

CONCLUSION

The concern for preservation and betterment of environment has gained attention all over the world for the last few decades, when it became clear that natural wealth of a nation is not unlimited. After the Stockholm Declaration in 1972, the nations throughout the world started giving priorities to laws by way of their legislative agenda. India being a signatory was energized to frame laws relating to control and prevention of pollution in the environment.

Certain notable air pollution episodes like the poisonous smog of London, the killer smog of Donora, Meuse Valley disaster, Belgium, Bhopal gas tragedy in India, posed an international concern on the major thread on the world by air pollution. In India, although the legislative measures on air pollution was passed in the year 1981 under the Air (Prevention and Control of Pollution) Act; it became a matter of great concern after the Bhopal gas leak disaster. To prevent and control air pollution, there have been legal principles and provisions which have evolved from common law principles and other laws existing in Indian jurisprudence. Prior to the enactment of the Air (Prevention and Control of Pollution) Act 1981, scores of legislations have been passed, some of which are still enforced. An analysis of certain portions of these legislation are required to understand how far the Acts are effective and what more is required to be incorporated into these Acts to prevent Air pollution to include all aspects other than those dealt with under special legislation.

On analysing of the provisions of Indian Penal Code, 1860 an earliest legislation dealing with public nuisance, one finds that the Code specifically mentions that making the atmosphere noxious to health is an offence punishable, with a fine that may extend to five hundred rupees. This section is potential against the offenders who might be creating pollution by

impregnating the air in the cities or other places with noisome and offensive stink and smell held to be common nuisance. Public smoking of tobacco was held to fall within the mischief of Penal provisions relating to Public nuisance. These petty offences when taken together bring into a major problem and therefore, can be penalized under the Indian Penal Code. However, the punishment provided is meager for potential polluters and incapable of controlling the gigantic problem of air pollution.

The Criminal Procedure Code 1973, under Section 133 provides to control the problem of Public nuisance. It is an emergency provision which can be called in aid to remove public nuisance caused by effluents discharge and air discharge creating risk to the general public. The overriding effect of the Special Act have been resolved by the Court, where it has been observed that by virtue of the promulgation of the Air Act and Water Act, the provision of other Act will not be effected rather only those portions will not be applicable which are inconsistent with the provisions of the Special Act. The Code can be used to ensure the maintenance of law and order to prevent any nuisance instead of providing any substantial relief to the victims.

The law of easement guarantees beneficial enjoyment to the owner of a land, free from air, water and noise pollution, without disturbing the natural environment. The right to pollution free passage of air and comfortable living has been given to the owner of a land under the Indian Easement Act 1882.

The control of air pollution being one of the aspects related to the safety and health of community also brings the prevention of air pollution under the objects of the Police Act 1861. Though there is no direct provision dealing with the problem of Air pollution, section 34 may be mentioned where power has been conferred upon police officer for punishing certain offences on road etc. The Act empowers the police officer to take into custody, without a warrant who has caused any offensive matter seen from any house, factory dung heap and the like. The Act no doubt controls the spreading of obnoxious smell by throwing filth or dirt in public places, but there is no provisions for smokes released by the use of wood or coal fires and heating in the densely populated

area where the shops and residents often create a thick pall at air pollution. Inclusion of the aforesaid subject under section 34 would help to curb pollution of air provided the fine not exceeding Rupees fifty is enhanced by an amount to create a deterrent effect. The aspect of noise from loudspeakers and sound magnified devices is covered under the Police Act, where noise arising for music may be effectively dealt with recourse to section 30(4) of the Act. However, the aforesaid provision of the Act is quite inadequate as it merely meets the problem of musical noise on occasions of festival and ceremonies in public places, but is silent when such noise is caused from private premises throughout the day on occasion other than festivals and ceremony.

The Factories Act 1948 and the Workmen's Compensation Act 1923 are social piece of legislation meant to give relief to workers engaged in factories and establishment. The Workmen's Compensation gives relief to a person from an employer for any injury or disease caused during the course of employment. The Supreme Court has pointed out the importance of clean air at workplace and directed all the asbestos industries to be bound by rules "safety" in the use of asbestos issued by International Labour Organization. The elimination of air borne particles of asbestos from the working environment in appropriate concentration as recognized by the competent authority was directed by the Supreme Court to be followed by the employers. Smoky factories often create air pollution at work place. Chapter three of the Factories Act provides for maintenance of proper environment of work in factory.

In 1987 new provision under section 36 have been incorporated where the conditions are imposed to avoid the risk caused by gas, fumes, vapour and dust in any confined place. After the Bhopal disaster the public opinion emerged to the effect that hazardous processes should not be allowed to be installed in the residential areas of the cities and towns. If such factories where already existing, effective measures should be taken to control their working as far as practicable to minimize atmospheric pollution or avoid chances of dangerous industrial accidents causing adverse effect on society. Due to such state of affairs in 1987 the provision relating to hazardous processes have been

inserted in Chapter IV-A. Under section 41-A, a site appraisal committee for initial location of a factory involving hazardous processes was required to be appointed by the State Government to advise the state Government in the process of granting permission to such factories. The offences under the Act are not a part of general penal law but arise from the duty provided in a beneficial, social defense legislation, which creates absolute or strict liability.

The Mines Act 1952 provides the provisions for regulation for industries and mines. The rules under the Act cover the powers of Government to restore abandoned mines to prevent pollution. The Act should also contain some effective provisions to control pollution of atmosphere by dust particles through the method of using sprinklers to put water and the noise during blasting of mines should also be controlled.

The Insecticides Act, 1968 contains provisions to check hazards caused to the atmosphere due to aerial application of insecticides. The rules for preventing inhalation of toxic dust, vapours and gas are important to curb the hazards caused by air pollution. The Rules 36, 37 and 44 provide certain preventive measures relating to storage of insecticide, medical examination of all persons and segregation and disposal of pesticide in an environment friendly manner. The Act is found ineffective until and unless certain pesticides found hazardous to health are banned and proper steps are taken to check maladies caused by using of pesticides without caring for side effect on environment. The Central Government has set up Environment Pollution Advisory Board in Ministry of Agriculture to review from time to time the environment repercussions and to suggest measures wherever necessary. This Committee is required to work effectively to take suitable measures to check the contamination of air and water by use of pesticides because people can avoid huge doses of insecticide but it is impossible to avoid exposure to contaminants in food, in air and in drinking water. Atomic Energy Act help to prevent radiation hazard from radioactive substances or radioactive generating plants.

These legislations give us an impression that the sources of air pollution are many and there have been different legislative measures for different

sources and different activities. The direction of these legislations should be towards a common goal i.e., to curb the menace of air pollution. The authorities under these different Acts are also different. A proper coordination amongst these authorities are required to achieve success towards the protection from air pollution.

On analyzing the provisions of the Air (Prevention and Control of Pollution) Act 1981 the definition under section 2(b) the term 'air pollution' is found to include as any substance or element in the air present in a concentration more than a certain value which may affect man, other living beings and property. The Act defines "air pollutant" under section 2 (a). The term "air pollutant" means any solid, liquid or gaseous substance(including noise) The definition puts stress on two things (i) the high concentration of solid liquid or gaseous substance including sound at a very high pitch (known as noise) and (ii) the substance should tend to be injurious to human beings, flora, fauna, property or environment. Therefore, small quantities of pollutant as it is considered to be within the permissible are tolerable limit under the Act. It is interesting to note that most pollutants which are released in permissible limit are considered not to be deleterious or injurious to the health of human beings, fauna, flora, property or environment and keeping it in mind the legislation endeavors to maintain pollution only to outdoors i.e. ambient air. However, the definition does not include indoor air pollution and it is only concerned with the outdoor air pollution or ambient air.

Therefore the fumes in the kitchen, smoking in closed office rooms maladourous emissions in the auditorium are not covered under the definition. Unfortunately, it is seen that most of the people spend more than 90% time in their homes, educational institutions, offices and theatres. If the indoor air quality is not maintained it will also have grave effect on the public health. Certain legislative provisions are required to be incorporated in the Act to maintain Indoor Air Quality as well. These may include compulsory planning of houses to maintain proper ventilation in urban area. Similarly in rural areas the person remaining at home in a pall of smoke during cooking and other

domestic cores should be made aware of the consequence of such pollution. They should be encouraged to use alternative non-conventional source of energy under the Air Act.

Going through the provision relating to the constitution of the Board, it is found that the authority under the Central Pollution Control Board constituted under section 3 of the Water Act has also been entrusted to perform its functions for the prevention and control of air pollution. The Administrative core of the controlling authority has raised objections because of the reasons mentioned below. It is interesting to note that in the water Act of 1974, Central Board was formed with the object of controlling water pollution. The chairman of the Board is required to have special knowledge or practical experience in respect of matters relating to the use and conservation of water pollution. The Board, for performing the functions of the Air Act, does not include any person having special or practical knowledge on the prevention and control of air pollution. Since the technical organization to control air pollution requires different technique it would be proper to include or add a person having special knowledge relating to air pollution in the Board and similar provision is suggested for the state Board constituted under the water pollution Act.

It can be pointed out here that the members of the Board represent the Government, local authorities, industries, government undertaking etc the composition of the Board neither includes persons from technical organization who could undertake suitable technique for control of the pollutants at source nor does it include legally trained persons who could bring the machinery into action. It may be further suggested that the increasing pollution in India requires the Boards to be made more powerful. This is possible only when the members are nominated in the Board through on honest endeavor such members must be persons having sufficient knowledge on sustainable development and also have on urge towards development by balancing it in term of environment. There are situations when the state Board becomes reluctant to check air pollution in these circumstances there must be agencies formed through people representative to

look into the function of the state Board and draw the attention of the central Board in such circumstances. Similar provision should also be incorporated for central Board if it fails to come forward to exercise its authority

The Board shall also have the function to inform the public about the rate of surface air pollution and ambient air quality from time to time, like any meteorological report. In order to enable people to protect the environment from being polluted more and more. It will also enable the public to take care of health by undergoing health check up, in those places where the ambient air quality has deteriorated. This would also make the people conscious and enable them to take measures to reduce the pumping or pouring of more pollutants into the atmosphere. Such on information would enable people to take precautions by all possible means. The provisions of freedom of Information Act, 2002 must be complied with, to enable every citizen to secure access to information to oversee the public authorities, consistent with public interest, in order to promote openness, transparency and accountability in administration. One must keep in mind that the environment around is also another home where we live in and it would be a prime duty of every individual to keep it clean. In 'Stockholm Declaration' too it is mentioned that every individual bears a solemn responsibility to protect and improve the environment for present and future.

Declaration of Pollution Control Area is provided under section 19 of the Air Act 1981 which helps to deal with the major regulatory mechanism contemplated by the Act. The provision to declare any area to be "air pollution control area." Sub section (1) empowers the 'state Government,' in consultation with the State Board, to declare any area or areas within the state as air pollution control area/areas for the purposes of the Act. Such declaration will be made by notification in the official Gazettes in such manner as may be prescribed by the rules made under the Act.

It is pertinent to note that though the concept of 'Pollution Control area' is the focal point of the whole framework of the Act, the term has nowhere been defined in the Act. It is relevant to know that even though this

omission was pointed out in the course of the Rajya Sabha debates, no steps were taken to overcome the shortcoming. The Act also lays down no guidelines regarding the standards that qualify an area to be designated as a Pollution Control Area. Further, it may be pointed out that unlike the other sections in the Act, the applicability of this section, extends to not only pollution control area, but also to areas not being so designated and the significance of the section lies in the fact that it empowers the board to take action even in cases where pollution is 'apprehended to occur.' While selecting a site from the point of air pollution control, the following factors should be taken into consideration to avoid costly control measures, improve public relations and prevent litigations.

In general, while considering each possible site for location of a plant, the site advantage vis-a-vis the out of control air pollutants should be carefully investigated.

A pre-operational survey is recommended if a new plant is to be located in an area which is already industrialized, to know the existing level of contaminants, under prevailing meteorological conditions. This type of survey gives an idea regarding the nature of pollution due to existing industries, i.e. whether the existing level of pollution is high, medium or low. The results of such a survey with respect to known operational data on the magnitude of contemplated emissions from the new sources, would provide information on the extent to which waste products could be safely discharged into the atmosphere without resulting in too much contamination.

The knowledge of the specific effects of the major pollutants and land use of the area surrounding the site is necessary for site selection. The effects of contaminants likely to be discharged from the proposed industrial plant is important, in particular, from the point of its effects on human health, animals and damage to crops. A particular pollutant discharged may be more toxic and harmful to vegetation and animals than to people for example Hydrogen sulphide has little effect on vegetation but is obnoxious and even dangerous to human life in comparatively low concentrations while a rural

and predominantly agricultural area is more affected by fluorides and sulphur dioxide than an urban population.

In order to minimize air pollution problems by site selection the prime factors, which have to be considered, are the climate and meteorology of the location under consideration. The dispersive ability of the air at each possible site has to be determined. Meteorological factors should be favourable for the air to dilute the pollutional load down to acceptable levels of contamination. The ideal site for location of an industry is a level terrain in a region where the average wind speed is of the order of 16 km/hr. or more and where temperature inversions rarely occur.

The adverse influence of topography and whether factors in relation to pollution control should be carefully considered, and critically examined, before selecting a site for a new industrial plant. This is because air movement is greatly influenced by the topography in the neighbourhood of site under consideration, like valleys, mountains etc.

Where supply of clean air is an essential requirement for some industries and factories, this aspect has to be looked into for site election. The industries and factories dealing with the manufacture of transistor, electronic components, antibiotics, and vaccines require clean air for manufacture. Also clean air is required for cooling the reactors of atomic energy plants and if polluted air were used, the impurities present would become radioactive and their escape into atmosphere would create a hazard. The location of industries in areas heavy air pollution will materially add to cleansing the air.

To control air pollution proper planning and zoning of industrial areas and residential areas can play an important role. Residential areas and certain heavy industries should not be located too close to each other. It is always better to have green belt between industrial and residential areas. The concerned municipality of the industrial area should encourage the creation of green belt. While selecting site for location of any plant the norms of the Environment Impact Assessment must be done. For selecting such a site it should be mandatory to take into consideration the opinion of the public

through public participation according to the Environment Impact Assessment Regulations 1994.

The Air Act under section 20 mentions about the pollution caused by vehicular traffic is required to be controlled and for this purpose the provision under section 17(i) (g) should be complied with. In this regard, the state Government is empowered to give such instruction as may be deemed necessary to the authority, in charge of motor vehicles under the Motor Vehicles Act, 1988 and such authority shall be bound to comply with such instructions. It may be mentioned that the Air Act as its caption suggests deal with any activity that pollutes the air and as such provides for steps and measures for dealing with such activities, namely, the industries, vehicles etc. But once we dwell upon the Act we will find that taking into consideration the various industries and their polluting factor the pollution in totality is not considered in the Act. There is little more than one section in the whole Act that mentions the pollution of vehicular traffic. This provision is also not an active provision, which acts as an instrument to penalise the erring vehicles. This section only confers upon the state board in consultation with the Central Board, the power to prescribe standards for emissions of air pollutants from vehicles and the state Government in consultation with the state Board is empowered to give instruction to the registering authority of vehicles in order to comply with the standards laid down by the state Board.

The specific section or sections related to vehicular pollution is section 17(i) (g) which states that it is the function of the state Board or rather it is the power of the state Boards to lay down in consultation with the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants or automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft. This section seems to be more substantive in attaining the object of preserving the quality of air and preventing and controlling vehicular air pollution. By virtue of these sections the State Pollution Control Board in simple prescribes Standards for emission of air pollutants from vehicles (automobiles). These

standards vary from place to place, urban areas have much higher standards as compared to the rural areas because of the density of traffic and such standards are followed more stringently in cities than in small rural towns. The state Government in consultation with the state Board gives such instructions as may be deemed necessary to ensure that such pollution standards are complied with. These instructions are given to the Transport authorities such authority shall, notwithstanding anything contained in that Act or rules made there under, be bound to comply with such instructions. However, the process does not deal the problem of vehicular pollution effectively due to the involvement of many authorities, who might fail to have proper coordination. The provision must incorporate some person to look into proper coordination and also to provide more deterrent penalty for polluting air by vehicular exhaust.

The Hot Mix Plant case gives an the impression that the Court here has tried to balance the environmental problem with the necessity of running an International Airport in the Capital of India In doing so the Supreme Court has also directed that the Hot Mix Plant set up by a company shall be examined by Central Pollution Board on environmental feasibility that the main opposition was from M.C.Mehta. The case created doubt in the mind of people as that why the Central Pollution Control Board was not putting forward the issue like the USPA? Why was it reluctant in exersing its power or putting forward all the materials available for having clean air around as? This Halfhearted attempt of the Central Pollution Control Board also would create doubt on its report; it shall perform in ascertaining environment feasibility of the Hot Mix Plant. It may be suggested here that there should be certain monitoring agencies to vigilate on the reports submitted by the Board. There are other cases where we find that state Board is at times not performing its duty properly. There must be some checks and balance for assessing the words of the Board .If the work of development by the Statutory authorities are being performed properly the problem of curbing pollution

would be properly done. The steps taken for curbing pollution must be more effective.

Section 31-A empowers a Board to issue any directions in writing to any person, officer or authority. This section provides, notwithstanding anything contained in any other law but subject to the provision of this Act, and to any direction that the Central Government may give in this behalf, a Board may, in exercise of its powers and performance of its functions under this Act, issue any directions in writing to any person, officer or authority, and such person, officer or authority shall be bound to comply with such directions. This section is effective in controlling air pollution as the Board is armed with unrestricted power to take necessary action without delay.

The provision under the Air (Prevention and Control of Pollution) Act 1981 have failed to bring the expected control of air pollution, mainly due to the failure of enforcement agencies in enforcing properly and effectively the existing legislative measures rather than the absence of effective legislative provisions. The main reasons for such failure are:

- (i) Failure of different bodies entrusted with the enforcement of air pollution control law, to act or to act in concert and co-operation.
- (ii) Lack of aware and informed public opinion.
- (iii) Lack of political will.
- (iv) Lack of money, technical knowledge and personnel.
- (v) Inadequacy of penal provisions in the Air Act 1981.

The initial legislative approach was fragmented and piecemeal. These legislations aimed at controlling specific types of pollution rather than preserving and protecting environment in totality. The necessity for a comprehensive legislation with integrated approach towards environmental protection was felt and it was adopted in the form of Environment Protection Act, 1986. The Act provides a law that covers not merely land or water or air but all the aspects of the environment. It may be pointed out here that the

Bhopal Gas Disaster 1984, was also another incident, which brought about the need for a comprehensive legislation dealing with the environment as a whole.

The Environment (Protection) Act 1986 has enacted to give effect to the solemn resolutions at the 1972 Stockholm Conference on Human Environment. The predominant characteristic of the Environment Act is the centralization and the concentration of all power in one authority, the Central Government. The authorities constituted to implement the environment are also subject to the supervision and control of Central Government. The vesting of such authority is advantageous in one respect but is also not above criticism. It helps in formulation of a National environmental policy and its implementation at the national level. Yet, it is criticized for undue centralization as it may lead to serious undesirable consequences and the Central Government may fail to consider vital environmental impact assessments while formulating plans and programmes and making decisions in its enthusiastic and rapid race towards development. Even if it chooses to appoint officers and confer upon them powers under section 4 of the Environment (Protection) Act, there is no guarantee that they will have functional freedom. This is so because they are made subject to general control and direction of Government. Even delegation of powers and functions by Central Government to any officer by Central Government to any officer, State Government or other authority may not bring about different results.

This Act is said to be a more effective and bold measure to fight environmental pollution. The Act has adopted a new stand with regard to the question of locus standi so that now even a citizen has right to approach a Court. Section 19(b) requires such person to give a sixty days notice, this aspect is criticized as an 'eye wash' because sixty days notice enables the polluter to continue pollution for sixty days and the sufferers or persons concerned have no alternative than to wait helplessly. It also allows the offending industry sufficient time to clean up. Therefore, most concerned

citizens or groups prefer to obtain redress through PIL and this provision remains like a vestigial organ.

The Act strengthens penal provisions, but contains a provision that takes away this deterrent effect by providing if the concerned act or omission is an offence under any other Act, the offender can be proceeded under that Act. Therefore, if any punishment is to be imposed for air pollution the provisions of the Air Act are to be taken into consideration and not the Environment (Protection) Act. Therefore, since the provisions of the Air Act do not lay much emphasis either on imprisonment or fine the offenders are being persuaded and not penalized under the Air Act. This takes away the life out of this enactment.

The Act has also failed to make any provision to provide for effective participation by individuals and voluntary organizations in development of an environmental policy and enforcement of emission standard. There should be provisions for public scrutiny over a project, as it will provide an opportunity for all concerned to study, assess and express their views on environmental consequences of the proposed actions. Some who would put forward an argument that the public may be ignorant of technical issue involved may oppose this type of public participation. The attitude that the public should not be unduly alarmed by probability of future danger involved in a project has actually been used to conceal relevant and vital information from public. This phenomenon has in returned aggravated the problem of pollution. The expansion of health ailments, respiratory and other diseases are increasing day by day. The authorities entrusted with the work can no longer be permitted to sit back with folded hands. The raise in the respiratory ailments, including lung cancer hovering over more than half of the city's school children in Calcutta and other metropolitan cities gives the reflection that nothing has been done to reduce pollutants from the city's air. Therefore, it is the people or innocent children who are the immediate victims of environmental hazards. Inevitably the Right to information is kept away and it may be pointed out that concealing relevant information would

not leave the public remain unaware of the facts. The legislature should encourage public participation to guarantee fairness and resolve the problem of pollution through effective means. Therefore, Government should disseminate environment information as a matter of legal right of individuals and also by way of environmental education to the people. The policy should also put more stress on the air pollution because if the pollution of atmosphere occurs in a rapid pace, the day would not be far when we would find people gasping for breath in the metropolitan cities. The more vulnerable to atmospheric pollution would be the children because their lungs are at a formative stage and they inhale more air relative to their body size. Further, due to their height they are close to ground level and more exposed to pollutants. A study conducted by Chittaranjan National Cancer Institute shows that 52% school children's in West Bengal were suffering from respiratory ailments. This situation is alarming. It shows how recklessly we are violating minors Oposa's theory of intergenerational equity and responsibility. Before the condition worsens both the Environment (Protection) Act and Air Act should work in consonance and have punitive measures imposed for violation of the emission standards and other standard to maintain ambient air quality. One of the defects of the Environment (Protection) Act is that it fails to provide for an independent statutory agency. The Environment (Protection) Act should also be amended to provide provisions for enforcement by taking adequate help from the specialized agencies performing tasks under the Environment Impact Assessment Regulations of 1994.

The Act is required to impose punishments to deter people if any law is silent and it should not provide for opting to the special legislation of the other Act, if the punishment specified in that Act has less severe penal provisions. Scanning of existing laws on air pollution therefore, reveals that the laws are guided by the principle of sustainable development, where balanced between economic development and environment concerns is to be made. The law partially lends credence to public participation. However,

legal propensity remains neither towards substantive nor procedural participation. The enforcement and inspectorate mainly State Pollution Control Boards and environmental authority are delegated with powers to undertake all measures to protect and improve environment. The slackness coupled with woefully understaffed machinery exhibits negligible records in actualizing the objects in these laws. It is under this backdrop public has been empowered to complain to Board by giving affording 60 days prior notice. While granting license the Board is not under a duty to solícite public opinion regarding environmental enignity of industries. The 1988 amendment to Water & Air Act has provided a fillip to public participation in activating the machinery of court.

The Environment Protection Act empowers the Central Government to make rules by exercising the powers conferred under section 6 and 25. In pursuant to this power the Environment Protection Rules 1986 and the other rules on noise and ozone have been passed for controlling air pollutants. The rules framed for control of noise pollution is Noise Pollution (Regulation and Control) Rules 2000. Ozone Depleting Substances (Regulation and Control) Rules 2000 was framed keeping in mind the principle of Right to Development which lays emphasis that the Right must be so fulfilled as to equitably meet development and environmental needs of the present and future generations. The Rules prohibit the use of ozone depleting substances.

In the entire sphere of power and functions of the Boards the general public and environmental action groups have not been made a working partner. The Air, Water and Environments Acts generally assign power to Boards to plan Nationwide programme by laying down of standard of quality activising State Government with respect to suitability of localities of industries and to take all measures which are expedient for control of air pollution. In Identification, demarcation and declaration of air pollution area the State Government is only supposed to consult State Board. Such an important step is to be taken without any public feedback and hearing. So much so while granting consent, the Board is not under a duty to solícite the

opinion of voluntary groups and local people. This is equally true in case of watch and vigilance.

Environmental laws are many. In spite of so many laws, the implementation process is moving at snail's pace. According to Krishna Iyer, J. the impotency of law is to be tackled by including environmental issues under the umbrella of public interest litigation. A right to information emphatically exercised and backed by powerful public support would bring in some fear to violators of law. In India we have the National Commission for Women and the National Human Rights Commission, which have played a very big role in curbing the atrocities taking place in these respective fields. Such a Commission should be set up especially for environmental issues- they cannot be clubbed with other litigations. Special courts or tribunals can be empowered to adjudicate upon such matters. Justice Krishnaswami Iyer also recommends the existence of a seasoned and knowledgeable person to play the role of an 'Environment Ombudsman'. Participative social active groups can become catalyst to encourage and activate people and link them with the legal process. It is very important to create awareness among people as well as prevent them from misuse of nature.

There should be provisions like that of Wildlife Protection Act, 1972 showing more sensitiveness towards public participation. In the constitution of Wildlife Advisory Board the State Government is empowered to nominate ten persons who in the opinion of State Government are interested in protection of Wildlife including three representatives of Tribal. To boost general public the Act contains a very salubrious provision to reward person who helps in the detection of the offence. It provides that out of the Fine collected from the culprit 25 percent should be paid as a reward to the person who renders assistance in detection of the offence.

There are similar provisions provided in the Forest Act 1927 where mandatory duty on the person exercising any right in reserved forest to assist Forest and Police officials with information regarding the likely offences.

Therefore, the Air Act must have legal provisions engraved into it to check pollution with the help of public. Public participation to assist the Board to ascertain pollution is required to be embedded into the Air Act. The Forest Conservation Act, 1981, is equally sensitive to solicit the opinion of non-government specialists in the Advisory Committee. The National Environment Tribunal Act, 1995, passed facilitate information sharing in environmental dispute resolution inducts one environmentalist in the Tribunal.

One of the surest ways of controlling and monitoring pollution would be to give powers to workers to stop a plant if emission levels cross the prescribed limits. The Clean Air Act of USA provides for this. The US Act also provides that no worker raising the issue of pollution or calling for stoppage of work due to apprehension of excessive emission shall be discharged or discriminated against. Swedish law allows workers to strike work in the event of flouting of environment regulations by the management. Far from trying to solve this problem, the Environment Act refuses to even address itself to this question.

Industries under the Pollution Acts are accountable only if the Pollution Board officials decide to do so. Lack of infrastructure, political pressure and corruption has resulted in the Boards allowing the industries to go scot-free. The Environment Act does not solve any of these problems.

The individual's right also does not stand on a better footing. This is because the individual cannot proceed with his complaint, if on receiving 60 days notice; the Government communicates to the individual its decision not to file a complaint. This section has been partly borrowed from Section 7604 of the American Clean Air Act. Under the U.S. Act 60 day's notice has to be given. However, if the Government communicates its refusal to file a complaint, the individual can proceed with his own case. An individual will be stopped only if 'the State has commenced and is diligently prosecuting an action in Court'. Even in such cases, any individual can intervene as a matter of right. Under our Act, citizens, worker and environmental groups are

neither given access to any data nor any right to commence independent action. This is a major flaw in the Act.

The doctrinal roots of modern environmental law are found in the common law principles of nuisance. Most of pollution cases in Tort law fall under the categories of nuisance, negligence and strict liability. The Right to clean air was recognized by the common law since long. However, common law remedies for nuisance as applicable to environment pollution are not sufficient and certain gaps remain, which have been fulfilled through legislative remedies or judicial activism.

The Common Law action for negligence may be brought to prevent environmental pollution. A major achievement made in *Donoghue v. Stevenson*'s case was that the fallacy of privity of contract was done away with by allowing the consumer to bring an action in tort against the manufacturer, with whom there was no privity of contract. In such cases, pecuniary compensation payable for the commission of the wrong may be either substantial or exemplary. While the former is for the purpose of restitution, the object of the latter is to deter the wrongdoer. The casual connection between the negligent act and the plaintiff's injury was often the most problematic link in pollution cases. The party seeking to recover compensation for damage had to prove that the party against whom he complained was in the wrong. If, eventually, the case was evenly weighed on both sides, and the court was not satisfied that it was occasioned by the negligence or default of the other party, the action could not succeed.

In course of time, there were situations where a person was made liable for some harm, even though he was neither negligent in causing it, nor intending to do so. The liability recognized was strict liability from this principle the present concept of absolute liability evolved.

Therefore, the rule of strict liability in *Rylands v. Fletcher* can very well be applied in cases of escape of dangerous substances causing pollution, as has been rightly observed by the Supreme Court in *Shriram*'s case the Supreme

Court had rightly observed in *Vellore Citizens Welfare Forum's* case that the Constitutional and Statutory provisions protect a person's right to fresh air, clean water and pollution free environment, but the source of the right is the inalienable common law right to clean environment.

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 to compensate the community as a whole and to provide all infrastructure which are necessary for clean and provide healthy environment. These provisions are related to the concept of sustainable development and 'polluter pay's principle. However, the State till this date could not implement these aspects in reality.

Subhash Kumar signifies an important milestone in the development of environment law in India. It heralds the emergence of right to clean and unpolluted environment as an integral part of fundamental right enshrined in Article 21. In *Prof. M.V.Nayadu* the Supreme Court held that healthy environment and sustainable development are fundamental human rights implicit in the right to life. The Court observed that- In today's emerging jurisprudence, environment rights which encompass a group of collective rights are described as 'third generation rights'. The first generation rights are generally political rights such as those found in the International Convention on Civil & Political Rights while 'second generation rights' are social and economic rights as found in the International Covenant on Economic, Social and Cultural Rights. The Supreme Court has discussed and evolved the 'polluters pays principle', 'precautionary principle' and also provided for public trust doctrine in various cases. These principle are required to be incorporated into the legislatures of India for making them effective.

An independent non-political judiciary is crucial to the sustenance our democratic form of government. The vitality of the democratic process, noble ideals of justice, liberty and equality in the constitutional edifice, as well as the rule of law are all dependent on the tone of the judiciary. Democracy signifies a government of the people, by the people and for the people, and the noble ideals should be easily accessible to all its members if a government claims to be truly democratic.

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.

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.

The Public Liability Insurance Act, 1991 has been 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. 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. 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 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. Earmarking of a separate environment relief fund is another safeguard for immediate relief to victims. The concurrent remedy under the Act and any other law for claiming larger amount of compensation subject to apportionment and final adjustment is another beneficent 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. Like its preceding enactment Public Liability Insurance Act exercises power of entry, inspection, search, seizure and direction to achieve the object of the legislation. The collector is also statutorily empowered to make application for restraining owner from handling hazardous process. The court can take cognizance of offences on the complaint made by central Government or any authority. It discourages the public complaint, which might prove a disincentive to the public participation in setting the machinery of the court in motion. 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. 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. 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".

The benefit of both Public Liability Insurance Act and National Environmental Tribunal Act is limited to industrial disaster. The legislatures 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 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.

The legislative measures can succeed only through the involvement of the industries and the people. An aware and informed public opinion can play a positive role in promoting environmental pollution control programmes to help supplement official efforts to check the dangerous increase in the level of air pollution. Hence, the courts have rightly opined that the common man should be given education so that he can make his individual positive contribution towards control of pollution. Further, it is very necessary to arouse civic consciousness by introducing the subject of environmental issues in educational institutions; through radio, television, newspaper, periodicals etc.

Even traditional methods like puppet shows performance in local language etc should be adopted in rural areas to educate those rural people who are totally unaware of the consequence of pollution. Similarly, contribution can also be made by the industries both in financial as well as physical terms. They themselves can take the measures for the control of pollutants by introducing built-in-systems and thus can involve themselves for the solution of the problem by joining with local and other appropriate authorities. The industries should be encourage to undertake social responsibilities, this can be done by announcement of awards by the Government to those industries who have maintained the environmental norms and have contributed towards eradication of air pollution by maintaining green belt and other devices.

It is not an easy task to revive the average citizens sense of responsibility and wholehearted participation to curb the menace of air pollution. But we must put in hard work to make all members of the society aware of the pollution of atmosphere. Man had started polluting the atmosphere slowly from the day he invented fire. It is time that people should realize how important it is to preserve the ambient air quality. The legislature, executive and the judiciary along with the voluntary organizations and all the agencies of

social control must join their hands and work hard within the given constraints to curb the problem of air pollution.

The provisions incorporated in the various legislations have provided for different authorities under the different Acts. Going through these provisions it is apparent that the different Acts have been piece meal and have concentrated on the aspects of pollution related to such Act. Many of these Acts like the Factories Act 1948, Insecticide Act 1968, Mines Act 1952, Boilers Act 1923 etc. have different authorities to deal with the aspect of hazards and public health due to air pollution. Similarly, special legislations also have different administrative authorities. It is observed that there is lack of coordination among Inspectors and other administrative authorities under different Acts. There should be an effort to make these authorities work jointly to curb the menace of air pollution. This can be done through supervision of a common body like the Pollution Boards. There should be measures taken to consolidate all the laws relating to air pollution within a comprehensive legislation. The monitoring instruments and the process followed in India requires to be revised and upgraded. A large number of critical pollutants are not being monitored, this aspect has to be looked into. The number of air quality monitoring stations compared to the gravity of pollution is less. Therefore, the number of air quality monitoring stations should be increased to a substantial extent. The air quality monitoring in India has selective approach towards certain areas, this approach is required to be changed and a comprehensive national survey should be made to mitigate air pollution in India.