

AIR POLLUTION AND ITS CONTROL UNDER OTHER LAWS

Law has played effective roles in controlling and regulating the human conduct. To prevent and control air pollution there has been legal principles and provisions in Indian jurisprudence. Initially the efforts made in India were haphazard and fragmented. The earliest legislative measures taken in India can be traced from the Bengal Smoke Nuisance Act, 1905 and Bombay Smoke Nuisance Act, 1912. There are scores of legislations, which have been laying down measures to control air pollution. The various other laws scattered in the statute books having direct or indirect relation with the control of Air pollution are being discussed hereunder.

4.1. INDIAN PENAL CODE, 1860

The First Law Commission of India headed by McCauley (who drafted the Indian Penal Code) included chapter 14 consisting of 28 sections (sections 268 to 294 A) dealing with public nuisance in the Penal Code as long as 1860. The sole object in including chapter 14 is to safeguard the public health, safety and convenience by causing those acts that make environment polluted threatening the life of the people punishable.

The Penal Code in chapter 14 (sections 268 to 294A) deals with public nuisance, i.e., the offences relating to public health, safety, convenience, decency and morals.

Before any finding can be arrived at that a public nuisance has been committed under Indian Penal Code must be the necessary consequence of the nuisance feisor.

Section 268 defines 'Public nuisance' as, a person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause, injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. The section further explains that a common nuisance is not excused on the ground that it causes some convenience and advantage. Thus, an act which tends to or causes interference with the health, safety, comfort, convenience of public at large will be considered as public nuisance. It covers all types of pollutions including air pollution.

The offence constituted by section 278 Indian Penal Code is making atmosphere noxious to health. It provides whoever vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine that may extend to five hundred rupees.

This section applies to trade producing noxious and offensive smells such as making candle in a town by boiling stinking stuff, a manufactory for making spirits of Sulphur, vitriol and aquafortis.¹

This section is directed against public nuisance and not a private nuisance. The act done must be noxious to health of person in general dwelling or carrying on business in the neighbourhood. It is not necessary that the alleged nuisance should produce smell injurious to health; it is sufficient if they are offensive to the sense. Thus allowing a large stock of bones to remain uncovered in the open for a long time so as to become rotten and to emit smell noxious to people living in or passing by the vicinity, is a public nuisance.²

Public smoking of tobacco in any form cigarettes, cigars, beedis or otherwise falls within the mischief of the penal provisions relating to 'public

¹ St. Helen's Co. Vs Tippings 35 L.J.Q.B.(H.L.) 66, see Hari Singh Gaur, p. 24.

² Bereckfield (1906) 34 Cal 73.

nuisance' and held illegal, unconstitutional and violative of Article 21 of the Constitution.³

The negligent blasting of stone in a quarry so as to endanger safety of persons living in the vicinity is public indictable nuisance.⁴ The erecting of buildings and making fire which set forth noisome, offensive and stinking smokes and making great quantities of noisome offensive and stinking liquors near the common highway and near to the dwelling-houses of several of the inhabitants, whereby the air was impregnated with noisome and offensive stink and smells was held to be a common nuisance.⁵ Section 287 deals with negligent handling of machinery, it provides that whoever does with any machinery any act so rashly or negligently as to endanger human life or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take sufficient care of any machinery in his possession, to guard against any probable danger to human life from such machinery, shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to one thousand rupees, or with both.

This section intends to deter the companies involved in handling of machinery, which may lead to calamity if the machinery is not handled with due care. The gravity of offence has increased with the modern industrialization but the term of punishment is meagre.

An analysis of all these provisions under the Indian Penal Code proceeds upon the assumption that every one has the right pure and fresh air but since the punishments provided are meagre, compared to the gigantic problem of air pollution. Therefore, in the present scenario most of the provisions are ineffective and are not helpful in curbing the problem of pollution.

³ K.Ramakrishanan Vs State of Kerala, AIR 1999 Ker 385.

⁴ Mutters 34 L.J. (N.C.) 22.

⁵ Vithoba (1884) Unrep Cri. C. 203.

4.2. THE CRIMINAL PROCEDURE CODE, 1973

Chapter X-B and C of the Criminal Procedure Code 1973, deals with the procedural aspect of the problems of public nuisance. Wherein the problem of air may be covered to some extent. Provisions therein provide for a speedy and summary remedy for public nuisance in case of emergency, where there is danger to public interest. Section 133 of the Criminal Procedure Code 1973 is also invoked for the control of air pollution.

Section 133 (1) of the code of 1973 provides that whenever a District Magistrate or Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) he thinks fit, considers that any unlawful obstruction or nuisance should be removed from any way, river or channel which is or may be lawfully used by the public, or from any public place or that the conduct of any trade or occupation or the keeping of any good or merchandise is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such good or merchandise should be removed or keeping thereof regulated or that the construction of any building or disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped.

Such Magistrate may make a conditional order requiring the person causing obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods to desist from carrying on, or to remove or regulate in such manner as may be directed.

The condition precedent to section 133 is the imminent danger to property and consequential nuisance to the public. In *Vasant vs. Baburao*⁶ the Supreme Court has observed that the object and purpose behind section 133 is to prevent

⁶ 1995 Supp 4 SCC 54.

public nuisance and that if the Magistrate fails to take immediate recourse to sec 133 irreparable damage will be done to the public.

Section 133 of the Criminal Procedure Code 1973 is rarely being used for the purpose of the pollution control. In *Krishna Gopal vs. State of M.P.*⁷, the court has made use of the section as a potent provision for control of noise pollution. In this case the Court was recognizing the position that a nuisance resulting in actual or potential pollution would attract the provision of section 133.⁸

In *Ganesh vs. State*⁹, it was held that section 133 of Cr.P.C. is not inconsistent with the provision of the Pollution Acts; rather the provision under 133, Criminal Procedure Code 1973 is an emergency provision and can be called in aid to remove public nuisance caused by effluents of the discharge and air discharge causing hardship to the general public. In this case the High Court refused to quash the proceeding initiated by the Magistrate under section 133 by holding that the Air Pollution Act and the Water Pollution Act which prescribe overriding effect of the special Act, clearly gives an impression that by virtue of promulgation of the Pollution Act, the provision of other Act will not be effected and only those portions will not be applicable which are inconsistent with the provisions of the special Act.

If the person creating nuisance, even after being ordered by the Magistrate, does not perform as ordered or does not appear and show cause, he is liable to the penalty under section 188 of the Indian Penal Code and the order is made absolute.¹⁰ The question whether section 133 Cr.P.C. has a mandatory import came up for consideration before the Supreme Court in *Ratlam*

⁷ (1986) Cri.L.J. 396.

⁸ Leelakrishnan P. : Law of Public Nuisance: A tool for Environmental Protection. JILI vol 28:2 1986, pg 229.

⁹ (1997) Cri. L.J.396.

¹⁰ Section 136 of Cr.P.C. if such person does not perform such act or appear and show cause, he shall be liable to the penalty prescribed in that behalf in Section 188 of the Indian Penal Code(45 of 1860) and the order shall be made absolute.

Municipality vs. Vardhichand,¹¹ and the Supreme Court held that section 133 Cr.P.C. is categorical although read discretionary. Judicial discretion when facts for its exercise are present has a mandatory import. Therefore, when Magistrate has before him, information and evidence, which disclose the existence of a public nuisance and on the materials placed, he considers that such unlawful obstruction or nuisance should be removed from any public place, he shall act. Thus his judicial power shall, passing through the procedural barrel, fire upon the obstruction or nuisance triggered by the jurisdictional fact. The Magistrates responsibility under section 133 Cr.P.C. is to order removal of such nuisance within a time to be fixed in the order. This is a public duty implicit in the public power to be exercised on behalf of the public and pursuant to a public proceeding. Failure to comply with the direction will be visited with a punishment contemplated by section 188 I.P.C. The imperative tone of section 133 Cr.P.C. read with the punitive temper of section 188 I.P.C. make the prohibitory Act a mandatory duty.¹²

Further under section 144 of Criminal Procedure Code the Executive Magistrate can make an order in urgent cases of nuisance. Such order can be issued to prevent any annoyance or injury to any person or danger to any human life, health or safety, disturbances of public tranquility, riot or any affray. The object of such order is to face the problem of law and order temporarily as the duration of such order is merely of two months.

It shows that the aforesaid provision of Cr.P.C. deal with the procedural aspect of the problem of public nuisance. Wherein air may be covered to some extent, the object of the provision is just to ensure the maintenance of law and order or to prevent any nuisance in stead of providing any substantive relief to the victims.

¹¹ AIR 1980 SC 1623.

¹² Ibid.

4.3. INDIAN EASEMENT ACT, 1882

The Indian Easement Act is one of the oldest Legislative enactments dealing with two important topics of easements and licenses. The law of easements is basically the law of neighbours and concerns itself with defining rights of an owner for the beneficial enjoyment of his land against his neighbour. These rights are in addition to those which an owner possess by virtue of his ownership of the property and to that extent diminish those of the other owner. These rights have also a unique feature in that they are neither proprietary nor possessory.

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.¹³ An analysis of section 7 of the Act¹⁴ along with the Illustrations¹⁵ appended to the section makes it clear that an owner of a land inhabiting has a few rights which have direct bearing upon the right of an owner not to be annoyed unreasonably by his neighbour. These rights are (i) Right to pollution free passage of air and (ii) Right to comfortable living. Every person has a natural right to enjoy the air pure and free from noxious smells or vapours, and anyone who sends on to or over his neighbour's land, anything which makes the air impure commits a nuisance.¹⁶

Commission of a nuisance on the property of another person cannot be claimed by way of an easementary right¹⁷, as "No easement arises where the nuisance is a common or public nuisance".¹⁸

¹³ The Indian Easement Act 1882, S. 7 illustrations (b)-(f) and (h).

¹⁴ Section 7(b) declares the right of every owner of immovable property (subject to any law for the time being in force) to enjoy without any disturbance by another the natural advantages arising from the situation.

¹⁵ Illustrations(b) to section 7- the right of every owner of land that the air passing thereto shall not be unreasonably polluted by the other persons.

¹⁶ *Chastley vs. Ackland* (1892) 2 Ch 389.

¹⁷ *Kailash Chand vs. Gudi* AIR 1990 (H.P) at p.17

Gale states the legal position thus:

“There can be no prescription to make a public nuisance, which is a prejudice to all people, because it cannot have a lawful beginning by license or otherwise, being against common law”, which was also been upheld by the High Court in *Bhurelal vs. Mohan Singh*.¹⁹

4.4. THE POLICE ACT 1861

The Bill providing for regulation of Police was introduced in the legislature with an object to reorganize the Police and make it a more effective instrument for the prevention and detection of crime. The Police Act was passed on 22nd March 1861.

The word “police” is generally applied to the internal regulation of large cities and towns; whereby the individuals of the states, generally members of a well-governed family are bound to conform their general behavior to the rules of property and good neighbourhood.

It is a department of the state charged with the preservation of public peace, law and order, the safety and health of the community. It may, therefore, be said that the control of air pollution too is one of the aspects relating to the safety and health of the community and therefore its prevention must also come under the objects of the Police Act. Though there is no specific provision directly dealing with the problem of Air Pollution, mention may be made of section 34, where powers of police officer for punishing for certain offences on roads etc. have been laid down. This section provides that any person who, on any road or in any [open place or]²⁰ street or thoroughfare within the limits of any town to which this section shall be specifically extended by the [State Government]²¹ commits any of the following offences, to the obstruction

¹⁸ *Weld vs. Horney* (1806) ER 75.

¹⁹ AIR 1966 (Raj) at 122.

²⁰ Ins. By Act 8 of 1895, Sec 13.

²¹ Subs by the A.O. 1950 for “Provincial Government”

inconvenience, annoyance, risk, danger or damage of the [residents or passengers]²² shall on conviction before a Magistrate, be liable to a fine not exceeding fifty rupees, or to imprisonment [with or without hard labour]²³ not exceeding eight days, and it shall be lawful for any police officer to take into custody, without a warrants, any person, who, within his view, commits any of such offences, namely :-

- (i) Throwing dirt into street- Any person who throws or lay down any dirt, filth rubbish or any stones or building materials, or who constructs any cowshed, stable or the like, or who causes any offensive matter to run from any house, factory, dung-heap and like.
- (ii) Indecent exposure of person- Any person who willfully and indecently exposes his person, or any offensive deformity or disease, or commits nuisance by easing himself, or by bathing or washing in tank or reservoir, not being a place set apart for the purpose.
- (iii) Neglect to protect dangerous places any person who neglect to fence in or duly protect any well tank or dangerous structure.

No doubt by the aforesaid provision, the spreading of obnoxious smell by throwing filth or dirt in public place may be controlled and the spreading of air borne diseases by indecent exposures etc. may be checked, but there are no provisions for smokes released by the use of wood or coal fires for cooking and heating in the places where the shops and residents often create a thick pall or air pollution, this kind of nuisance should be included in section 34 which ought to be another aspect of public nuisance within the Police Act 1861.

Today noise is also one of the biggest problems, and has been included in the definition of air pollutant. It comes from many sources. Among many, one of the aspects of noise pollution is the problem of noise arising from music because use of loudspeakers and sound magnifying devices has become part of festival and ceremony. This aspect is covered under the Police Act.

²² Ins. By Act 8 of 1895, Sec 13.

²³ Ins. By Act 1 of 1903 Sec 3 and Sch II.

Noise arising from music may be effectively dealt with by recourse to section 30(4) of the Act. This section authorizes the Superintendent of Police to regulate the extent to which music may be used in streets on occasions of festivals and ceremonies. No doubt the Act intends to control the extend of the musical sound; the ultimate cause of noise pollution may also be covered. However, the aforesaid provision of the Act is quite inadequate as it merely meets the problem of musical noise on occasions of festival or ceremonies in public places, but it is silent if the musical noise arises from private premises on occasions other than festival or ceremonies.

Similar are the provisions of section 34, Police Act where the punishment is that it shall not be a fine exceeding fifty rupees and such a punishment will not have any effect to deter the people from throwing dirt, filth, rubbish or stones and the person neglecting to protect dangerous processes etc. as these persons can escape liability only by paying a fine accounting to rupees fifty only.

4.5. WORKMENS'S COMPENSATION ACT 1923

The Workmen's Compensation Act 1923 falls in that category of legislation which has it roots in the theory that a State cannot be mute spectator to the suffering of the working class engaged in factories or establishments who are exposed to the various risks to their limbs and lives. Due to the technological innovations and automation introduced in industries the working class operating sophisticated mechanical devices or handling hazardous industrial activities are invariably exposed to the risks involved in accidents or in cases of occupational diseases, invalidating them temporarily or permanently and also involved in fatal accident for no fault of theirs. The object of the Act cannot better be explained than what was stated by the Royal Commission, which observed:

The Workmen's Compensation Act was framed with a view to provide for compensation to a workman incapacitated by an injury from accident. But compensation is not the benefit following from the Act it has importance in furthering work on prevention of accident in giving workmen greater freedom from anxiety and in rendering industry more attractive. There are also effective provisions in the Act which provides for maintaining an atmosphere free from pollution in the place of work for the workers in industries etc.

Section 3 of the workmen's Compensation Act, 1923 creates the liability of employers to pay compensation to their workers in case of injuries caused in the course of employment.

Schedule III²⁴ of the Act contain a list of diseases. These diseases are peculiar to the occupation of a person; most of these diseases are caused due to the presence of pollutant in the atmosphere of the work place. These pollutants affect the health of worker and lack of health denudes his livelihood.

Schedule III is divided in three parts, namely Part-A, Part-B, Part-C. The workman is entitled to compensation only if the condition contained in this sub-section is satisfied with regard to disease mentioned in Part-B, of Schedule III there is a further requirement to be satisfied namely that the workman contracting the disease must have been in the service of the employer concerned for a continuous period of not less than six months. With regard to diseases mentioned in Part-C of Schedule III the workman must have been in the continuous service of one or more employer for such period as the Central Government may specify. Section 3(2) deals with compensation to be paid in cases of occupational diseases.

Section 3(2A) of the Act gives power to the Commissioner to fix the extent of liability of the employer in cases where the workman has worked in establishment belonging to different employers because all the employer shall be liable to pay compensation. The Act under section 3(3) authorize the State

²⁴ Workmen's Compensation Act 1923

Government in case of employment specified in Part A and Part B of Schedule III and the Central Government in the case of employment specified in Schedule III indicating in the case of employments added the diseases which shall be deemed for the purpose of this section to the occupational disease.²⁵

Section 3(4) of the Act speaks of disease which is not specified in the Schedule III and puts limits on the payment of compensation. Section 3(5) of the Act speaks of alternative remedies. The workman who is entitled to claim compensation under the provision of the Act or he may file a suit in the Civil Court for damages in respect of the injuries against the employer or any other person but he can not avail both.²⁶

In *Consumer Education and Research Center vs. Union of India*,²⁷ the Court pointed out the importance of clean air at work place and directed all the asbestos industries to be bound by rules regarding "safety" in the use of asbestos issued by International Labour Organisation. The elimination of air borne particles of asbestos and respirable 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.

The Court further held that the employer is vicariously liable to pay damages in case of occupational diseases here in this case asbestosis. The Employees State Insurance Act, 1948(?) and The Workman's Compensation Act, 1923 provide for payment of mandatory compensation for the injury or death caused to the workman while in employment. The Act does not provide for the payment of compensation after cessation of employment. It is therefore becomes necessary to protect such person from the respective dates of cessation of their employment.²⁸

²⁵ V.G.Goswami: Labour and Industrial Laws (seventh edition) Pg.140.

²⁶ Id at 418.

²⁷ AIR 1995 SC 922.

²⁸ AIR 1995 SC 922 at 942.

4.6. FACTORIES ACT 1948

The Factories Act 1948 was enacted to consolidate the law relating to labour working in factories. The Act is social piece of legislation meant to achieve reforms among workers working in factories and to protect workers employed therein against industrial and occupational hazards. For this purpose it seeks to impose upon owners or occupiers certain obligations to make the right to life of workers meaningful to prevent pollution at work place; protection of environment; protection of the health of the workman or keep the water and air free from pollution for the safety and health of the people.

Smoky factories often create air pollution at the work place. The various provisions regarding measures to be adopted by the occupier of the factory to maintain proper environment of work in factory have been provided under chapter III of the Factories Act 1948.

Section 12 of the Factories Act 1948 provides for the regulation of disposal of wastes and effluents from the factories. It authorizes the State Government to make rules for this purpose sub-section(1) provides that there shall be effective arrangements made in every factory for treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal. Under sub-section(2) the State Government may make rules prescribing the arrangements to be made under sub-section(1) or requiring that the arrangements made in accordance with sub-section(1) shall be approved by such authority as may be prescribed. It appears that although section 12 was an effective provision for regulating the wastes and effluents from the factories. Still there have not been cases reported. This gives an impression that the section has not been invoked to give relief to the persons aggrieved.

In factories generally the environment remains full of dust and fume and there runs excessive temperature which affects the health of the workers engaged therein. In order to deal with this tiresome problem the Factories Act, 1948 under its section 13 provides that:

(I) Effective and suitable provision shall be made in every factory for securing and maintaining in every work room-

- (a) Adequate ventilation by the circulation of fresh air, and
- (b) Such temperature as will secure to work therein reasonable conditions of comfort and prevent injury to health;...

The State Government has been empowered to prescribe a standard of adequate ventilation and reasonable temperature for any factory or class of factories or description of factories or any part thereof and it has been given power to direct that (proper measuring instrument at such places and in such positions as may be prescribed shall be maintained).²⁹

The Factories Act under its section 14 requires effective measures to be adopted to prevent inhalation and accumulation of any dust or fume or other impurity of such a nature in any work room given off by reason of the manufacturing process carried in the factory as is likely to be injurious or offensive to the workers employed therein.

If any exhaust appliance is necessary for the purpose, it shall be applied as near as possible to the point of origin of the dust or other impurity and such point shall be enclosed so far as possible.³⁰

In order to avoid dust and fume and other impurity of such nature it has been provided that in any factory no stationary internal combustion engine shall be operated unless the exhaust is conducted into the open air and no other internal combustion engine shall be operated in any room unless effective measures have been taken to prevent such accumulation of fumes therefrom as are likely to be injurious to workers employed in the room.³¹

²⁹ Subs by Act 20 of 1987 for Sec 13(2) w.e.f. 1-12.1987

³⁰ The Factories Act 1948 sec 14(1)

³¹ The Factories Act 1948 sec 14(2)

In order to provide more effective arrangements for health and safety of the workers engaged in work places where dangerous substance are likely to be present, in 1987 new provision has been substituted by an amendment in section 36 which provides that no person shall be required or allowed to enter any chamber, tank, vats, pit pipe or other confined space in any factory in which any gas vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.³²

The analysis of the provision section 36(2) would entail that any person may be required or allowed to enter any such confined space in which any gas, fume vapor or dust is likely to be present to such an extent as to involve risk to persons in the following conditions:

- 1) If all practicable measures have been taken to remove such risky substance up to permissible limits and to prevent any ingress of such gas or dangerous substance; and
- 2) If certificate in writing has been given by a competent person on the basis of test carried out by himself that space is free from dangerous gas, fume, vapors or dust; or
- 3) If no such certificate has been obtained a person may be required or allowed to enter any such confined space if such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

The precaution must be taken to avoid any risk to life of the workers who is to enter such confined space. The provision of the section are based on the philosophy that precaution is better than cure.³³

In order to avoid chances of explosions wherein any manufacturing process produces gas, dust, fume or vapor section 37³⁴ requires effective and proper measures to be adopted to avoid explosions which are

³² The Factories Act 1948 sec 36(1)

³³ V.G.Goswami: Labour and Industrial Laws (seventh edition) Pg 310

³⁴ The Factories Act 1948

likely to occur where any manufacturing process produces dust, gas, fume or vapor of such character and to such extent as to be likely explode to ignition.

After Bhopal disaster the public opinion emerged to the effect that industries involved hazardous process should not be allowed to function causing environmental pollution. Such factories should not be allowed to be installed in the residential areas of the cities and towns. If such factories are already installed and working, effective measures should be taken to control their working as far as practicable to minimize atmospheric pollution or avoid chances of dangerous industrial accident causing adverse effect on the society. In such state of affairs the amendment in the Factories Act were made in 1987.

The provisions relating to hazardous process have been inserted in chapter IV A. Section 41-A(1) provides that for the initial location of a factory or the expansion of a factory involving a hazardous process; the State Government may appoint a Site Appraisal Committee and the purpose of such committee is to advise the State Government in process of granting permission to such factories. The section also deals with the Constitution and Power of the Site Appraisal Committee. Under section 41-B, some statutory duties have been imposed on the occupier of every factory involved in hazardous process and all these statutory duties of the occupier aim to ensure safety and security of the workers and general public which may be in peril in absence of effective and proper precaution. It may be noted that not only these duties have been imposed on the occupier but the sanction has also been attached for proper compliance thereof. In order to determine as to which process are hazardous process, the list of industries involved in hazardous process has been also inserted by the Amendment act 20 of 1987 which is contained in the first schedule that has come into force with effect from 1st December 1988. For example coal industries, power generating industries, fertilizer industries etc are involved in hazardous processes.³⁵ The schedule first contains as many as 29 industries at present and the schedule may be amended as and when

³⁵ Supra note 33 at Pg 319

necessary. Section 41-F provides that maximum permissible threshold limits of exposure of chemical and toxic substance in manufacturing processes (whether hazardous or otherwise) in any factory shall be of the value indicated in the second schedule.³⁶

The Central Government may at any time for the purpose of giving effect to any scientific proof obtained from specialized institution or expert in the field by notification in the Official Gazette, make suitable change in the Second Schedule.³⁷ Section 41-G provides that the occupier shall in every factory where a hazardous process take place, or where hazardous substance are used or handled, set up a Safety Committee consisting of equal number of representation of workers and management to promote co-operation between the workers and the management in maintaining proper safety and health at work and to review periodically measures taken in that behalf.³⁸

Section 41-H contain the provision that the workers have right to bring to the notice of the occupier, agent, manager or the person in charge of the factory any imminent danger reasonably apprehended by them. In such a situation the person concerned must take remedial action without any delay to ensure security.

It sometime happens that workers engaged in manufacturing process in any factory contract occupational diseases the problem of occupational diseases due to air pollution in the workplace has been covered in a list of diseases notified in the Third Schedule of the Factories Act which has been substituted by the Amendment made in 1987.

The Central Government has been further empowered to add or alter the Schedule. It is the statutory duty of the Manager to send notice to the prescribed authorities if any worker contracts any diseases notified and the medical practitioner attending the patient is under duty to send report in writing without delay to the office of the Chief Inspector. If he fails to comply with this

³⁶ The Factories Act 1948

³⁷ Id. Section 41-F(2)

³⁸ Id. Section 41-G(1)

provision a fine up to one thousand rupees may be imposed under section 89 as amended in 1987.³⁹

Section 87 provides that where the State Government is of the opinion that any manufacturing process or operation carried on in a factory exposed any person employed in it to a serious risk of bodily injury, poisoning or disease, it may make rules applicable to any factory or class or description of factories in which manufacturing process or operation is carried on. The Rules should:

- (a) Specify the manufacture process or operation declaring it to be dangerous;
- (b) Prohibit, restrict the employment of women, adolescents or children in the manufacturing process or operation;
- (c) Provide for periodical medical examination of person employed or seeking to be employed in the manufacturing process or operation and prohibit the employment of person not certified as fit for such employment and requiring the payment by the occupier of the factory of fees for such medical examination;
- (d) Provide for protection of all person employed in the manufacturing process or operation or in the vicinity of the places where it is carried on;
- (e) Prohibit, restrict or control the use of any specified material or process in connection with the manufacturing process or operation;
- (f) Require the provision of additional welfare amenities and sanitary facilities and the supply of protective equipment and clothing, and laying down the standard thereof, having regard to the dangerous nature of the manufacture process or operation.

³⁹ V.G.Goswami: Labour and Industrial Laws(seventh edition) at Pg 358.

A new provision section 87-A confer powers upon the Inspector to prohibit employment on account of serious hazard. Under section 88-A,⁴⁰ it is provided that where in a factory any dangerous occurrence of such nature as may be prescribed occurs whether any bodily injury or disability or not, the manager of the factory shall send notice thereof to such authorities and in such form as within such time as may be prescribed. Section 90 authorises the State Government to direct inquiries regarding accident, causes of disease or any other occurrence, which is required to be notified. Section 90 also lays down procedure of such inquires directed by the State Government.

Another new provision relating to safety and occupational surveys has been inserted by Act no. 94 of 1976⁴¹ which authorizes authorities specified therein to undertake safety and occupational health surveys in accordance with the provision of the section.

In order to make the compliance of the provision of the Act more effective penalties for offence has been laid under section 92 of the Act. For violation of any provision of the Act, rules made there under or by an order made under the Act the occupier and the Manager both shall be guilty of an offence and shall be punished with imprisonment up to two years or with fine up to one lakh rupees or both and with a further fine up to one thousand rupees if the violation is continued after conviction each day there after now for contravention of any provision of chapter IV or any rule made under section 87 resulting in an accident causing death or serious bodily injury, the minimum fine shall be rupees 25 thousand for death and 5 thousand rupees in case of an accident causing serious bodily injury.

The offences under the Act are not a part of general penal law but arise from the duty provided in a beneficial social defence legislation, which creates absolute or strict liability without proof of any mens rea. The offence are strict statutory offences the omission or commission of the statutory

⁴⁰ A provision inserted in 1976

⁴¹ The Factories Act 1948, section 91-A

breach is itself the offence.⁴² Seven Judges bench of the apex court in *R.S. Joshi vs. Ajit Mills Ltd*⁴³ observed :

“even here we may reject the notion that a penalty or a punishment cannot be cast in the form of an absolute or no fault liability but must be preceded by mens rea. The classical view that ‘no mens rea, no crimes’ has long ago been eroded and several law in India and abroad especially regarding economic crimes and departmental penalties, have created severe punishments even where the offence have defined to exclude mens rea.”

The rule of strict liability is attracted to offence committed under the Act and the occupier is held vicariously liable along with the Manager and the actual offender as the case may be. The ‘passing on’ is provided under section 101 of the Act and is an exception to the principal of strict liability. Section 101, enables the occupier or manager of the factory, to extricate himself from punishment by establishing that the actual offender is someone else, provided he can give satisfactory proof of the facts required by section 101(a) and (b).

Section 94 of the Act says that any person who has been convicted of any offence punishable under section 92, is again guilty of an offence involving a contravention of the some provision, he shall be punishable on a subsequent conviction with imprisonment for a term which may extend to three years or with fine which shall not be less than ten thousand rupees but which may extend to two lakh rupees or with both.⁴⁴

But the Court may for any adequate and special reasons to be mentioned in the judgement, impose a fine of less than (ten thousand rupees).⁴⁵ But where contravention of any provisions of chapter IV or any rule made there under or under section 87 has resulted in an accident causing death or serious bodily injury, the fine shall not be less than (thirty-five thousand rupees) in

⁴² Supra note 39 at Pg 362

⁴³ AIR 1997 SC 2279 at 2287

⁴⁴ The Factories Act 1948 section 94(1)

⁴⁵ I, Proviso to section 94(1)

case of accident causing death and (ten thousand rupees) in the case of an accident causing serious bodily injury.⁴⁶

For the purpose of the sub section (1) no cognizance shall be taken for any conviction made more than two years before the commission of the offence for which the person is subsequently being convicted.⁴⁷

The penalty for willfully obstructing an Inspector from exercising any power conferred on him by and under this Act⁴⁸ is provided under section 95 and which shall be a punishment with imprisonment for a term which may extend to six months or with fine which may extend to ten thousand rupees or with both.⁴⁹

Section 96 makes provision for wrongful disclosure of the results of such substance sent to the Government analyst for the purposes of analysis and report thereon. It provides that whoever, except in so far as it may be necessary for the purposes of a prosecution for any offence punishable under this Act publishes or discloses to any person the result of an analysis under section 91 of the Act, shall be punishable with imprisonment up to six months or with fine up to ten thousand rupees or with both.⁵⁰

Section 96-A has been inserted in 1987 to deal with the penalty for contravention of the provision of newly inserted sections 41-B, 42-C and 41-H. Section 41-B deals with the compulsory disclosure of information by the occupier, section 42-C lays down specific responsibility of the occupier to maintain accurate and up to date health records of the workers and Section 41-H speaks of statutory duty of the occupier etc. to take immediate remedial action if the workers bring to the notice of occupier, the imminent danger to their lives or health.

⁴⁶ II, Proviso to section 94(1)

⁴⁷ The Factories Act 1948 section 94(2)

⁴⁸ The Factories Act 1948

⁴⁹ Supra note 39 at Pg 364

⁵⁰ Ibid

Section 96-A provides: (1) whoever fails to comply with or contravenes any of the provisions of section 41-B, 42-C and 41-H or the rules made there under, shall in respect of such failure or contravention be punishable with imprisonment for a term which may extend to two lakh rupees, and in case the failure or contravention continues, with additional fine which may extend to five thousand rupees for everyday during which such failure or contravention continues after the conviction for the first such failure or contravention.

(2) If the failure or contravention referred to in subsection (1) continues beyond a period of one year after the date of conviction, the offender shall be punishable with imprisonment for a term, which may extend to ten years.

The penalty here is expected to have deterrent effect after the aforementioned sections have been newly inserted. Besides in these provisions, there are power given to the court to make orders to the occupier or manager to take some measures as may be so specified within a period specified in the order (which the court may, if it thinks fit and on application in such behalf, from time to time extend) for remedying the matters in respect of which the occupiers or manager of a factory is convicted of an offence punishable under this Act.⁵¹

The Factories Act 1948 further provides that where an order is made under the aforesaid matter and the order of the court has not been complied with, the occupier or manager, as the case may be, shall be deemed to have committed a further offence, and may be sentenced therefore by the court to undergo imprisonment for a term which may extend to six months or to pay a fine which may extend to one hundred rupees for everyday after such expiry on which the order has not been complied with or both to undergo such imprisonment and to pay such fine as aforesaid.

Under section 105 it is provided that (1) No court shall take cognizance of any offence under this Act except on complaint by, or with the

⁵¹ The Factories Act 1948 section 102

previous sanction in writing of, an Inspector and (2) No court below that of a Presidency Magistrate or of a Magistrate of the first class shall try any offence punishable under this Act.

Thus after going through these provisions it become clear that there have been changes in law brought after the year 1987, but is the changes sufficient to check air pollution from one of its main roots i.e. the industries? As India is one of the ten most industrialised countries in the world, it should have an effective monitoring system to check air pollution caused by the industries. The Factories Act can nip the spreading of pollution from one of its sources. The industries must also undertake social responsibility to mitigate pollution levels. In order to have effective control more effective provision are required on the following aspects:

A cleaner technology must be insisted in order to avoid dust and fume in the factories, where such pollutants are creating occupational diseases. There should be frequent monitoring to check that compliance with the regulations enacted by the statute is done.

In *Consumer Education and Research Centre v Union of India*,⁵² the Supreme Court observed: The Government of India issued model rule 123-A under the Factories Act for adoption. Under the direction issued by this Court from time to time, all the State Government has by now amended their respective rules and adopted the same as part of it but still there are yawning gaps in their effective implementations in that behalf.....

These gaps are to be looked into and measures must be taken for effective implementations of the provisions of law. The lists of the industries involving hazardous process have the responsibility of maintaining threshold limits of exposures to chemical and toxic substances in manufacturing processes and according to section 41-F these industries shall maintain the threshold limit of the value indicated in the Second Schedule. As these industries may lead to serious pollutions, some effective agency must

⁵² AIR 1995 SC 922 at 942

regulate and have vigilance on whether there is compliance with the value in Second Schedule. Besides the procedure for maintaining of health record of the workers up to a minimum period of 40 years from the beginning of the employment or 15 years after retirement or cessation of employment whichever is later shall have to be strictly adhered to as per the direction of the Supreme Court. By these industries in order to protect the workers from health hazards and the authorities undertaking safety and occupational health surveys must develop integrated information from such industries and make proposals to curb the problem by new regulatory instruments. Public disclosure should be encouraged to draw the attention of the Government to take precaution beforehand.

Section 96 provides for the penalty for wrongfully disclosing result of analysis under section 91 of the Factories Act 1948. This provision thus intends to maintain secrecy. Implementation of the provision makes it difficult to assess the pollution-taking place in the workplace. The fragmentary data on factory emissions and poor monitoring of the compliance with regulations enacted by the Statutes creates an hindrance to achieve one of the object, of the Act i.e., a pollution free work place for employees and the people of the vicinity where the plant is commissioned and functioning. Therefore, there is a need felt for more stringent laws for preventions of industrial air pollution.

The problem of industrial noise may indirectly be covered within section 11 of the Factories Act which provides that the factory shall be kept clean and free from effluent arising from any drain, privy or other nuisance where in the noise, being act of nuisance may also be covered.

The problem of industrial noise can be included within chapter IV⁵³ of the Act, which relates to health hazards and problem of environmental pollution in industries. It authorizes the Appraisal Committee, duly appointed by the State to examine the application for establishment of factories involving

⁵³ Dealing with power of certain diseases about the workers working in factories

hazardous process. The hazardous process under section 2(C)⁵⁴ of the Act means any process or activity in relation to an industry specified in schedule I⁵⁵ of the Act which produce two result viz.- (a) material impairment to health of person engaged or connected there with, (b) problem of general environment. Thus if the manufacturing process of the industries is such which produce the noise, it is bound to cause aforesaid two results. Hence the problem of noise has not specifically been included within the aforesaid definition of hazardous process. Once the noise is included with this definition a responsibility of the employers would be under section 41-(B)(1)(2).⁵⁶ To intimate the Chief Inspector and the local authority all the information regarding the danger of noise along with other health hazards and the measures to overcome such hazards.

The Act creates the duty of the occupier of the factory for maintaining accurate and up-to date health records including medical care about the workers in factories. Such as periodical "audible test" of the workers should be properly maintained.

It may be pointed out that the employees should be protected from noise pollution by making some statutory provision in the industrial law. It is also very amusing that under section 35 of the Act, protection of eyes of an employee is given but protection of ears is nowhere given.

Thus after the aforesaid discussion it is clear that the Act should be amended in order to effectively deal with the hazards from industrial noise.

4.7. THE MINES ACT 1952

The existing Mines Act, which relates to the regulation and inspection of Mines, was passed in 1923. This Act has been amended in certain

⁵⁴ Dealing with the definition of "hazardous process"

⁵⁵ Dealing with the list of industries involving hazardous process

⁵⁶ Dealing with compulsory disclosure of information by occupier regarding the dangers to the health of the workers in hazardous process

respects and the Mines Act, 1952 was passed with a view to amending and consolidating the law relating to the regulating of labour and safety in mines. The Act does not contain stickiest provisions like the Factories Act 1948 that contains provision which are considered to be more liberal provisions.

The Act however has been affected by subsequent legislation⁵⁷ and the provisions mainly relate to (a) the removal of certain practical difficulties experienced in the enforcement, (b) provisions for additional safety regulations, (c) closure association of workers with safety measures, (d) provision for a minimum penalty in case of gross negligence or recklessness, and (e) increase in the levy of cess for administration of central rescue stations.

There are provisions similar to the provision relation to the safety and health of workers like the Factories Act. The Act also has provisions for the notice of certain diseases connected with mining operations such as silicosis; Pneumoconiosis, Manganese poisoning etc, as notified by the Central Government and measures to be taken by the authorities concerned.

Protection against environmental degradation due to mining is to some extent regulated by the Mines and Minerals (Regulation and Development) Act, 1957. Its purpose is to regulate mines and development of minerals. Section 4 of the Act prospecting or mining operations in any area, except under and in accordance with the terms and condition of a prospecting license or a mining lease granted to him under the Act and rules made there under.⁵⁸ The conditions for obtaining a Prospective license or mining are specifically dealt in section 5. The Act does not provide for refusing or canceling the certificate of approval. Prospecting licenses and mining leases are void and of no effect if granted, renewed or acquired in contravention of the provisions of the Act or any rules or orders made there under. Penalty provided is imprisonment as well as fine under section 21.⁵⁹ Further no court can take

⁵⁷ Act 42 of 1983

⁵⁸ Section 19, The Mines Act

⁵⁹ See Paras Diwan (ed), Harpal Kaur Walia, "Air Pollution: A study of Indian enactments", Environmental Administration: law and judicial attitude, p-231.

cognizance of any offence punishable under this Act except upon complaint in writing made by a person authorized in this behalf by the Central or the State Government.⁶⁰

The provisions are made for the regulations of industries and mines. The Act is silent to the problem of environmental pollution but under the Rules, powers of the Government are utilized to restore the abandoned mines and to prevent pollution.

The polluting of the atmosphere by dust particles and noise, during blasting of mines, does not have any preventive provisions under the Act. Some effective provisions are required to exercise greater control and vigil on mining operations. Public hearings by the recent regulations have been made mandatory procedure for the mining operation.

4.8. THE BOILER ACT 1923

The Indian Boiler Act was passed to secure uniformity throughout India in all technical matter connected with boiler regulation-e.g.-standard or construction maximum pressure and to insist on registration and regular inspection of all boiler throughout India to maintain safety measures and avoid accident caused by the use of boiler.

Therefore the Act provides provision for registration of boiler, penalties for illegal use of boiler and provision for inspection by Chief Inspector, Deputy Chief Inspector and Inspectors. The penalties under the Act for violation of its provisions are minor. The increase in industrialization of the country in recent year has rendered the use of boiler of higher pressure and capacities inscrutable and the existing Act regulation are not quite adequate to meet the present day requirement. This is evident from some cases where the boilers are installed without considering environmental consequences.

⁶⁰ Ibid.

In an important case *Krishna Gopal vs. State of M.P.*⁶¹ a glucose saline factory obtained license to operate in residential area. The public authorities namely the Joint Director of Town and Country Planning Municipal Corporation and Chief Inspectors of Boilers, had given their approval for installation of the factory including boiler without considering objection from the local residents and the relevant factories that might help than to make a sound environmental decision. The boiler boomed round 12 O'clock at night and emitted smoke and ash and disturbed the sleep of a heart patient living next door. The Sub-Divisional Magistrate on getting a police report and taking evidence invoked section 133 of The Code of Criminal Procedure and passed an order for removal of the factory as well as boiler from the area. On Appeal the Sessions Judge held that only the boiler need to be removed. On Revision the High Court ordered removal of both the factory and boiler endorsing the order of the Sub-Divisional Magistrate.⁶²

The Court extended remedial measures and made the following observation: "Manufacturing of the medicines in a residential locality with the aid of installation of a boiler resulting in emission of smoke there from is undoubtedly injurious to health as well as the physical comfort of the Community."⁶³

Therefore the permission granting agencies should given due consideration, the views of the local public apply whether small or big, to decide the issue on environmental criteria *Krishna Gopal* shows the total apathy and indifference of the authorities in this respect.⁶⁴

Certain stringent provision are required to be implemented to meet the present day requirement especially in the matters and should have

⁶¹ (1986) Cr.L.J 396

⁶² Leela Krishnan P. : Law of public nuisance: A tool for environmental protection: JILI Vol 28:2 1986 at 229

⁶³ Supra note 61 at 399

⁶⁴ Supra note 62 at 230

adequate turning on environmental matters and should be required to have clear ability to comprehend the environmental criteria on which decisions are to be based.

4.9. THE INSECTICIDES ACT 1968

The Insecticides Act 1968 was brought into force with effect from 1st August 1971 with a view to regulate the import, manufacture, sale, transport, distribution and use of insecticides in order to prevent risk to human being or animal and for matter connected therewith. The Act deals with the provision for sale, distribution or use of insecticides in general and also prohibits the sale, distribution and use of insecticides without being registered or without license,⁶⁵ for reasons of public safety. The provision for registration,⁶⁶ Registration Committee⁶⁷ and other Committee⁶⁸ along with the establishment of Central Insecticide Board⁶⁹ and Central Insecticide Laboratory⁷⁰ are provided under the Act for the purpose of granting certificate of registration to persons desiring to import or manufacture insecticide.⁷¹ The Act provides for regulation of transport and storage of insecticide so as to prevent cases of accidental contamination of food with insecticides.

The provision for sale distributions or use of insecticides in general is ordinarily dealt with registration under section 9 of the Act. If after registration under Insecticides Act, the insecticides and chemical are found hazardous to health, the Central Government can exercise its power for cancellation certificate of registration under section 27(2) only in respect of any

⁶⁵ The Insecticides Act 1968, Section 18

⁶⁶ Id, Section 9

⁶⁷ Id, Section 5

⁶⁸ Id, Section 6

⁶⁹ Id, Section 4

⁷⁰ Id, Section 16

⁷¹ The Insecticides Act 1968

insecticides specified in sub clause (iii) of clause (e) of section 3 i.e. preparation or formulation of one or more of the substance specified in the Schedule, but the said power cannot be exercised in respect of any insecticides which is specified in the Schedule itself by the Parliament. In *Ashok vs. Union of India*,⁷² while upholding the decision the Supreme Court observed:

“Once a substance is specified in the Schedule as contemplated under section 3 (c) (i) then there is no power for canceling the registration certificate issued in respect of the same substance even if on scientific study it appears that the substance in question is grossly detrimental to the human health. This is the lacuna in the legislation itself, and therefore, steps should be taken for appropriate amendment to the legislation.”

The Act provides for the constitution of a Registration Committee under section 5. The Central Insecticides Board under section 4 and provision for appointments of other committees by the Board under section 6. There is provision for appointment of licensing officers by the State Government under section 12 of the Insecticides Act 1968. The Registration Committee will mainly scrutinize the formulae of the insecticides and verify the claims made by the importer or the manufacturer, as the case may be as regards the efficacy and safety of the insecticides to human beings and animal for granting the certificate of registration.

The Act also prohibits the sale, distribution and use of insecticides without obtaining certificate of registration under the Act or without obtaining license or for reason of public safety as provided under section 18 of the Insecticides Act 1968. Section 17 of the Act prohibits the import or manufacture of any misbranded insecticide, these provision help in checking poisoning or pollution of the environment by insecticides having higher toxicity. Beside section 25 lays down the provision for confiscation of

⁷² AIR 1997 SC 2298 at 2306

the stock of the insecticide in respect of which any person has been convicted for contravening any of the provision of this Act or rules made there under.

The Act also lay down provision for appointment of insecticide analyst under section 19 and Insecticide Inspector,⁷³ powers of Insecticide Inspector⁷⁴ and the procedure to be followed by Insecticide Inspector.⁷⁵

Penal action in the form of fine and imprisonment is provided under section 29, for any person contravening and provision of the Insecticides Act or any rule made there under or for importing manufacturing or selling or distributing any insecticides deemed to be misbranded importing or manufacturing without certificate of registration, without license or in contravention of section 27 or whoever obstructs the Insecticide Inspector shall for the first offence be punishable with imprisonment for a term which may extend to two years or with fine which shall be not less than ten thousand rupees but may extend to fifty thousand rupees or both. For second and subsequent offence with imprisonments which may extended for a term of three years or with fine which shall not be less than fifteen thousand rupees or both.

Section 36 of the Insecticides Act empowers the Central Government to make rule after consultation with the Board for the purpose of giving effect to the provisions of the Insecticides Act 1968. In exercise of this power, the Central Government has made the Insecticide rule 1971.

Transport and storage of insecticides and provision regarding protective clothing equipment and other facilities for workers during manufacture etc. of insecticides have been provided in the subsequent chapters. The last chapter deals with the rule relating to the miscellaneous provision.

These provisions can be applied to check the poisoning of the atmosphere by the use of toxic chemical like insecticides. Only those insecticides, which are environment friendly, need to be registered and those

⁷³ The Insecticides Act, 1968 section 20

⁷⁴ Supra note 73, section 21

⁷⁵ Supra note 73, section 22

that vitiate the atmosphere by exceeding the maximum permissible values need to be checked.

The Act is still not without lacuna as evident from some of the rule⁷⁶ laid down for e.g. the insecticides manufactured are at times extremely toxic and may result to the poisoning of atmosphere during transit. Under rule 35 (4) the transport agency shall be responsible to take measures urgently to prevent poisoning and pollutions of soil and water if any insecticides is found to have taken but the provision does not mention about the poisoning or pollution of air, which might cause health hazard due to inhalation if leakage occurs.

There are other precautionary provision provided under the rule for first ad-measure, protect clothing equipment and other facilities during manufacture etc of insecticides. Under rule 41 of the Act the manufacturer are required to keep sufficient quantities of antidotes and first aid medicines to treat poisoning cases arising from inhalation, skin contamination, eye contamination and swallowing.

These are provision laid down under rule 10(3A) for pest control operation where the person desires to undertake pest control operation with the use of aluminum phosphate, methyl bromide, ethylene dibromide or as notified shall apply for grant of license for undertaking pest control operation. Any person applying for pest control operation should be at least graduate in agriculture or in science with chemistry as a subject with a certificate minimum 15 days training from institute mention under the rule. For under taking fumigation the operator has to obtain special permission from the plant protection adviser to the Government of India to addition to license similar provision are provided for the commercial pest control operators. These measures are required to be ad heard to avoid environmental hazards. Rule 42 also provides for the training of worker to be arranged by manufacturers and distributors of insecticides in observing safety equipment provided to them the

⁷⁶ The Insecticides Rules, 1971

workers also should be educated regarding effect of poisoning and the first aid treatment to be given.⁷⁷

To check the hazards caused due to aerial application of insecticides certain precautions have been provided under rule 43,⁷⁸ aerial application of insecticide shall be subject to the following provision namely:-

- (a) Marking of the area shall be responsibility of the operators.
- (b) The operator shall use only approved insecticide and their formulation at approved concentration and height;
- (c) Washing decontamination and first aid facilities shall be provided by the operation;
- (d) All aerial operation shall be notified to the public at least twenty-four hours in advance through competent authorities;
- (e) Animals and person not connected with the operation shall be prevented from entering such areas for a specific period; and
- (f) The pilot shall undergo specialized training including clinical effect of the insecticides.

For preventing inhalation of the toxic dusts vapors or gases, the worker shall use any of the following types of respirators or gas masks suitable for the purpose, namely

- (a) Chemical-cartridge respirator;
- (b) Supplied-air respirator;
- (c) Demand flow type respirator;
- (d) Full face or half face gas masks with canister.

It is provided that in no cases the concentrates of insecticides in the air where the insecticides are mined exceed the maximum permissible value.

The rule provides the provision for segregation and disposal of date expired pesticide in an environment friendly manner as may be

⁷⁷ Ibid

⁷⁸ Supra note 76 rule 38

specified from time to time by the Central Government in consultation with the State Insecticides Board and all such stock shall not be used for remanufacture. Under rule 44 it is provided that it shall be the duty of the manufacturers, formulators of insecticides and operator to dispose packages or surplus materials washing in a safe manner so as to prevent environmental or water pollution.

Rule 37 provide for the medical examination of all person, who are engaged in the work of handling dealing or otherwise coming in contact with the insecticide during manufacture or formulation of insecticides being engaged in spraying during operation and rule 36 lays down condition for storage of insecticides separate rooms or premises to avoid contamination with other articles. The room or premises meant for storing insecticides shall be well built, dry, well lit and ventilated and of sufficient dimension.

Use of pesticide in order to achieve self-sufficiency in food grain, commercial crops and other agricultural product was felt in the twentieth century in our country. Abundant use of insecticides and chemicals in protecting the food grains and in increasing the agricultural production will bring insurmountable hazard to the countrymen. In most of the developed countries the use of hard pesticides on agricultural crops has been banned or restricted and other pest control programmed are adopted in order to maintain ecosystem and check global atmosphere pollution. But the developing countries are still using these pesticides without caring for side effect on environment. To check these maladies what is essential for the Government of India is to have a co-ordinate and sustained effort. In this age of computerization and interlinking of the countries through Internet it does not take more than a couple of minutes to gather the necessary information in respect of any particular insecticides or pesticide and now such commodities have been dealt with in other advanced countries. What is really essential is a genuine will on the part of the administrative machinery and a conjoined effort of all the ministries concerned.

Therefore effective measures have to be taken to prohibit the manufacture of such insecticides and pesticides in our country when its

deleterious effect on human health is alarming. In this regard the Supreme Court in *Ashok vs. Union of India*,⁷⁹ has made the following observation:

One thing is absolutely clear that in this country there has not been much study and research on the harmful effect of several such chemical and pesticides. There is no co-ordinate organization and the lack of co-ordination between different ministries of the Government who deal with different chemical and pesticides make the people of this country suffer it may be true that several such insecticides and chemical may be required in certain contingency when epidemic like plague and dengue break. But that cannot be ground for allowing the industrialist to manufacture such commodity when it is established that the use of commodity is grossly detrimental to human health. Take for example an insecticide called DDT. It acts as nerve poison paralyzing insects. DDT is residual poison that retains its effectiveness in a sprayed area for week although it may persist in the area for years.

After detailed discussion it becomes clear that the legal provision for regulating the manufacture and use of insecticides has been framed but the Act becomes ineffective until and unless proper step are taken to check the maladies caused by using pesticides without caring for side effect on environment. The Central Government has set-up the Pesticides Environment Pollution Advisory Board in the Ministry of Agriculture to review from time to time the environment repercussion and to suggest measure wherever necessary. This committee is required to work effectively to take suitable measure to check contamination of water and air by the use of pesticides because people can avoid large doses of insecticides but it is impossible to avoid exposure to contaminants in food, in the air and in the drinking water.

⁷⁹ AIR 1997 SC 2298 at 2303

4.10. THE INDUSTRIES (DEVELOPMENT AND REGULATION) ACT, 1951

This Act provides for the development and regulation of certain industries through licensing. The Central Government is empowered to make rule for regulating the production and development of the industries mentioned in the Schedule and for consulting with provincial government on these matter under this Act. Section 5 of the Act also provides the constitution of a Central Advisory Council, prior consultation with which is obligatory before the Central Government takes certain measure such as the revocation of a license or taking over the control and management of any industrial concern. It is important to note that under the Act the burden of proof lies on the polluter and note on the prosecution as can be seen from section 28, which runs: "where any person prosecuted for contravening any order made under section 18-G which prohibits him from doing an Act without a permit.....The burden of proving that unless he has such authority, permit shall be on him."⁸⁰

It may be pointed that the Industries (Development and Regulation) Act as such makes no direct or indirect reference to environment. Under the Act the planning of future development on sound and balanced lines is sought to be achieved by the licensing of all new undertakings by the Central Government. The imposing condition for issue of license can be stretched to serve the cause to environment [section 11(2)].⁸¹

4.11. THE ATOMIC ENERGY ACT, 1962

The Atomic Energy Act⁸² provides for the development control and use of Atomic Energy for the welfare of the people of India and for other peaceful purposes and for matter connected there with.

⁸⁰ Harpal Kaur Walia, Air Pollution: A study of the Indian enactment, published in Environment Administration Law and Judicial Attitude(Edited by Paras Diwan),pg 230.

⁸¹ Ibid

⁸² 1962 (33 of 1962)

In order to prevent radiation hazards from radioactive substance or radiation generating plant the Act empowers the Central Government⁸³ to provide control over radioactive substance or radiation generating plant in order to-

- (i) Prevent radiation hazards;
- (ii) Secure public safety of person handling radioactive substance or radiation generating

Plant;

- (iii) Ensure safe disposal of radioactive wastes.

To control radiation hazards section 15 empowers the Central Government with the right requiring that any substance containing uranium and plutonium or any their isotopes shall be delivered to the Government. The intention is to exact uranium plutonium or any of their isotopes not only because they are essential to the atomic energy programmed but also because they are strategic materials which have military potentialities and which constitute a radiation hazard. For similar reason the Central Government prohibits the manufacture possession use transfer by sale or otherwise export in any energy transport and disposal of any radioactive substance without its written consent.

The Act provides special provision for safety under section 17 of the Act. This section enable the Central Government to make rule to ensure that safety measure are taken in handling radioactive substance wherever they are manufactured produced mined treated stored transported or used.

The principle relating to payment of compensation where it is payable under this Act has been laid down under section 21. The relation protection rules 1971 are framed by the Central Government for providing further protection from hazards caused by radiation.

One widely publicized case⁸⁴ decided by the Supreme Court involved imported Irish butter that was alleged to have been contaminated by

⁸³ Section 3(c)

⁸⁴ *Dr Shivrao Shantaram Wagla vs. Union of India* AIR 1988 SC 952

the radioactive fall out from the Chernobyl (USSR) nuclear disaster. A three-person committee of expert was formed to determine whether the butter was safe for human consumption. The expert committee concluded that the butter was indeed safe. The Supreme Court relied on opinion of experts and the Atomic Energy Regulatory Board (AERB) and rejected the petitioners challenge and permitted distribution of the imported butter.

Another petition was brought by Union representing employees at Bharat Electronics, a public sector company, alleging that the company had failed to adequately protect the health and safety of workers who were exposed the x-ray radiation in the course of their work. In this case the employers the Bharat Electronics was directed to strictly comply with the safety rules and undertake various measure such as film badges indicator for radioactive levels primary and secondary lead shields, electrical inter locking devices etc and the Union Government was directed to carry bi-annual checks of safety devices.⁸⁵

The Court also required that the company should specially insure each exposed worker for Rs. One lakh and each exposed officer for Rs. Two lakh. However the Court while delivering the judgment found no proof of injury and therefore no entitlement of damages was directed at this stage.⁸⁶

Although decision in the above case have considered low levels radioactivity harmless but no one knows whether low-level radioactivity are in fact harmless. The decision of *Sharma vs. Bharat Electronics*⁸⁷ has imposed responsibility to compensate worker in event of further proof of injury resulting from present continuing employment. This is significant gain for workers. The implementation of occupational and health safety policies would restrict the atmosphere from being contaminated by the radioactive substance although it would not render total check on the hazards.

⁸⁵ AIR 1987 SC 1792.

⁸⁶ Ibid

⁸⁷ Ibid

4.12. THE EXPLOSIVE ACT, 1884

The main object of the Indian Explosive Act, 1884 is to protect the public against the dangerous nature of explosives. The Act is enacted to regulate the manufacture, possession, use, sale, transport, import and export of explosive.

Explosive as defined under section 4(d) of the Act⁸⁸ means gunpowder, nitroglycerine, nitroglycol, gun cotton, dinitro-toluene, tri-nitro-toluene, picric acid, di-nitro phenol, tri-nitro-resorcinol (styphnic acid), cyclo-trimethylene-tri-nitramine, penta-trythritol-tetranitrate, tetryl, nitro-guanidine, lead azide, lead styphynatè, fulminate of mercury or any other metal, diazo-dinitrophenol, coloured fires or any other substance whether a single chemical compound or a mixture of substances, whether solid or liquid or gaseous used or manufactured with a view to produce a practical effect by explosion or pyrotechnic effect; and includes fogsignals, fireworks, fuses, rockets, percussion-caps, detonators, cartridges, ammunition of all descriptions and every adaptation or preparation of an explosive as defined in this clause.

Under section 5 of the Act Central Government have been empowered to make rules as to licensing of the manufacture, possession, use, sale, transport and importation of explosives. Section 6 empowers the Central Government to prohibit the manufacture, possession and importation of any explosive which is so dangerous a character that, in the opinion of the Central Government its prohibitions are required for public safety.

Under the Act section 6C lays down the provisions for refusal of license in respect of any prohibited explosive⁸⁹ or where the license is required by a person whom the licensing authority has reason to believe to be prohibited by this Act⁹⁰ and the licensing authority can refuse licenses where

⁸⁸ The Explosive Act, 1884

⁸⁹ Section 6C (a), The Explosive Act, 1884

⁹⁰ Section 6C (b), The Explosive Act, 1884

the licensing authority deems it necessary for the security of the public peace or for public safety. This provision can be applied also to serve the cause of environment where the explosive is harmful for public.

4.13. Code of Civil Procedure, 1908

The Code of Civil Procedure is enacted to consolidate and amend laws relating to procedure of courts of the civil judicature. Generally the CPC contains procedural law, but it also contains some specific provisions of Substantive law. Resources like land, air, water and vegetation are the property of the public or State. The State or members of public in their representative capacity may approach Civil Court under this Code to seek relief against polluters of these resources. The Court may grant temporary or permanent injunction against the polluters.

Section 9 of the Code of Civil Procedure states that the Courts shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred.

A civil action by the Advocate General or by two or more members of the public with permission of the court, for a declaration, an injunction, or both can be obtained under section 91 of the Code of Civil Procedure as a remedy for public nuisance. In the absence of special damage this is the only available civil remedy. A private action can be maintained against a public nuisance where the plaintiff has suffered particular damage beyond that suffered by all the other persons affected by the nuisance.

A plaintiff in a tort action may sue for damages or an injunction, or both. An injunction is a judicial process where a person who has infringed, or is about to infringe the rights of another, is restrained from pursuing such acts. An injunction may take either a negative or a positive form. It may require a party to refrain from doing a particular thing or to do a particular thing. Injunctions are granted at the discretion of the court.

Injunctions are of two kinds, temporary and perpetual. The purpose of a temporary injunction is to maintain the state of things at a given date until trial on the merits. It is regulated by sections 94 and 95 as well as Order 39 of the

Code of Civil Procedure of 1908. It may be granted on an interlocutory application⁹¹ at any stage of a suit. It remains in force until the disposal of the suit or until further orders of the court.

Rule 1 of Order 39 provides that temporary injunctions may be granted where it is proved:

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution, of a decree, or
- (b) that the defendant threatens, or intends, to remove or dispose of his property with a view to defrauding his creditors, or
- (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit...

The grant or refusal of a temporary injunction is governed by three well-established principles: (1) the existence of a *prima facie* case (a showing on the facts that the plaintiff is very likely to succeed in the suit); (2) the likelihood of irreparable injury (an injury that cannot be adequately compensated for in damages) if the injunction is refused; and (3) that the balance of convenience requires the issue of the injunction.

4.14. Specific Relief Act of 1963

Sections 37 to 42 of the Specific Relief Act of 1963 regulate perpetual injunctions. A perpetual injunction permanently restrains the defendant from doing the act complained of. It is granted at a court's discretion after judging the merits of the suit. A perpetual injunction is intended to protect the plaintiff indefinitely (so that he or she need not resort to successive actions in respect of every infringement), assuming that the circumstances of the case remain essentially unchanged.

⁹¹ An application made between the commencement and end of a suit.