority.

Therefore, the National Environment Appellate Authority Act of 1997 creates an appellate forum where affected citizens may assail the environmental approval granted for siting a development project. The appellate authority examines the validity of decisions taken by the environment impact assessment (EIA) authority under the EIA regulations of 1994. This law, in tandem with the public hearing requirements under the EIA regulations, introduces a measure of transparency in the EIA procedure. It also provides a speedy dispute resolution mechanism to enable the project proponent to assess where he or she stands on environmental issues.

The Authority under National Environment Appellate Authority is empowered to hear appeals filed by persons aggrieved by the order granting environment clearance in the area where industrial activity is restricted under sections 3(1) and 3(2)(v) of the Environment (Protection) Act. This includes project clearance granted by the Impact Assessment Agency.

6.4.(v). ENVIRONMENT IMPACT ASSESSMENT

Environment impact assessment (EIA) is an exercise to evaluate the probable changes in various socio-economic and bio-physical characteristics of the environment which may generally result from a proposed programme, project or legislation.[84] EIA is widely regarded as the most comprehensive instrument for environment planning. It is undertaken to reduce to a minimum the possibility of an action causing unanticipated changes in the environment. It assists decision makers and planners to take into account the environmental costs and benefits of the proposed projects.

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[84] R.Jain, L.Urban and G.Stacy, Environmental Impact Analysis: A New Dimension in Decision Making, 1981, p.3.

The need to introduce EIA in India is evident from the alarming state of nation's environment, and has been recognized by the planning commission.[85] The Ministry of Environment and Forests (MEF) is the Impact Assessment Agency (IAA) envisaged under the Environment Impact Assessment (EIA) Regulation of 1994.

Therefore, the Union Ministry of Environment is responsible for evaluating EIA reports submitted by project proponents. Generally, for large projects the review is carried out in consultation with committee of experts.

A meaningful EIA involves the multi-disciplinary decision-making process requiring application of a variety of knowledge and expertise. It involves many problems. The threshold question whether the project causes such significant adverse effects that make it necessary to have an impact assessment is one. The innumerable secondary socio-economic effects of a project such as concentration of population, loss of job opportunity, shrinking of civic amenities and increase in crime rates are another dimension. Cumulative impacts upon the environment caused by proposed project in company with existing industries supply still another problem.

Essentially, great care should be taken in developing impact assessment agencies as semi-independent autonomous authorities impervious to the influence of external forces but positively alive to the ecological and environmental mores of the land and ethos of the people. It is doubtful whether a super structure of a single agency like the MEF is suitable for the purpose especially when conclusion with the committee of experts is now made rather discretionary than mandatory.[86]

The reports and the Environment Impact Assessment is required to protect the environment from being further polluted. Pollution is a consequence of abusing environment and natural resources by human beings, which should be monitored properly by proper planning.

6.5. Conclusion

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[85] Planning Commission, Government of India, The Seventh Five Year Plan, (1985-90), p.389.
[86] P.Leelakrishnan, "Environment Act and Delegated Legislation: The Environmental Impact Assessment", Indian Bar Review, Vol. 23 (3 & 4) 1996, p.80.

The civil and criminal liability for polluting the atmosphere and air remained embedded in our law. Since the induction of English Common law into our legal system, neither the damages awarded in most of the civil cases decided were exemplary, nor did the penal provision of section 133 of Code of Criminal Procedure have deterrent effect. Therefore, before the enactment of special laws the legal response to the corporate criminal responsibility was ineffectual. The law was not sufficient to put a check on the activities of large corporations endangering the environment.

The Air Act contains three penal provisions to deal with various environmental violations. Section 37 penalises basic offence under section 22, with an imprisonment for a term not less than one year and six months but which may extend to six years and with fine. It has additional fines, which are to be imposed when the failure continues and exceed the punishment to a minimum of two years, which may extend to seven years. Section 38 provides penalty for auxiliary offence and section 39 contains penal clause meet residual contravention. Though with the help of these provisions no person was convicted till this date. This shows that the sections have remained as a paper tiger.

The large corporations are unmindful of serious environmental problems. They have consistently shown a pattern of irresponsibility in dealing with dangerous substances. The Bhopal Tragedy is a burning example. In this case, no charge was brought under the Air Act even though there was certain negligent Acts, which could be brought under the purview of the Air Act[87].

Probably, the Corporations are well aware that they cannot be imprisoned for violation of environmental laws. At the most they may be made to pay monetary penalties, but the fines imposed on the corporations are simply

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[87] For the effects of methyl isocynate gas on the victims of Bhopal Tragedy and subsequent legal battle before the Supreme Court, see generally, *Union Carbide corporation and Others* v. *Union of India and Others*, (1989) 1 SCC 674; *Charan Lal Sahu* v. *Union of India* (1990) 1 SCC 61.; *Union Carbide Corporation and Others* v. *Union of India* (1991) 4 SCC 84. In the last mentioned decision the Supreme Court held, *inter alia*, that the quashing of the criminal proceedings against the Union Carbide's Chairman and UCIL's officers by an earlier order of the Court was, in the particular facts and circumstances, not justified. The court directed the criminal proceedings to be proceeded with. The chief judicial Magistrate of Bhopal had conducted trial for offences under sections 304, 326, 324, 429 I.P.C. r/w section 35 I.P.C. There was no charge under Air Act.

regarded as a part of the cost of doing business[88]. Sometimes the nexus between industry and government also enables them to escape liability.

Air pollution has different dimensions like noise pollution, vehicular pollution and other pollution of atmosphere causing depletion of ozone, radiation pollution, pollution by hazardous substances, and other pollution which generally increases or caused abnormality in the composition of gases in the atmosphere. The legislations on these aspects have not been enacted into a comprehensive piece. The laws on the different aspects have been enacted at different times. This has made the legislative structure complex.

Under Public Liability Insurance Act 1991 and National Environment Tribunal Act 1995 a victim may claim compensation for injury resulting from industrial disaster.

The Public Liability Insurance Act is passed in a hasty manner without giving full consideration to all aspects of the problem. This is the reason why the provisions of this Act suffer from several pitfalls though the Act basically has a laudable object of providing immediate relief to victims. No doubt the Act provides for strict non-fault liability of the owners of hazardous substances but its scope is not wide which applies to 'handling' of hazardous substances. Further the term 'hazardous substance' which exceeds such quantity as specified by the central government by notification.[89] It means every substance or preparation which by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings or other living creatures, plants, micro-organism, property or the environment, cannot be treated as hazardous substance under this Act except when it exceeds in quantity specified by the central government.[90]

However, the Public Liability Insurance Act saves the right of claimant to plead for compensation under any other law subject to deduction for awards made under the instant Act. The owner's liability is two fold. Firstly he is

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[88] Byan, "The Economic Inefficiency of Corporate Criminal Liability", 73 Journal of Criminal Law and Criminology, p.502.
[89] Section 2(d), Public Liability Insurance Act 1991.
[90] Section 3(ii), Public Liability Insurance Act 1991

required to provide out of fund known as environment relief fund. Secondly the owner has to take insurance policies before starting hazardous process. It is to be remembered that since the quantity of compensation payable under this Act is not adequate, Rs. 25,000/- being maximum, a victim is invariably to seek more compensation under other law.

The Act is a welcome legislation providing for strict liability of the owners of hazardous substances but it however, suffers from many shortcomings. The adjudicatory powers to award compensation have been vested in the collector who is a revenue official of the government and adjudication of claim by him will not be conducive to administration of the Act.

The Act does not give relief to a victim who suffers temporary disability. A person under temporary disability also deserves relief, which he is not entitled to under the Act. The figures of compensation for damage to person or property for all practical purposes do not make any sense and seem to have been provided by keeping in view the Workman's Compensation Act. However, there is a need to express that if the owner was found to be guilty of recklessness, negligence, or any act of commission or omission a higher amount of compensation shall be payable at direction of the adjudicating authority.[91]

Earmarking of a separate environment relief fund is another safeguard for immediate relief to victims. The concurrent remedy under the Act[92] and any other law for claiming larger amount of compensation subject to apportionment and final adjustment is another beneficient provision.

Public Liability Insurance Act, apart from providing immediate relief, touches some of the pertinent issues relating to strict monitoring and vigilance of the hazardous operations. The penalties provided and gradation of offences to deal with accident is based on strict liability principle.[93] Like its preceding

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[91] Furquan Ahmad, "Pollution from hazardous industries and its effective control", Indian Bar Review, Vol 21 (1) 1994, p.136.
[92] Public Liability Insurance Act
[93] Id., Section 14,

enactment Public Liability Insurance Act exercises power of entry,[94] inspection, search, seizure[95] and direction to achieve the object of the legislation.[96] The collector is also statutorily empowered to make application for restraining owner from handling hazardous process.[97] The court can take cognizance of offences on the complaint made by central Government or any authority.[98] It discourages the public complaint, which might prove a disincentive to the public participation in setting the machinery of the court in motion.[99]

Breach of duty to take insurance policies, renewal and compliance attracts one and half-year imprisonment and a minimum fine of Rs. 1 lakh. The chances of non-compliance exist in all probability especially in cases where the amount of total compensation awarded exceeds Rs. 1 lakh. Moreover, no punishment has been prescribed to deal with the cases of non-compliance of liability to pay immediate relief under section 3. This provision keeps the no-fault or strict liability principle in abeyance.

The constitution of an advisory committee to formulate better package of insurance policy will offer best of the benefits to victims. The compensation of committees consisting three representatives of Central Government, two representatives of owner and two experts of insurance or hazardous substances.

On the face of it National Environmental Tribunal Act paints a rosy picture but it has inherent limitations, which dilute the principles of absolute liability. The scope of the Act has been narrow down due to the restrictive meaning to the word accident and handling. Due to which the people who are exposed to daily intake of pollutants due to effluents and emissions discharged will not be covered, as that would not amount to accident.

The Tribunal has also incorporated the basic philosophy of public interest litigation, by granting access to representative body or organization.

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[94] Id, Section 10.
[95] Id, Section 11.
[96] Id, Section 12.
[97] Id, Section 13.
[98] Id, Section 18.
[99] Supra note no. 52 at 154-155.

The Central Government has unfettered discretionary power to recognize or derecognise organization to be entitled to make an application for compensation. It may have a positive aspect that this requirement would discourage the fake person to move the tribunal to protect their private interest. The negative aspect may recognize or derecognise any body for the purpose of making the application, according to the central governments whims and fancies.

Section 9(5) deals with installing the principal bench of the tribunal at New Delhi and other benches at such other places. This will cause hindrance to provide speedy relief since the claimants will have to commute all the way from the place of the accident to the place where the bench is set up, thereby causing unnecessary delay in the disposal of the case.

Section 5(3) and section 19 read together, underline the provision that the setting up of Tribunal will oust the jurisdiction of any other court. This will prove to be a major drawback, as suits for negligence and nuisance may still be brought in non-accident situations, for instants, for injuries caused by repeated exposure to atmospheric pollutants. The disadvantage of such a suit, however, will be that the victim will have to prove negligence and will not have the benefit of strict liability law.

The penalty provided under section 25 is low for non-compliance with any order made by the tribunal. As the big industries, may make payment of the paltry amount and escape the clutches of the Act. Section 26 provides for offences by company and lays down the principle of vicarious liability for the principal offender. The proviso to section 26 provides that nothing contained in this sub-section shall render any person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

Thus, legal and constitutional prescriptions pertaining to the environment do exist in the formulation of National Environmental Tribunal Act, but they are inadequate to meet the demands of a comprehensive national environment order.

It may be pointed out at this juncture that only criminal sanction and fines on industries and giant corporations would not bring deterrent effect. To prevent pollution from industries a proper economic policy option based on analysis of cost-benefit of environment pollution should be put forth. This would prove to be an effective measure to control pollution. The gravity of such cost should be more than the cost incurred to install treatment plants. It is not an easy because it requires to be assessed on the basis of economic calculus. The monetisation of tangible cost of environmental damage should also be assessed to make the law effective[100]. It also has to be seen that polluter pays principle is properly utilized. The recovery of the loss caused to the environment must not give a blanket license to the polluter "to pollute and pay".

It is important to note that the Indian judiciary has tried to simplify the procedural formulations and advocated for the establishment of an authority / commission to assess and determine the loss caused by the environmental pollution. It has been suggested that the State should activate itself to recover damages from polluters who have damaged the atmosphere. The 'Environment Protection Fund' should be used compensate the community as a whole and to provide all infrastructure which are necessary for clean and provide healthy environment.

The benefit of both Public Liability Insurance Act and National Environmental Tribunal Act is limited to industrial disaster. The legislatives have also adopted measures under the Factories Act to compensate the victim of occupational hazards and laid down provisions for health check up and insurance. But what about the people of the locality who might also suffer from certain diseases due to the industrial activities and other hazards? The State owes responsibility to keep the air pure and fresh for public use based on public trust doctrine. Therefore, the State cannot shake off its responsibility to look after the interest of the public. State must draft legislation to give health

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[100] See Chhatrapati Singh, Legal Policy for Environment Protection, in P.Leelakrishnan, Law and Environment, (1992), pp 40-45.

insurance to such persons and frame a policy for routine health check up of these people. The public must be given information about the atmosphere in order to enable them to go for routine check up at the Health Care Center provided by the State.