Chapter 2

STATUTORY LAWS

An important arm of the legal framework in any field or area of legal research is the arena of statutory laws. Laws legislated by the legislative is one of the important structures - basic – of any civilised, morefully a democratic country.

The term 'legislation' is derived from two Latin words, *legis* meaning law and *latum* meaning to make, put or set.

Legislation is that source of law which contains the declaration of legal rules by a competent authority.[1] According to Gray, legislation means "the formal utterances of the legislative organs of the society".

According to Holland: "The making of general orders by our judges is as true as legislation as is carried on by the Crown." He continues, "in legislation both the contents of the rule are devised, and legal force is given to it by the acts of the Sovereign power which produces written law. According to Austin: "There can be no law without a legislative act." Some writers have said: "Legislation consists in the declaration of legal rules by a competent authority, conferring upon such rules the force of law."[2]

Law that has its source in legislations may be most accurately termed 'enacted' law, all other forms being distinguished as 'unenacted'. The more familiar term, however, is 'statute law' as opposed to the 'common law'; but this, though sufficiently correct for most purposes, is defective, in as much the word statute does not extend to all modes of legislation, but is limited to Acts of Parliament and as such the Chapter is nomenclatured as Statutory Laws and the legislations, namely, The Air (Prevention and Control of Pollution) Act, 1981[Act 14 of 1981]; the Environment (Protection) Act, 1986 [Act 29 of 1986]; The Motor Vehicles 14Act, 1988[Act 59 of 1988]; the Indian

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[1] P.J.Fitzerald, *Legislation (Chap. 4)* in *Salmond on Jurisprudence, (12th edn.)*, Sweet & Maxwell (1966), p. 115.

[2] V.D. Mahajan, *Jurisprudence and Legal Theory (5th edn.)*, Eastern Book Company (2006), p. 178.

Penal Code, 1860 [Act 45 of 1860], the Criminal Procedure Code, 1973[Act 2 of 1974]; etc., discussed are all Acts of Parliament and they have a pan-Indian (territorially) application (except the state of Jammu and Kashmir in most cases).

The prominent legislation in England, meant to combat pollution are: The Public Health Acts of 1874, 1875, 1936, 1937 and 1961; The River Pollution Acts of 1876, 1951 and 1961; The Drainage of Trade Premises Act of 1937, The Rural Water Supplies and Sewerage Acts of 1944 and 1965; The River Board Act, 1948; The Clean Rivers(estuaries And Tidal Waters) Act, 1960; The Clean Air Act, 1956, The Water Acts of 1845 and 1948; The Water resources Act of 1963; The Thames Conversancy Acts of 1932 and 1950; The Dumping Sea Act of 1974, etc.[3]

The Pioneering enactments of the united States of America are; The Refuse Act, 1899 (30 Stat.1152); The Water Pollution Control Act, 1948 (62 Stat. 1154); The water Pollution Control Act Amendments of 1956 (70 Stat. 498); The Water Quality Act of 1965 (79 Stat. 903); The water pollution Act 1972 (86 Stat. 816; the Clean water Act, 1977 (91 Stat. 1566); The Solid waste Disposal Act of 1965 (pub. L. 89-272); Resources Conservation and Recovery Act of 1976 (90 Stat. 2795); The Federal; Water pollution Act, 1948; The Water Quality Act, 1965, The Water Quality improvement Act, 1970 and the Federal Water pollution Control Act 0f 1972(amended in 1972).[4]

In Australia, there is an enactment named as the Victorian Environment Protection Act of 1970.[5]

In Canada, The control of Atmospheric pollution is the jurisdiction of the individual Provinces.[6]

Since we have dwelled on the meaning of legislation, it would be better if we even examine the power to make laws of the legislatures, especially the Parliament.

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[3] N. Maheshwara Swamy,-*Laws on Prevention of Pollution (new edition),* Asia Law House. (1998), p. 35.
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

Overview of the Statutes relating to Environment in India

The Water(Prevention and Control of Pollution) Act, 1974 or simply the Water Act was enacted under article 252 of the Constitution since the subject-matter of "water' was enumerated is relatable to entry 17 read with Entry 6 of the State List in the Seventh Schedule of the Constitution.

Unlike the Water Act, the Air prevention and Control of Pollution Act, 1981 or simply called the Air Act and the Environment (Protection) Act, 1986 were legislated or enacted under Article 253 of the Constitution. These Indian environmental statutes were legislated in pursuance to implement the measures sought to be taken in the event of protecting and improving the human environment in the United Nations Conference on Human Environment (UNCHE), where it was a signatory of the decision taken there, namely, the Stockholm Declaration.

Indian environmental statutes chiefly employ a system of licensing and criminal sanctions to preserve natural resources and regulate their use. Civil compensation recovered through private citizens' suits play a peripheral role in the overall regulatory strategy. Pollution charges, fees or other economic approaches to discourage pollution are largely untried.[7]

A survey of early environmental legislation indicates the nature and levels of governmental awareness to environmental issues. Apart from forest laws, nineteenth century legislation also partly regulated two other aspects of India's environment: water pollution and wildlife. These laws however had a narrow reach and limited territorial reach.

In India, the History, over a century old, starts with the Indian Penal Code, being Act LXV of 1860. Section 268, placed in Chapter XIV of this Act has, first of all, defined what is Public Nuisance. Sections 269 to 278, have then, proceeded, in that chapter, to define and penalise the various species of public nuisance.

[7] **Divan, Shyam & Rosencranz, Armin,** *Environment Law and Policy in India (3rd Impression),* Oxford University Press (2002), p.30 & 40 .

Abatement of nuisance is also made subject of sections 133- 144 of the Criminal Procedure Code (Cr.P.C.), 1973 (Act 2 of 1974) which has replaced the Code of Criminal Procedure, 1898.

The relevant said provisions of the Cr.P.C. are not penal but only prohibitive provisions whereas The Indian Penal Code, enacted in 1860, imposed a fine on a person who voluntarily fouls the water of any public spring or reservoir. In addition the Code penalized negligent acts with poisonous substances that endangered life or caused injury and proscribed public nuisances.

The earliest laws aimed at controlling environmental pollution were The Shore Nuisance (Bombay and Kolaba) Act, 1853; The North India, Canal and Drainage act, 1873 (VIII of 1873); The Indian Easements Act, 1882; and those especially related to air pollution were the Oriental Gas Company Act, 1857 (V of 1857) the Bengal Smoke Nuisance Act, 1905 and the Bombay Smoke Nuisance Act, 1912; the Indian Poison Act, 1919; The Boilers Act, 1923, etc. As the chronology suggests, they have been enacted during the British regime and most of them, some due to their efficiency in controlling pollution issues and some being unutilised, have still been retained in independent India.

Vehicular Pollution and Legislative Developments

The presence of vehicular emissions in the form of smoke dates back to the invention of the engine and earlier version of the modern day motor vehicle popularly understood by the term 'automobile' and not much attention was paid to the issue of environmental pollution. The side effects of vehicular pollution, unknown during those days as hazardous to life may have seemed totally insignificant.

The increase of the vehicular population due to the rise in the economies of various countries was not felt suddenly. One of the indicators of rising number of vehicles was understood when the world thought of the impending crisis due to limited resources in the form of fuel. The problem of Pollution control

was never a priority of the several governments of the world when they were chasing the 'maximising the profit' goal/dream.

Though it is a fact that in the early days also the automobile had been emitting the smoke in the atmosphere making it impure, however there has been no such evidence of such emissions creating health hazards to the public in general. There are also no records of any dispute arising from the problems resulting from those discomforting emissions. People in those days might not have taken into consideration of the various harmful effects of vehicular pollution because of the simple reason that the automobile owning was a privilege of a few. In the towns and cities too, the number of vehicles were not large since the production and marketing were not organised properly and the price were not defined. The early period was spent most in developing the machine's performance and power and not in dealing with the market forces. Thus the priority in those days was given to the scientific aspect of the invention and not the commercial aspect and as such the poisonous emissions of the same was negligible and unnoticeable. Another reason why the pollution from automobile was not under the glare of the health and welfare authorities was that such consequences of vehicular activity was shadowed by the rapid industrialisation of the various countries of the world.

It was later found out that the transport activity and more particularly the motor vehicles were to be blamed for 40% of the atmospheric pollution and destruction of the ozone layer.

Motor Vehicles Act, 1988 (Act 59 of 1988)

The first enactment relating to Motor Vehicles[8] in India was the Indian Motor Vehicles Act, 1914. It was replaced by a more comprehensive and detailed enactment, namely the Motor Vehicles' Act, 1939 and finally by the Act of 1988[9].

BACKDROP: The first Indian Motor Vehicle Act was passed in 1914 with only 18 Sections. It conferred powers to local Governments to regulate the use of motor vehicles by way of

[8] Manohar and Chitaley, *The AIR Manual (34),* 1989.
[9] *Motor Vehicles Act, 1988*(Act 59 of 1988).

registrations, licensing and punishments. But with the break of First World War in1914 and great depression at global level till 1930, the Act almost remained ineffective all over the country. In 1939, the Motor Vehicle Act was enacted with the recommendations of Indian Railways Enquiry Committee headed by Wedgewood. This MV Act, 1939 laid the foundation of formal administrative machinery in road transport which functions till date. The Act, besides enforcing restrictions on the movements of vehicles on road in terms of registrations, licensing, permits and penalties in elaborate procedures and rules, ensured the creation of State and Regional Transport Authorities at State and District level all over the country for the first time, of course, in complete collaboration with Police department. Since then, the administrative structure of the road transport in the State has been reshaped, streamlined and more reorganized from time to time with the subsequent enactment of MV Acts and their amendments.

RATIONALE: The basic rationale behind the need for a strong administration in road transport sector in the State was as follows:

1. Transport is a Concurrent Subject.
2. The national investment in roads and road transport sector is as high as in other modes of transport and communication like railways, airways, waterways etc.
3. The road transport department was grossly under staffed.
4. The accelerated pace of road transport development cannot be denied in the process of rapid economic development. This essentially requires an efficient management and administration of this vital sector.

The Motor Vehicles' Act, 1939 (Act 4 of 1939)

The Motor Vehicles' Act, 1939 (Act 4 of 1939) was consolidated and kept up to date till it was recently replaced by the Act of 1988. The said Act of 1939 had been the main guide in matters relating to Motor vehicles, its incidental and ancillary problems

for almost five decades/ half a century. It was amended time and again to keep in pace with the various developments in the manufacture/technology and running/maintenance of the motor vehicle/automobile.

OBJECTS OF THE MOTOR VEHICLES ACT, 1939: "It has been recognised now for some years past that the Indian Motor Vehicles Act, 1914, which was framed to suit conditions at an early stage of the development of motor transport, is no longer adequate to deal with conditions brought about by the rapid growth of motor transport in the past two decades. In the interests alike of the safety and convenience of the public and of the development of a co-ordinate system of transport much closer control is required than the present Act permits and it is necessary to take powers to regulate transport.

"The question of the co-ordination of road and railway and the methods by which the object can be secured with consistency with public interest had engaged the attention of the Government of India for some years past. As early as 1933, *Messrs Mitchell and Kirkness* carried out, at the instance of the government of India, an inquiry into these problems and submitted a report in which they emphasised the importance of early action. The Road-Rail Conference convened by the Government of India in the same year passed a resolution inter alia recommending control of public services and goods motor transport. In January 1935, the first Transport Advisory Council made definite recommendations to the same effect. In the following year a Bill was framed to give effect to these recommendations which was approved by the second Transport advisory Council who also recommended a complete overhaul of the Act of 1914 at an early date and the appointment of a committee to enquire into and report on the subject of compulsory insurance of motor vehicles,

"A Bill was introduced in August 1936, to amend the Act of 1914 on certain points. It was, however, recognised then that a more comprehensive measure would have to follow. The legislature decided that the Bill should be circulated and this was

done: but before further action could be taken on it, the reports of the Motor Vehicles Insurance Committee and of the Wedgewood Committee were received. Government decided that in the circumstances, it was preferable to drop the partial measure and to present a more comprehensive Bill. The present Bill incorporates the main recommendations of both these committees and is the outcome of the consultations with Provincial Governments and the Third Transport Advisory Council which deliberated on it in December last. The principle of compulsory insurance has been approved by all the Provincial Governments, though there are differences of opinions as to whether its adoption should be entirely optional or whether in the interests of uniformity, its adoption within a certain period of time should be obligatory".[10]

Though the talked about Act, i.e. Motor Vehicles Act, 1939, seemed to be adequate to meet the current requirements with its timely amendments, however the need was felt. That this Act would further take into account the Road transport Technology pattern of passengers and freight movement, developments on road networks in the country and the improved techniques in the arena of motor vehicle management.

Various committees in the form of the National Transport Committee, National Police Commission, Road Safety committee, Low Powered Two-wheelers Committee and also the Law Commission have recommended the updating, simplification and rationalisation of this law after having gone through the different aspects of road transport. In addition to this a large number of parliamentarians have also urged for a comprehensive review of the Motor Vehicles Act of 1939 with an aim to make it relevant towards the modern day requirements.

A Bill related to the above was placed before and passed by both the Houses of Parliament. It received the assent of the President of India on 14th October 1988 and as such/ soon thereafter became an Act of Parliament under the short title and

[10] Statements of Objects and Reasons of the Original Bill. See *Gazette of India, Part V.* p.114: for Report of Select Committee, see ibid p. 187.

citation/nomenclature, The Motor Vehicles' Act, 1988(Act 59 of 1988) enacted in the thirty ninth year of the Republic of India.

STATEMENT OF OBJECTS & REASONS OF MOTOR VEHJICLES ACT, 1939:[11]

1. The Motor Vehicles Act, 1939 (Act 4 of 1939, consolidates and amends the relating motor vehicle. This has been amended several times to keep it up-to-date. The need was, however, felt that this Act should, now inter alia, take into account also changes in road transport technology, pattern of passenger and freight movements, development of road network in the country and particularly the improved techniques in the motor vehicles management.
2. Various Committees like the National Transport Policy Committee, National Police Commission, Road Safety Committee, Low Powered Two-wheeler Committee, as also the Law Commission have gone into different aspects of road transport. They have recommended updating, simplification and rationalisation of this law. Several Members of Parliament have also urged for comprehensive review of the Motor Vehicles Act, 1939, to make it relevant to modern day requirements.
3. A Working Group was, therefore, constituted in January 1984, to review all the provisions of the Motor Vehicles Act, 1939, and to submit draft proposals for a comprehensive legislation to replace the existing Act. This Working Group took into account the suggestions and recommendations earlier made by various bodies and institutions like C.I.R.T., A.R.A.I. and other transport organisations including manufacturers and the general public. Besides obtaining comments of State Governments on the recommendations of the Working Group, this was discussed in specially convened meeting of Transport Ministers if all States

[11] Published in the *Gazette of India, Extraordinary, Pt. II. Section 1*, dated 11th may, 1987, pp. 129-30.

and Union Territories. Some of the more important modifications so suggested related for taking care of:

(a) The fast increasing number of both commercial and personal vehicles in the country;

(b) The need for encouraging adoption of higher technology in automotive sector;

(c) The greater flow of passenger and freight with the least impediments so that islands of isolations are not created leading to regional or local imbalances;

(d) Concern for road safety standards, and pollution-control measures, standards for transportation of hazardous and explosive materials;

(e) Laying down clear parameters where the private and the public sector can co-exist and develop, in road transport field; and

(f) Need for effective ways of taking down traffic offenders.

4. The proposed legislation has been prepared in the light of the above background. Some of the important provisions of the Bill provide for the following matters, namely :

(a) Rationalisation of certain definitions with additions of certain new definitions of new types of vehicles;

(b) Stricter procedures relating to grant of licences; and the period of validity thereof;

(c) Laying down of standards for the components and parts of motor vehicles;

(d) Standards for anti-pollution control devices; Provisions for issuing fitness certificates of vehicles also by the authorised testing stations;

(e) Enabling provision for updating the system of registration marks;

(f) Liberalised schemes for grant of All-India Tourist permits as also National permits for goods carriages;

(g) Administration of the Solatium Fund by General Insurance Corporation;

(h) Maintenance of State registers for driving licences and vehicle registration;

(i) Constitution of Road Safety Councils.

5. The Bill also seeks to provide for more deterrent punishment in the cases of certain offences.

6. The Notes on Clauses explain the provisions of the Bill.

7. The Bill seeks to achieve the above objectives.

Thus, after the enactment of the Motor Vehicles Act, 1988[12] together with the relevant amendments[13], the problem arising out of the running of vehicles, especially, air pollution, has been strived to be minimised, if not, eradicated absolutely.

The new Act consists of altogether consists of two hundred and seventeen sections which has been divided into fourteen chapters and two schedules. But out of the said two hundred and seventeen sections a few of them are dedicated to curb the menace of vehicular pollution. The inadequacy has been as far as possible supplemented by the Rules both of the Centre[14] and the states[15]. In addition to these provisions other sections of the Act may be approached to circumstantially/ indirectly/constructively with an object to further strengthen the already existing relevant and direct provisions.

A motor vehicle/automobile may be or may not be polluting in the ordinary course of its running. There are various factors which lead to the pollution of the atmosphere due to the running of a motor vehicle/automobile. Vehicular pollution[16] is not so

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[12] *W.e.f. 1st July, 1989* Vide S.O. 368 (E), Published in the *Gazette of India, Extraordinary, Pt. II, 3(ii)*, dated 22nd May, 1989.

[13] Notably *Motor Vehicles (Amendment)Act, 1982*(w.e.f. 1.12.,82) and *Motor Vehicles (Amendment)Act, 1994* (w.e.f. 1.11.94)

[14] *The Central Motor Vehicles Rules, 1988.*

[15] For e.g. *West Bengal Motor Vehicles Rules, 1989.*

[16] When the permissible standards laid down by the *State Pollution Control Board* in consultation with the Motor Vehicles department are exceeded.

simple to connect it with the activity of running vehicles. To be more explicit, a vehicle in its ordinary course of running may not be polluting or to be precise it may be complying with the norms laid down by the Pollution Control Board or any other related agency[17]. But due to several other external factors such as improper driving of the vehicle, traffic jams, overloading, etc., the atmosphere may be polluted. Thus, in this sense, to control the pollution of atmosphere due to vehicular activity other provisions of the Motor Vehicles Act, 1988 can also be purposefully utilised bearing effective results. Such provisions have also been examined further down in this chapter in addition to the provisions specifically made to curb vehicular pollution.

Provisions of Preventing and Controlling Vehicular Pollution

The law regarding the pollution of the atmosphere by motor vehicles is crystal clear. We can mention here that the pollution by automobiles through the medium of air can be done in two ways. Firstly, the running of the automobile produces various gases in the form of smoke and such gases are made up of various pollutants such as CO, CO_2, NO_x, SO_2 and other particulate matter. These gases/ fumes in their individual capacity (in the combined form, some of the gases compounds can be more hazardous) are very poisonous creating health hazards to the public. Secondly, the sound emitting from vehicles whether from the engine or from the blowing of horns can also be major irritants to the general public further resulting to public health hazards.

Chapter VIII of the Act is more or less dedicate to matters related to the construction and maintenance of vehicles and as such is more direct in checking and reducing vehicular pollution. As already mentioned earlier the Act has provided to the Central and the respective state governments, the power to make

[17] The permissible standards of pollution may be laid down by the environment department in consultation with the Motor Vehicles department, (such standards may be laid down under the Environment (Protection) Rules, 1986 in Schedule I.

rules[18] in the matter of checking and reducing vehicular pollution in the atmosphere.

The abovementioned chapter together with the said rules are practically adequate in reducing pollution from automobiles. There might arise situations where a vehicle may be ordinarily complying with the standards laid down by the authorities or pollution levels of such vehicle may be within permissible limits but due to traffic jams, ill maintaining of speed limits by the driver, or overloading which may give rise to requirement of more power and thus use of more fuel giving rise to more emissions, etc. Therefore causing the ambient air quality to deteriorate and the atmosphere polluted. In these situations, it is hard to pin down a particular culprit and nobody can be taken to task since the circumstance is to be blamed and the person driving the vehicle will defend himself or herself by saying that his or her vehicle is already in compliance with the permissible limits. But blaming the situation and letting off the wrongdoers, the actual culprits would not solve the main problem. The approach should be to find ways to bring these persons who, prima facie, does not appear to break or violate the law, to justice. Thus provisions can be made use of the respective sections dealing with traffic jams[19], control of traffic[20], speed limits[21], overloading[22], etc., with an objective to control the pollution of the atmosphere by vehicles. Imposing such provisions to check the incidental matters relating to pollution as mentioned above, penalties might be harsher as a result of violating such provisions which helps the authorities in implementing and enforcing the laws related to maintaining the ambient quality of air. Harsh penalties such as suspension and cancellation of registration certificates or permits can deter a person using an automobile from both ill maintaining his vehicle and violating other incidental provisions of the said Act. Thus harsh penalties affecting the user of the vehicle, especially the

[18] Sections 110, 111 of the *Motor Vehicles Act, 1988*; also *see* notes 14 & 15.
[19] Section 201, *Id.*
[20] Sections 112, 113, *Id.*
[21] Sections 183, 184 *Id.*
[22] Section 194, *Id.*

owners would help in curbing the unsustainable use of automobiles.

Persons driving motor vehicles in violation of the abovementioned provisions will have no ground to contest the prosecution against them and as such would be certainly penalised, however, the only underlying problem lies in the non enforcements of the existing relevant laws and their respective provisions.

Chapter VII of the Motor Vehicles Act, 1988 hereinafter called 'the Act' is the most directly connected and concerned provision dealing with the prevention, control and abatement of vehicular pollution. The said chapter consists of three sections, section 109; section 110 and section 111.

Section 109

Section 109 is related with the general provisions regarding the construction and maintenance of automobiles. The third subsection of this section, namely, section 109(3), consist some provision which can be very helpful, if properly implemented, to curb the menace of vehicular pollution, an analogy of unsustainable automobile use. According to the subsection, if the Central Government is of the opinion that it is necessary or expedient to do so in the public interest, may by order, published in the Official Gazette, notify that any article or process used by the manufacturer shall conform to the standard as may be specified in the said order.

The Supreme Court in pursuance to this provision had directed that any four wheelers manufactured after April 1, 1995 in Delhi was to be fitted with a catalytic converter, which was assumed to minimise the level of pollution from automobile exhaust and thus helping the vehicles in maintain and complying with the prescribed standards laid down by the concerned authorities.[23]

Section 110

[23] The prescribed standards are laid down in the *Environment (Protection) Rules, 1986*, particularly in the Schedules.

Section 110 of the Act empowers the Central Government to make rules regulating the construction, equipment and maintenance of motor vehicles among other things. Sections 110(g), 110(m) and 110(n)[24] are provisions which can be specifically utilised for the objective above-mentioned and to create an environment of sustainable automobile use. The said provisions of the Act have been implemented vigorously after the Supreme Court in *M.C.Mehta V Union of India*[25] directed the concerned authorities under the relevant law to act but still the performance of such authorities has not been satisfactory.

It is also provided in section 110 that rules such as fixing standards for emission of air pollutants from vehicle exhaust, the Ministry of Environment and Forests have to be consulted. This is to be done since the Ministry is the main authority coordinating between various departments in relation to the problems of environment pollution. They also have the logistics together with the required experience and as such provide the government making rules fixing standards with the technical and the expertise for achieving desired results. And finally their main function is to protect and improve the environment keeping in view the essential economic development.

The Central Government has already framed the general rules under the above provision, namely the Central Motor Vehicle Rules (CMVR), 1989 with relevant amendments hereinafter called 'the Rules'. Rules in respect to fixing the standards of vehicular emissions and its related enforcement have been incorporated in the Rules. They are, among other things, Rules 115, Rule 115-A, Rule 115-B and 116 respectively. This has been done taking cue from section 20 of the Air (Prevention and Control of Pollution) Act, 1981.[26] The said rules,

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[24] Section 109 of the *M.V.Act, 1988* was inserted by the *Motor Vehicles(Amendment) Act, 1994*(Act 54 of 1994)

[25] (1998) 6 SCC 60 at p.61.

[26] **Section 20.** ***Power to give instructions for ensuring standards for emission from automobiles*** – With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause(g) of subsection (1) of section 17 are complied with, the state government shall, in consultation with the State Board, give such instructions as maybe deemed necessary to the concerned authority in charge of registration of motor vehicle under the Motor

namely, Rule 115, Rule 115-A, Rule 115-B and 116 states as follows:

Rule 115. Emission of smoke, vapour, etc from motor vehicles.[27]

Rule 115-A. Emission of smoke and vapour from agricultural tractors driven by diesel engines.[28]

Rule 115-B. Mass Emission Standards for Compressed Natural Gas Driven Vehicle.[29]

Rule 116. Test for smoke emission level and carbon monoxide level and other pollutants:

(1) Notwithstanding anything contained in sub-rule (7) of rule 115, any officer not below the rank of a Sub-Inspector or Inspector of Motor Vehicles who has reason to believe that a motor vehicle is not complying with the provisions of rule 115(2) or 115(7) may, in writing, direct the driver or any person for conducting the test to measure the standard of emission in any one of the authorised testing stations, and produce the certificate to an authority at the address mentioned in the written direction within seven days from conducting the check.

(2) The driver or person incharge of the vehicle shall, upon such direction by the officer referred to in sub-rule (1), submit the vehicle for compliance of the provisions of Rule 115(2) at any authorised testing station.

(3) The measurement for the compliance of the provision of Rule 115(2) shall be done with a meter of the type approved by an agency referred to in Rule 126 of the principle rules or by the National Environmental Engineering Research Institute (NEERI), Nagpur.

Vehicles Act, 1988(Act 59 of 1988), and such authority shall, notwithstanding anything contained in that Act or rules made thereunder be bound to comply with such instructions.

[27] *Annexure I, II, III, IV-A to IV-L*

[28] *Refer Rule 115-A, Central Motor Vehicle Rules, 1989*

[29] *Refer Rule 115-B, Central Motor Vehicle Rules, 1989*

Provided that such a testing agency shall follow ISO or ECE standards and procedures for the granting of approval for the measuring meters.

(4) If the results of the test indicate that the motor vehicle complies with the provisions of Rule 115(2), the driver or any person incharge of the vehicle shall produce the certificate to the authority specified in sub-rule (1) within the stipulated time limit.

(5) If the results indicate that the motor vehicle does not comply with the provisions of Rule 115(2), the driver or the person incharge of the vehicle shall rectify the defects so as to comply with the provisions of Rule 115(2) within a period of seven days and submit the vehicle to any authorised testing station for recheck and produce the certificate so obtained from the authorised testing centre to the authority referred to in sub-rule (1).

(6) If the certificate referred to in sub-rule (1) is not produced within the stipulated period of seven days or the vehicle fails to comply with the provisions of Rule115 (2) within a period of seven days, the owner of the vehicle shall be liable for penalty prescribed under subsection (2) of section 190 of the Act.[30]

(7) If the driver or any person incharge of the vehicle referred to in sub-rule (1) does not produce the said certificate within the said period of seven days, such vehicle shall be deemed to have contravened the provisions of Rule 115(2) and the checking officer shall report the matter to the registering authority.

(8) The registering authority shall on receipt of the report referred to in sub-rule (7), for reasons to be recorded in writing, suspend the certificate of registration of the vehicle, until such time the certificate is produced before the registering authority to the effect that the vehicle complies with the provisions of Rule 115(2)

[30] *Motor Vehicles Act, 1988 (Act 59 of 1988).*

(9) On such suspension of the certificate of the registration of the vehicle, any permit granted in respect of such vehicle under Chapter V or Chapter VI of the Motor Vehicles Act, 1988 shall be deemed to have been suspended until a fresh "Pollution under Control" (PUC) certificate is obtained.

Therefore after taking into consideration the abovementioned Rules of the Central Motor Vehicle Rules, 1989, we find that the 'sections' and 'rules' from which they originate from seems to be water tight as to the prevention and control of motor vehicle. The relevant provisions of both the Act and the Rules are sufficient to provide for the sustainable automobile use especially when it concerns air pollution. The provision appears reasonable and is not too harsh since it allows the driver of the person in charge of the culprit vehicle a period of seven days to rectify the fault. The basic reason for such pollution is the ill maintenance of the vehicle's engine, though the quality of fuel is an important factor for putting part of the blame. The period of seven days to service the engine of the vehicle and make necessary change of the service parts, like oil filters, and lubricants seems adequate to rectify the fault and make the vehicle fit so as to make it comply with the provisions of Rule 115 of the CMV Rules, 1989, which prescribes the smoke emission standards of vehicles.

The testing are to be done in the authorised testing centres and as such there is minimum chance of tampering with the results of such tests, and further the Rules also provides for the following the standards and procedures for approval of such measuring meters which are of international standards.

Penal action in the form of the a fine has been provided by section 190(2) of the Act and this is done so only after the driver or the person incharge of the erring vehicle fails to produce the 'pollution under control' certificate after the expiry of the stipulated period of seven days. Section 190 (2) of the Act says – Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards

prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

This penal section acts as a deterrent to the driver or the person incharge of such erring vehicle. If he is wise he will maintain his vehicle to make it compliant with the prescribed emission standards rather than pay a fine of one thousand rupees or maybe more in case of a future violation since the fine is enhanced in such situations. The maintenance of his vehicle to make it compliant to the already prescribed norms of emissions can cost him less than the fine.

The vehicle contravening the provision of Rule 115(2) is to be reported by the checking officer as per sub-rule 7 of Rule 116 and on the basis of such report received and for the reasons to be recorded in writing, the errant vehicle's certificate of registration is to be suspended and which also in effect results in the suspension of the permit, if any. This would result in closing down of the vehicle or is practically off road since driving without registration would invite prosecutions under other provisions of the Act, namely, section 192 and the fine for the same is not less than rupees one thousand and if the vehicle is driven by a hired driver, the fine will have to be paid on his behalf too, i.e. double. If the vehicle is driven in contravention of to the suspension of the registration and permit it would attract the provisions of section 192[31] and 192A[32] of the Act. These

[31] **Section 192. Using vehicle without registration.** – (1) Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of section 39 shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees for a second and subsequent offence with an imprisonment which may extend to one year or with fine which may extend to ten thousand rupees but shall not be less than five thousand rupees or with both.
Provided that the court may, for reasons to be recorded, impose a lesser punishment.
(2).....
(3).....

[32] **Section 192-A. Using vehicle without permit.** – (1)Whoever drives a motor vehicle or causes or allows a motor vehicle to be used in contravention of the provisions of subsection (1) of section 66 or in contravention of any condition of a permit relating to the route on which or the area in which or the purpose for which the vehicle may be used, shall be punishable for the first offence with a fine which may extend to five thousand rupees but shall not be less than two thousand rupees and for any subsequent offence with imprisonment which may extend to one year but shall not be less

provisions, especially section 192 impose a fine which may extend to five thousand rupees but must not be less than rupees two thousand and for a second or subsequent offence the penalty would be imprisonment which may extend to one year or fine which may extend to rupees ten thousand but shall not be less than five thousand. For driving without suspended or invalid permit the penalty imposed is according to section 192A of the Act which would be punishable with fine which may extend to five thousand rupees and shall not be less than two thousand rupees for the first offence. And for the second or subsequent offence with imprisonment which may extend to one year but shall not be less than three months and or with fine which may extend to rupees ten thousand but shall not be less than rupees five thousand.

The penalty according to the Act for second or the subsequent offence is harsh but in most cases such offences are undetected. Every such offence is booked as the first offence since the mechanism of recording the number of violation though laid down in the rules theoretically is not properly maintained. But atleast the consequence of such second violation in the form of imprisonment and heavy fine would have far reaching effects and would definitely help in solving the problem of vehicular pollution to a large extent. Again there are provisions, where after rectifying the fault due to which the said suspension of registration and permit has taken place, the driver or the person incharge of such vehicle approach the registering authority to vacate the suspension order. The proof of rectification of the fault is the issuance of a valid pollution under control certificate by the approved testing centre.

This particular projects and the steps to be followed has been properly explained by the Calcutta High Court in *State v Urmi Ghoshal and others,*[33] the police had mounted a pollution

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than three months or with fine which may extend to one year but shall not be less than five thousand rupees or with both:
Provided that the court may for reasons to be recorded in writing, impose a lesser punishment.
(2) .....
(3) .....

[33] AIR 2002 Cal 192

testing machine on vehicle for testing the vehicles on the road and on finding the emission from the vehicle beyond the permissible limit they had issued a slip for a compounding the offences by realizing certain amount on the spot. The court held that such action taken by the police is without jurisdiction. The Court observed: "It is understandable that the State had taken a positive step for checking the vehicle by testing the vehicle on the road by their own machine, but if the driver or person incharge of the vehicle who had already got his vehicle tested from the authorised testing agents of the government and it was found that it was within the permissible limit of pollution and produced a certificate before the checking authority then there is a prima facie presumption in favour of the owner or the person incharge of the vehicle that the vehicle is not polluting. But the presumption is rebuttable if it is found at the time of spot checking by the checking authorities by their own machine that the vehicle is still not within the pollution limit then it is not proper for the checking authorities to immediately saddle the owner or the Epson incharge of the vehicle with a compounding slip. That is not conceived in the scheme of the Rules. In case the checking authorities after checking by its own machine find that the vehicle is polluting and it is not within the norms laid down under Rule 115(2) then they can give a slip to the owner or the person in charge of the vehicle and ask him to get his vehicle rectified within a period of seven days and then submit the same for re-checking either by their own machine or by the authorised checking agency and in the event the checking authority or their agents find that the vehicle is not polluting then no step is to be taken in the matter. It is only in the event of the owner or the person incharge of the vehicle, who has been given the opportunity to get the vehicle rectified and if he fails to do so then that can result in a penalty under section 190(2) of the Act. It is not given to the Sub-Inspector of Police or the Motor vehicle Inspector to check the vehicle and if it is found emitting pollution suddenly to serve the owners or person in charge of the vehicle with compounding slip and recover the money and impose penalty in terms of section 190(2) of the Act.

If it is found that the vehicle is [polluting then the authorities are under obligation to give one week's time to the owner or the person in charge of the vehicle to get the same repaired and bring the emission within the permissible limit. Therefore, in case when a person holds a certificate from the authorised testing agents of the Government that the vehicle is within the permissible pollution limit and still is found by the checking authority that it is not within the limit of pollution then they can give him a notice of 7 days' to get the vehicle rectified and submit a report from the authorised testing agents of the Government to the effect that the vehicle is within the permissible limit of pollution or the incumbent can be asked to submit the vehicle before the checking authority for being tested by their own machine. But the authorities as per the scheme of the Act cannot take upon themselves to check the vehicle and serve with a compounding slip and recover a penalty on the spot. This is not conceivable under the law. If it is done, it is violation of the rules and checking authorities will be acting beyond their power."[34]

Again in the question of whether the emission standards laid down under the State Motor Vehicle Rules (here in question was in regard to rule 258 of the West Bengal Motor Vehicle Rules, 1989) would prevail, the court further observed: "It may be relevant here to mention that the police authorities took the action against the petitioners in this case under Rule 258 of the west Bengal Motor Vehicle Rules, 1989. Rule 258 appears to be beyond the power of the of the State of West Bengal, because section 110 of the Moto Vehicles Act, 1988 only empowers the Central government to frame the rules with regard to air and sound pollution under section 110(g) and (h) of the Act. Therefore, apparently it appears that Rule 258 framed by the state of west Bengal is beyond its competence.[35]

After having examined the substantive law for curbing the menace of vehicular pollution, the main problem being faced is the matter of enforcement of the relevant existing laws. Shri

[34] *Ibid* at p. 199 (para 18).
[35] *Ibid* at p. 197(para12).

M.C.Mehta, an advocate and an environmental activist, had said in one of his interviews to the media that we, in India, have one of the best laws in the world these laws are only in the books which happen to decorate our bookshelves. He was actually indicating that the enforcement agencies have failed the country and practical implementation is not carried out as expected.

Here, when we are discussing the prescribed emission standards laid down under the Rules and the procedure to be followed, it is pertinent to mention the provision of section 52 of the Motor Vehicles Act, 1988. The provisions of the said section allows the modification of a motor vehicle in terms of its seating capacity and also conversion of the engine together with facilitating its operation by different type of fuel or source of energy, including battery, compressed natural gas, solar power, liquid petroleum gas or any other fuel or source of energy, by fitment of a conversion kit, such modification shall be carried out subject to such conditions as may be prescribed.[36]

Incidentally, in *Paper Clipping v S.H.O., Karimnagar,*[37] the court held that there was no law permitting the use of Liquified petroleum gas as fuel to run the automobile vehicles. It further went on to say that there shall be an injunction restraining the user of Liquified petroleum gas as a fuel by anybody to run any automobile vehicles and the Director General of Police, Andhra Pradesh, Commissioner of transport, state of Andhra Pradesh, as also the Commissioner of Civil Supplies, State of Andhra Pradesh are directed to see that the above injunction order is implemented by themselves as also by their subordinates strictly and scrupulously.[38]

A person is allowed to alter his vehicle after giving notice to the registering authority within whose jurisdiction he has his residence or place of business or where the vehicle is normally kept, as the case may be, of the alteration he proposes to make and has obtained the approval from the registering authority to make such alterations. The relevant provision has been

[36] *See* section 52 of the *Motor Vehicles Act, 1988.*
[37] AIR 2000 A.P. 217.
[38] *Ibid* at p. 219.

envisaged in section 52 of the Act. Further it also provides for the modification of the engine or any part thereof, for facilitating its operation by a different kind of a fuel or other source of energy other than Liquefied Petroleum Gas (LPG). The other sources of energy may be Compressed Natural Gas (CNG), Battery (Electricity) or even solar power in the coming future. Thus such alterations are subject to conditions prescribed.[39]

This provision is likely to help in curbing vehicular pollution together with the stabilising the price of petroleum which has had a very volatile run in the market recently. The prices of Petroleum even crossed the 150 US dollar mark in the mid year of 2008.

Battery and solar driven vehicles would be almost zero polluting vehicles whereas compressed natural gas is a cleaner fuel, compared to petrol and diesel, thus less polluting. As per the recent direction of the Supreme Court in *M.C.Mehta v Union of India*,[40] three thousand buses of the Delhi Transport Corporation was ordered to be closed down unless they were converted to compressed natural gas driven ones[41] and the said order was to be implemented from April 1, 2000.

Another problem that had emerged due to the provisions of this section has been the conversion of large number of petrol driven vehicles to diesel driven ones. Such conversions were taking place in large numbers due to the low cost of diesel. This would no doubt aggravate the existing situation since pollutants from these diesel driven vehicles are more in variety and more poisonous in content. But the check for such harmful conversion is there in the same provision itself, that is the registering authority has the power to regulate such regressing developments.

Recently the government announced that it was considering a ban on the conversion of the petrol driven vehicles to diesel driven ones and it had even proposed to bring some

[39] Inserted by section 15 of the Motor Vehicle (Amendment) Act, 1994.
[40] Writ Petition (Civil) No. *13029* of *1985*, orders dated October 3, 1991 & October 25, 1991.
[41] *The Telegraph*, March 31, 2000.

amendments to this effect in the Motor Vehicles Act, 1988. This announcement was made by Shri Rajnath Singh, the then Surface Transport Minister, in his inaugural speech of the First Convention of the Indian Automobile Dealers Association (I.A.D.A.) in New Delhi.[42]Such an amendment would provide for long term solutions in curbing the menace of vehicular pollution. Presently such conversions are disallowed since the Apex Court has already ordered the scrapping of old vehicles, i.e. more than 15 years old, in the National Capital Region, New Delhi.[43] Other Capital cities and towns are following suit.

A Certificate of fitness[44]is necessary for a vehicle to register it validly. Such certificate of fitness is issued by the prescribed authority or an authorised testing centre. The certificate is issued to an automobile to give effect to its road worthiness. It is a statement of the fact that the motor vehicle to which a certificate of fitness has been issued complies with all the requirements of the Act or the rules made thereunder. Thus a vehicle flouting the norms of pollution standards can deprived of from obtaining such certificate of fitness. This section also provides that the prescribed authority or the authorised testing station has to give reasons in writing to the person incharge of such vehicle to which a certificate of fitness is not issued.

Further if a motor vehicle has already been issued a certificate of fitness or the motor vehicle already is in possession of such certificate of fitness; it is liable to be cancelled by the prescribed authority if it is satisfied that the concerned vehicle no longer complies with the requirements of the Act or rules made thereunder. And on such cancelation of Certificate of fitness, the registration certificate of the vehicle together with the permit, if any, granted to the said vehicle under chapter V of the Act stands suspended. Such suspension of the certificate of registration or permit, if any, mentioned above shall be deemed

[42] *The Times of India,* January 18, 2000.
[43] *M.C. Mehta v Union of India,* (1998) 6 SCC 60.
[44] Section 56(1) of the *Motor Vehicles Act, 1988 (Act 59 of 1988).*

to be suspended until a fresh certificate of fitness[45] is obtained under section 56(1).

The prescribed authority ordering such cancellation must be holding a required technical qualification[46]as per law and the reasons for such cancellations should be recorded in writing. A fitness certificate can be cancelled on the basis of a report of an officer having the required technical qualification in case the prescribed authority does not possess one. The effect of the certificate of fitness shall be extended throughout the territory of India as long as it is valid.

The person incharge of a motor vehicle who has been aggrieved by the order issued by the registering authority under sections 52 and 56 of the Act may, within a period of thirty days from the date on which he has received the notice of such order, appeal against the same to the prescribed appellate authority.[47] And further such authority shall pass such order as it deems fit after observing the principles of natural justice, i.e. give an opportunity of being heard to the aggrieved person.[48]

The Central Government may, having regard to public safety, convenience and objects of this Act, by notification in the Official Gazette, specify the life of a motor vehicle reckoned from the date of its manufacture after the expiry of which the motor vehicle shall not be deemed to be fit.[49] A motor vehicle driven in violation of this section is liable to have its certificate registration and permit, if any, to be suspended as it shall be deemed not to have complied with the requirements of the Act and the rules made thereunder.

The second part of section 53(1) (a) makes a motor vehicle liable to have its registration suspended if it fails to comply with the required provisions of the Act and rules made there under. Further a motor vehicle which is being driven even after crossing the expiry period of its age limit is bound to have its

[45] Section 56(4) of the *Motor Vehicles Act, 1988.*
[46] Inserted by *Motor Vehicles (Amendment) Act, 1994.*
[47] Section 57(1) of the *Motor Vehicles Act, 1988.*
[48] Section 57(2) of the *Motor Vehicles Act, 1988.*
[49] Section 59(1) of the *Motor Vehicles Act, 1988.*

registration certificate cancelled. That is to say that the running of the vehicle after the expiry of its age limit would be violative of the provisions of the Act and such vehicles are rendered as obsolete. The specifications in the matter of fixing the age limit of an automobile are carried out considering the type and class of such automobile. Thus the Central government specifies and fixes the age limit of motor vehicles and different age limits are fixed for different vehicles keeping in mind the type and class of the motor vehicle. And once the age limit of the vehicle fixed by the government and such period expires, no prescribed authority or authorised testing station/centre shall grant a certificate of fitness and if such certificate of fitness is already in effect, it shall be deemed to expire, too.

This section has empowered the authorities to off-road obsolete polluting vehicles. In *M.C.Mehta v. Union of India,* [50]the Supreme Court had ordered scrapping of vehicles which were fifteen years old or more. This provision of the Motor Vehicles act, 1988 provides the required shot in the arm to the Court in making the authorities to carry out its orders.

Section 53 of the Act deals with the suspension of the certificate of registration. It states that a registering authority or the prescribed authority, as the case may be, having reason to believe that any motor vehicle within its jurisdiction is in such a condition that its use in a public place would constitute danger to the public, or that it fails to comply with the requirements of the Act or rules made thereunder may, after giving the owner a reasonable opportunity of making any representation he may wish to make(by sending a notice by registered post with acknowledgement due at the owner's address which has been entered in the certificate of registration), for reasons to be recorded in writing, suspend the certificate of registration of the defaulting vehicle.

Applying the provisions under section 53 of the Act abovementioned, in a situation where an automobile has failed to comply with the prescribed emission standards laid down

[50] (1998) 6 SCC 60.

under Rule 115(2)[51] of the Central Motor Vehicle Rules, 1989 is a possibility since such polluting vehicle can be assumed to cause danger to the lives of the public. And as a reason of that the motor vehicle can have its certificate of registration suspended under the said rule. Further the vehicle's certificate of registration can be liable to cancellation if such failure to comply continues for a period not less than six months by the original registering authority.[52] However, a person aggrieved by an order under section 53 of the Act may appeal to the prescribed authority under section 57 of the Act, within thirty days of the date on which he has received notice of such order.

It is mandatory that a motor vehicle to which a permit has been granted must carry a valid certificate of fitness[53] and it should be so maintained at all times that it successfully complies with the requirements of the Act and the rules made thereunder.[54] If the said requirements or the conditions arising out of it are breached the permit granted above is liable to be suspended or even cancelled.[55] Such suspension or cancellation orders have to be accompanied by reasons recorded in writing. Thus, a vehicle which does not maintain the prescribed standards of emission and as a result of which will not be able to obtain a certificate of fitness may have its permit, if any, may be liable to be suspended for a period as the prescribed authority thinks fit or cancelled, as the case maybe.

A person aggrieved by such an order can appeal to the prescribed authority, namely, the State Transport Appellate Tribunal constituted under subsection (2) of section 89 of the Act. The said authority shall give both the aggrieved party and the authority passing the impugned order an opportunity of being heard. The decision of the State Transport Appellate Tribunal shall be final.

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[51] *Rule 115(2)* has been discussed earlier in the Chapter
[52] Refer the provisions laid down in *Rule 116* also.
[53] Section 56 of the *Motor Vehicles Act, 1988.*
[54] Section 84(a) of the *Motor Vehicles Act, 1988.*
[55] Section 86(a) of the *Motor Vehicles Act, 1988.*

So in totality a vehicle which indulges in polluting the environment or an automobile is put into an unsustainable use results in the failure to comply with the prescribed standards of emissions from vehicular exhaust. Such failure of compliance leads to the owner or the person incharge of the vehicle liable to pay fine and on the failure to repair the fault, by which such pollution is taking place, will be liable to have the certificate of registration and permit, if any, to be suspended. Such suspension may be revoked if the vehicle is repaired and the fault causing pollution is rectified. If the said failure continues for a longer period then both the certificate of registration as well as the permit of the defaulting vehicle is liable to be cancelled.

Thus, once the registration certificate and the permit are cancelled then there is no question of driving the vehicle on the roads and as such pollution from that vehicle is automatically prohibited. The only remedy, after the decision of the Prescribed Appellate Authority, left to the owner or the person incharge of the vehicle is to repair the vehicle, rectify the fault causing the pollution and making the motor vehicle compliant to the emission norms[56] laid down by the concerned department, presently Euro IV in the metros and Euro III in other cities.

Another contributing factor to the already existing menace of unsustainable use of automobile which adds to the burden of ill maintained vehicles is the problem of traffic jams. Traffic jams in the country, especially in the urban areas, are a matter of daily occurrence. This is one of the characteristics of unsustainable automobile use. There are various reasons for the occurrence of vehicular traffic jams. Firstly there has been an increase in the number of vehicles on the roads. This is due to a lot of reasons, main being the economic growth in the country, a result of liberalisation of the economy of the country. Such economic growth has led to the rise in the living standards of the people of India. Simultaneously the opened up markets of the country has led to the influx of various automobile companies

[56] Annexure I, II, III, IV-A to L, *Central Motor Vehicle Rules, 1989.*

from foreign shores manufacturing the Indian variants of the foreign brands to net the Indian market providing vehicles as per the Indian price. Further the liberalised economy has also let loose the financial regulations and loans were available cheap and accessible.

Secondly the roads are not wide enough for the smooth passage of vehicles. There are rules regarding the size of the roads according to their categories according to the Indian Road Congress Regulation but the original size of the roads have been decimated by the encroachment by hawkers and constructions of utilities, like telephone and electric poles, etc. In current times, the authorities in the pursuance of rapid development including the construction of roads the legal norms to be followed for such constructions are not followed or rather violated. Thus the shrinking size of the roads and as a result of that it cannot sustain the traffic. Sometimes cars not maintained properly can also become reasons for traffic jams but this is negligible since they can be towed away if they pose any impediment to the free flow of traffic.

Lastly, the drivers of most vehicles do not obey traffic rules or violate them and some of them are totally ignorant of the traffic signs put up on the road and streets. In India, we know that the one of the most corrupt departments is the Motor Vehicles Department and as a reason of that and among other things, many of the drivers have obtained their driving licences by paying bribes and not going through the proper process of tests and trials, either theoretical or practical. This is because every tenth person is purchasing an automobile and in the haste of driving their own car they don't even learn to drive in proper institutions. A person interested to learn driving a motor vehicle has to obtain a learner's licence and has to take admission to a government approved driving institute and after a period of a month or two, according to his preparedness, he is issued a driving licence, that too, after a gruelling session of tests, both written and practical, in traffic rules. Again there are different types of licences issued to commercial drivers and non-commercial drivers. This lack of traffic sense has led to the

avoidable problem s of traffic jams even where the roads are wide and the vehicles on the roads are less in number.

Traffic jams contribute substantially to the problem of unsustainable automobile use. This happens when vehicles, and there are never few in a traffic jam, are caught in a traffic jam the smooth flow of traffic is obstructed. Due to the reasons of such obstructions most of these vehicles are running idle while being stationary. This results in the increase in fuel consumption and such fuel consumption lets out more exhaust from the tail pipe of the vehicles. Even stopping the running of the automobile engine in a traffic jam and again starting it when it moves temporarily does not ease the matter. It has been proved in engineering that by stopping and then starting a vehicle's engine consumes so much of fuel that if moving it could cover a distance of atleast fifteen metres. From this we can assess that a vehicle in movement consumes less fuel than a vehicle caught in a traffic jam with the engine running idly.

A 1997 study by the Petroleum Conservation Research Association (PCRA), Delhi, showed that idling vehicles in the city wasted 321,432 litres of petrol and 101,312 litres of diesel every day (imagine the 2010 scenario). At present rates even that much of wastage would cost above Rs. 2 Crores. According to the Central Institute of Road Transport (CIRT), Pune congestion costs India Rs. 3000 to 4000 crore a year.[57]

Traffic jams costs time as well. The 2007 Urban Mobility report of the Texas Transportation Institute, United States (US) estimates that congestion made urban Americans travel 4.2 billion hour more and spend an extra 11 billion litres of petrol at the cost of Rs. US$ 78 billion a year. This is more than 100 times the extra aid the World Food Programme has sought to tide over the global food crises. A recent study says stuck in traffic jams, each commuter in Delhi loses 90 minutes every day on an average and vehicles in all waste an of 30 lakh litres of fuel each day. The report calculates fuel wasted due to traffic

[57] *Down to Earth,* March 16-31, 1998, p. 24.

jams every day at Rs 10 crore, resulting in a subsidy loss of approximately Rs 1.5 crore to the state exchequer every day.[58]

Breaking down the fuel waste, the study reckons each vehicle wastes an average of 1.6 litres of fuel — 2.5 litres for four-wheelers, and 0.75 litres for two-wheel[59]

The health cost is immense. The introduction of congestion tax[60] in London in 2003 has improved the health of its people. A study published in the journal, Occupational and Environmental Medicine, in 2008 stated that due to reduced pollution, 1,888 lives are saved each year in London.

Chapter VIII of the Motor Vehicles Act, 1988 deals with the Control of Traffic. Chapter VIII abovementioned inter alia includes sections 112,[61] 113,[62] 114,[63] 115,[64] 116,[65]117,[66]118,[67] 119,[68]122,[69] 125,[70] 126,[71] 127,[72] 137[73] and 138[74] (Relevant provisions for attaining the objective of sustainable automobile use are mentioned here).These sections provide ample scope to control the flow of traffic thus facilitating smooth passage of automobiles on the busy thoroughfares minimising, if not eradicating, traffic jams, which contributes a lot to air pollution

[58] The figures come from a study by city NGO 'Centre for Transforming India'.
[59] *Ibid.*
[60] The tax is levied on private vehicles entering central London during working hours.
[61] Limits of speed; *See* section 112, *Motor Vehicles Act, 1988 (Act 59 of 1988)*
[62] Limits of weight and limitation on use; *See* section 113, *Motor Vehicles Act, 1988 (Act 59 of 1988)*
[63] Power to have vehicle weighed; *See* section 114, *Motor Vehicles Act, 1988 (Act 59 of 1988)*
[64] Section 115 of the *Act* deals with the Power to restrict the use of vehicles.
[65] Section 116 of the *Act* deals with the Power to erect traffic signs.
[66] Section 117 of the *Act* empowers the State government to determine Parking places and halting stations.
[67] Section 118 of the *Act* authorizes the Central Government to frame driving Regulations.
[68] Sections 119 of the *Act* prescribe that every driver of the motor vehicle shall obey the traffic signs and drive his vehicle in conformity with the driving Regulations.
[69] Section 122 disallows a person incharge of a motor vehicle from keeping it in such condition or position so as to cause danger, obstruction or undue inconvenience to other users of the public place.
[70] Section 125 disallows a driver from permitting any person to sit in such manner and place so as to obstruct him, the driver, from controlling the vehicle.
[71] Section 126 of the *Act* disallows a person driving or incharge of a motor vehicle from causing or allowing the vehicle to remain stationary in a public place. (subject to exceptions)
[72] Removal of motor vehicles abandoned or left unattended on a public place; *See* Motor Vehicles Act, 1988 (Act 59 of 1988)
[73] Section 137 of the Act empowers the Central Government to make rules with regard to provisions contained in *Chapter VIII* i.e., provisions with regard to control of traffic.
[74] Section 138 of the Act empowers the State Government to make rules with regard to provisions contained in *Chapter VIII* i.e., provisions with regard to control of traffic.

through vehicles. Thus preventing controlling traffic jams is a determining factor in attaining the goal of sustainable automobile use.

According to section 112 of the Act, no person shall or cause or is allowed to drive vehicle at a public place at a speed exceeding the maximum speed or below the minimum speed fixed for such vehicle under the Act or under any other law for the time being in force. Such maximum speed means the maximum speed for the different classes or descriptions of motor vehicles as prescribed by the Central Government by notification in the Official Gazette.

Slow vehicles pollute more. At 75 km per hour, an automobile emits 6.4 grams (g) of carbon monoxide (CO) per km. But at 10 km per hour, the peak hour speed in Delhi, a car spews 33 g of CO per km. Peak hour speed in Kolkata is 7 km per hour, a bit like slow cycling. Every 5 percent reduction in traffic will increase vehicle speed by atleast 10 percent.[75]

In *M.C.Mehta v Union of India,*[76] the court had directed that no heavy and medium transport vehicles and light goods vehicles being four wheelers would be permitted to operate on the roads of NCR and NCT, Delhi unless they are fitted with suitable speed-control devices to ensure that they do not exceed the speed limit of 40 kmph.

According to subsection (2) of section 112 of the Act the State Government or its authorised agency is empowered by a discretionary power to impose speed limits on the different classes of automobiles respectively depending on the nature of the road or a bridge. It should be done vide a notification to be published in the Official Gazette putting up relevant traffic signs indicating the speed limits at suitable places and also in the interest of public safety and convenience. This provision of fixing speed limits is not applicable to vehicles[77] which are being used in the execution of military manoeuvres and further a

[75] *The Telegraph*, Kolkata, April 23, 2009.
[76] (1997) 8 SCC 777(Annexure).
[77] Registered under section 60 of the *Motor Vehicles Act, 1988.*

notification on that account is also not necessary if such imposition is to remain in force for a period of not more than one month.

The Penalty for violating the speed limits fixed under section 112 is the imposition of a fine which may extend to four hundred rupees and in the event of the same person being convicted for the same offence previously again, the fine may extend to rupees one thousand. And if a person is directly and apparently connected with the offence abovementioned, e.g. abetting the driver to drive at an excessive speed breaking the relevant traffic rule, then such person shall be fined rupees three hundred and if previously convicted then the fine may extend to rupees five hundred. Technically proving the commission of this offence might be difficult therefore keeping in mind the amount of fine the court does not ask for substantive proof. It is enough for the court to agree to impose a fine if the report has stated that the vehicle was over speeding and moving excessively faster compared to other vehicles on the road.

Section 183 provides for penalty to be imposed on the person driving a motor vehicle at excessive speed. Excessive speed means more than the speed limit prescribed under Section 112 of the Act. For the first default the fine can be to the extent of Rupees Four hundred and thereafter for subsequent defaults fine to the extent of Rupees One thousand.

Sections 113 empowers the state Government to prescribe conditions for the issue of permits for transport vehicles and may prohibit or restrict the use of such vehicles in any area or route. Conditions may be in the form of disallowing driving of a motor vehicle, especially transport vehicle, if the unladen weight of the said vehicle is in excess of the unladen weight as specified in the certificate of registration of the vehicle or the laden weight exceeds the gross vehicle weight specified in such registration certificate. This help in preventing overloading of vehicles mainly transport vehicles which is the cause of deteriorating road condition a very important aspect of unsustainable automobile use. In addition to that, more fuel burning (due to overloading)

results in more pollution. Section 114 complements this provision since it authorises any officer of the Motor Vehicles Department on behalf of the state Government to require the driver to convey the vehicle to a weighing device if he has reason to believe that a goods vehicle or trailer is being used in contravention of section 113 of the Act. In *Bhalchandra Transport Co., Hubli v State of Karnataka,*[78] the court held that only the officers of the M.V. Department who are authorised or empowered by the State government on this behalf and as such Police Officers are not authorised to book cases for overloading.

According to section 115 of the act, the Competent Authority has power on being satisfied that it is necessary in the interest of public safety or convenience, to prohibit or restrict the use of motor vehicles on specified road. Thus this provision prohibits the use of vehicles on a specified road which helps in curbing traffic jams in busy market areas where people with automobiles are always eager to enter and access.

In *M.C.Mehta v Union of India,*[79] one of the directions issued by the Supreme Court in its order dated 20-11-1997 was to the police and the transport authorities to consider immediately the problems arising out of congestion caused by different kinds of motorised and non-motorised vehicles using the same roads. The Court said: "For this purpose, we direct the police and the transport authorities to identify those roads which they consider appropriate to be confined only to motorised traffic including certain kinds of motorised traffic and to issue suitable direction to exclude the undesirable form of traffic from those roads."[80]

In *Rajbandha Maidan Vyavasayee Samiti, Raipur and others v Collector, Raipur,*[81] the Court held that the Collector was justified in putting the ban on the movement of heavy vehicular traffic on a particular road or area, even national Highways, during day time when there is congestion on the road.[82]

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[78] AIR 1998 Kant. 213.
[79] (1997) 8 SCC 770.
[80] *Ibid* at p.779 (Annexure).
[81] AIR 1986 M.P. 237.
[82] *Ibid* at pp. 239, 240, 241.

The power of the State government or the authority authorised in this behalf by the State Government under section 116 to cause or permit traffic signs to be placed or erected in any public place (subject to exceptions) for the purpose of bringing to public notice any speed limits fixed under section 112(2) or any prohibition or restriction imposed under section 115 or generally for the purpose of regulating motor vehicle traffic. This section provides the notice indicating the standard of compliance in matters of speed and no entries of vehicles which is complementary in controlling traffic jams. Further, under section 119 of the Act, it is every driver's duty to obey traffic signs. He shall drive the vehicle in conformity with any indication given by mandatory traffic sign and in conformity with the driving regulations made by the Central government under section 118 of the Act, and shall comply with all directions given to him by any police officer for the time being engaged in regulation of traffic in any public place.

In *M.C.Mehta v Union of India*,[83] one of the directions in the order[84] given by the court to the Civic Authorities including Delhi Development Authority (DDA), the Railways, the police and the transport authorities was to identify and remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement. In addition, steps be taken to put up road and traffic signs which facilitate free flow of traffic.[85] Against this order an application was made by the Delhi Outdoor Advertisers' Association praying for clarification and modification of the order (dated: 20-11-1997).

In pursuant to the above matter, the Supreme Court in *M.C.Mehta v Union of India*,[86] rejecting the prayer in the application of the advertisers' association observed:

> "We have perused the notice published by the Commissioner of Municipal Corporation of Delhi (MCD) warning all advertisers/owners of hoardings in Delhi to

[83] (1997) 8 SCC 770.
[84] Order dated *November 20, 1997.*
[85] *Ibid* at p. 779 (Annexure).
[86] (1998) 1 SCC 363.

remove such hoardings and also the notices issued thereafter as a result of non-compliance of the notice by some persons. We are satisfied that the steps taken are in a proper direction to identify and remove these hoardings. The order made this Court on 20-11-1997, which was duly publicised has directed in the order itself publicity through the electronic media and is obviously well known to everyone. The applicants belong to a category that would undoubtedly be aware of the order and its requirement. Even thereafter, a notice requiring compliance was published in the newspapers and in addition, in case of continuing default, individual notices were issued. The order dated 20-11-1997 is quite clear and has also been correctly understood by the authorities and all concerned. It directs the authorities to *remove all hoardings which are on roadsides and which are hazardous and a disturbance to safe traffic movement.* There is no ambiguity in the order. It is obvious that every hoarding, other than traffic signs and road signs on the roadsides have to be removed irrespective of its kind; every hoarding irrespective of whether it is on the roadside or not which is hazardous and a disturbance to safe traffic movement so as to adversely affect free and safe flow of traffic is required to be identified by the authorities and promptly removed. Obviously, the hazardous hoarding which is a disturbance to safe traffic movement has to be a hoarding visible to the traffic on the road."[87]

Under section 117 of the Act the State government or any authority authorised in this behalf by the State government may, in consultation with the local authority having jurisdiction in the area concerned, determine places at which motor vehicles may stand either indefinitely or for a specified period of time, and may determine the places at which public service vehicles

[87] *Ibid* at p. 364 (para 2).

may stop for a longer period of time than is necessary for the taking up and setting down of passengers. This acts as the moderator for stringent traffic rules which are enforced for free flow of traffic. This provision allows the vehicles, especially commercial ones, to carry on with their business.

Sections 122, 125, and 126 of the act are self explanatory and it deals mainly with safe driving another important facet of sustainable automobile use. Road accidents in India cost the country 1 percent of its Gross National Product (GNP), according to the CIRT[88] While road deaths in many other big emerging markets have declined or stabilized in recent years, even as vehicle sales jumped, in India, fatalities are skyrocketing — up 40 percent in five years to more than 118,000 in 2008, the last figure available. The same UN report also says that by 2030 road traffic injuries will rise to become the fifth leading cause of death on our planet beating HIV/AIDS and tuberculosis and resulting in an estimated 2.4 million fatalities per year.[89] The same report stated that deaths caused by speeding (59, 246) was more than deaths caused by driving under influence of alcohol and drugs. Pedestrian and cyclist faults combined were pegged at less than 4 percent of the deaths.

Section 127 is the consequence of violating section 126 and to some extent section 117 of the Act. The provisions empowers a police officer to authorise removing the vehicle by towing it away or immobilise it by means including wheel clamping if such vehicle has been parked in a 'No Parking' zone or halts in an area which does not have a halting station or is left abandoned and unattended in a public place for ten hours or more.

Section 137 of the Act empowers the Central Government to make rules with regard to provisions contained in Chapter VIII i.e., provisions with regard to control of traffic and section 138 of the Act empowers the State Government to make rules with regard to provisions contained in Chapter VIII i.e., provisions with regard to control of traffic.

[88] www.cirt.com visited and accessed on March 11, 2010.
[89] Kartikeya, *Driver Error Cause More Road Deaths* in *The Times of India,* July 5, 2010, p 1

Chapter XIII of the Act deals with the Offences, Penalties and Procedures. Section 177 of the Act deals with general provision for punishment of offences. It provides for imposition of penalty on the person contravening the provisions of the Act, for the first offence to the extent of Rupees One hundred and for second offence to the extent of Rupees Three hundred. Section 179 of the Act deals with disobedience of orders, obstruction and refusal of information. It empowers the authority to impose fine on the defaulter, which may be to the extent of Rupees Five hundred. Section 184 of the Act empowers the authority to impose fine on the person driving the motor vehicle dangerously. Section 195 of the Act deals with imposition of minimum fine under certain circumstances. Section 201 of the Act deals with imposition of penalty for causing obstruction to free flow of traffic.

In *M.C.Mehta v Union of India,*[90] the Supreme Court while perusing the issue of vehicular pollution in Delhi has given a comprehensive statement, in addition to the regular directions, explaining the sufficiency of the current legislation to deal with the problems of unsustainable automobile use, mainly vehicular air pollution, safe driving and traffic jams in one of its order.[91] The Court observed:[92]

"In our opinion, the provisions of the Motor Vehicles Act, 1988, in addition to the provisions in the existing laws, for example, the Police Act and the Criminal Procedure Code, confer ample powers on the authorities to take necessary steps to control and regulate road traffic and to suspend/cancel the registration or permit of a motor vehicle if it poses a threat or hazard to public safety. It need hardly be added that the claim of any right by an individual or even a few persons cannot override and must be subordinate to the larger public interest and this is how all provisions conferring any individual right have to be construed. We may now refer to some provisions of the

[90] (1997) 8 SCC 770.
[91] Order dated *November 20, 1997.*
[92] *Supra* Note 91 at 773, 774, 775 & 776 [(1997) 8 SCC 770].

Motor Vehicles Act, 1988 (for short "the Act") which are relevant for the purpose.

"Section 2(47) defines "transport vehicle" to mean a public service vehicle, a goods carriage, an educational institution bus or a private service vehicle. Each one of these vehicles is separately defined in other sub-sections of Section 2. Sub-section (28) defines "motor vehicle". In short, the definitions contained in Section 2c of the Act cover all kinds of vehicles which ply on the roads so that they are all governed by the provisions of the Act.

"Chapter II relates to licensing of drivers of motor vehicles wherein Section 19 confers power on the Licensing Authority to disqualify any person from holding a driving licence or revoke such licence. A few grounds on which this power can be exercised are: When the motor vehicle is used or has been used in the commission of a cognizable offence; when the previous conduct as a driver of a motor vehicle has shown that his driving is likely to be attended by danger to the public; or when he has committed any such act which is likely to cause danger or nuisance to the public, etc. These general grounds alone are sufficient to indicate that any person who poses any threat or is likely to cause nuisance or danger to the public can be disqualified and his licence revoked.

"Chapter IV deals with the registration of motor vehicles wherein Section 39 prescribes the necessity for registration. It says that unless the vehicle is registered in accordance with the provisions of the Act, it cannot be driven in a public place. The responsibility to ensure that such a vehicle is not driven is not merely on the person driving the vehicle but also on the owner of the vehicle. Section 45 permits refusal of registration or renewal of the certificate of registration inter alia on the ground that the vehicle is mechanically defective or fails to comply with the requirements of the Act or the rules made thereunder. It is obvious that the vehicle must be roadworthy in the sense that there is no mechanical defect therein to permit it being used as a motor vehicle. The necessity of complying with all the

requirements makes it clear that any requirement which is specified under the act or by the rules, has to be fully complied with and such a requirement would include the requirement of a specified category of motor vehicles being fitted with speed governors or such other devices as may be prescribed by law. Section 53 permits suspension of registration by the registering authority or other prescribed authority if it has reason to believe that any motor vehicle is in such a condition that its use in a public place would constitute danger to the public or that it fails to comply with the requirements of this Act or of the rules made thereunder. It is significant that this power to suspend the registration is available to the authority even if the condition of the motor vehicle is found to be such that its use in a public place would constitute a danger to the public, irrespective of whether that is a specific requirement under the Act or the rules. The conferment of this power is for the obvious reason that a motor vehicle which is considered to be unsafe or which poses danger to the public in a public place, if driven should not be permitted to ply in a public place since the paramount need is public safety. It is, therefore, clear that even if speed governors are not prescribed for a particular class of motor vehicles by any requirement of the Act or the rules made thereunder, it is permissible for the authority concerned to require the fitting of the speed governors in such motor vehicles for the purpose of ensuring that there is no danger to the public by the use of such motor vehicle in a public place. The power in Section 53 to this extent is wider. Section 53 read with Section 45 leaves no doubt about the amplitude of power of the authorities concerned whose duty is to control and regulate the traffic in public places. The basic test to be applied by them for exercise of this power is the need to ensure that there is no danger to the public by use of any motor vehicle in a public place.

"It is indisputable that heavy and medium vehicles as well as light goods vehicles are in a class by themselves insofar as their potential to imperil public safety is concerned. There is, therefore, immediate need to take measures such as installation of speed control devices and ensuring that such vehicles are

driven by authorised persons. Such measures are, designed to further public safety, would undoubtedly be covered by the aforementioned previsions.

"Chapter V relates to control of transport vehicles. Section 66 prescribes the necessity of a permit without which the vehicle cannot be used in any public place. Section 84 deals with the general conditions attaching to all permits. These conditions are deemed to be incorporated in every permit and do not require any additional or further mention thereof in each permit. Some of the significant general conditions are that the vehicle is at all times to be so maintained as to comply with the requirement of the Act and the rules made thereunder, and that the vehicle is not driven at a speed exceeding the permitted speed. Section 86 provides for cancellation and suspension of permits. The authorities are empowered to cancel and suspend the permit on the breach of any of the general conditions specified in Section 84 or any other condition when contained in the permit. Both these provisions are to be read with Section 56 which provides for certificate of fitness of transport vehicles. We may also refer to sub-section (4) of section 86 which permits the exercise of power of cancellation and suspension of permit by the transport authority or any other authority or person to whom such powers are duly delegated. The provisions to enable delegation of these powers is obviously to make it workable in case the jurisdiction of the transport authority is so large, as in the case of National Capital Region (NCR) and National Capital Territory (NCT), Delhi, so that the need is of several persons to exercise this authority.

"Chapter VIII deals with the control of traffic. Section 112 pertains to limits of speed and prohibits driving of a motor vehicle or it being allowed to be driven in any public place at a speed exceeding the maximum permissible speed.

"Chapter XIII relates to the offences, penalties and procedure. Section 177 contains the general provisions for punishment of offences which is available in the absence of any specific provision for punishment applicable in a given case. The punishment is maximum fine of Rs. 100 for the first offence and

for the subsequent offence is only Rs. 300. Section 183 provides the punishment for contravention of the speed limits referred to in Section 112 and Section 184 provides punishment for dangerous driving. The maximum punishment provided in all these three sections has ceased to have any efficacy in the present case and has, therefore, hardly any deterrent effect.

"One of the aspects which was considered at length by us was the need to find more stringent and effective measure to atleast bring to a halt the danger posed to the public by the continued use of a motor vehicle which is not roadworthy or was being used/driven dangerously. We find Section 207 takes care of that situation by conferring power on any police officer or other person authorised in this behalf to seize and detain the vehicle if he has reason to believe that the same has been or is being used in contravention of the specified provisions so as to pose a serious threat to the public. The object of enacting such a provision clearly is that such a vehicle cannot be continued to ply once it is found that it poses danger to the public because, in addition to punishing the guilty person for the contravention committed earlier, it is also important and necessary to prevent any further danger to the public by letting the vehicle continue to ply on a public place.

"In our opinion, the existing provisions in the Act alone are sufficient to clothe the members of the police force and the transport authorities with ample powers to control and regulate the traffic in an appropriate manner so that *no vehicle used in a public place poses any danger to the public in any form.* The requirement of maintaining the motor vehicles in the manner prescribed and its use if roadworthy in a manner which does not endanger the public has to be ensured by the authorities and this is the aim of these provisions enacted in the Act."[93]

Thus, it can be seen that the provisions of the Act by themselves are sufficient to form the requisite machinery and confer powers on the members of the Police force and the

[93] These deliberations have been reiterated by the Gujarat High Court in *Suo Motu vs State Of Gujarat And Ors.* II (2007) ACC 638, (2006) 3 GLR 1960.

transport authorities to control and regulate the traffic in a proper manner so that no vehicle used in a public place causes any danger to the public in any form.

The Government is also saddled with statutory duty to provide for the necessary set-up, frame rules and maintain overall supervision to give effect to these provisions to ensure public safety and to control pollution caused by the motor vehicles. The Government has power to constitute appropriate force for the enforcement of these provisions. In other words, the Government has power to create machinery for the implementation of the provisions of the M V Act and the Rules for the aforesaid purposes. The Government is also, under the Constitution, required to shoulder the responsibility to safeguard the public interest.

Thus, the Government has power and duty to see that the provisions of the M V Act are properly complied with and when it has been provided with adequate machinery for the said purpose, namely, the police force, it has to take every possible step to ensure public safety. Any connivance or negligence on this aspect would render the Government not only answerable to public but also answerable to the Court of law.

Air Pollution Control Legislations

Air pollution is a general term that covers a range of contaminants in the atmosphere. Pollution can occur from natural causes or human activities. Discussions about the effects of air pollution have been focussed mainly on human health but attention is being directed to environment quality and amenity as well. Urban air pollution has been an important concern for civic administrators, but increasingly, air pollution has become an international problem.

The most characteristic sources of air pollution have always been combustion[94] processes. Here the most obvious pollutant is

[94]The process of burning fuels. *Combustion* involves a mixture of fuel and air, which is thermodynamically unstable. The fuel is then converted to stable products, usually water and carbon dioxide, with the release of a large amount of energy as heat. *Source*: Environmental Encyclopaedia, (2nd edn.) p.208.

smoke. However, the widespread use of fossil fuel[95] have made sulphur and nitrogen oxides pollutants of great concern. With the increasing use of petroleum-based fuels, a range of organic compounds have become widespread in the atmosphere.

In the urban areas, air pollution has been a concern of since historical times. Indeed there were complains about smoke in Ancient Rome. The uses of coal throughout the centuries have caused cities to be very smoky places. Along with smoke, large concentrations of sulphur dioxide was produced. It was this mixture of smoke and sulphur dioxide that typified the Victorian London, paced by such figures as Sherlock Holmes and Jack, the Ripper, whose images remain linked with fog and smoke. Such situations were far less common in the cities of North America and Europe today. However, until recently they have been evident in other cities, such as Ankara, Turkey and Shanghai, China that rely heavily on coal.

Coal is still burnt in large quantities mainly to produce electricity or to refine metals, but these processes are frequently under taken outside cities. Within the urban areas, fuel use has shifted towards liquid and gaseous hydrocarbons (petrol and natural gas. These fuels typically have a lower concentration of sulphur, so the presence of sulphur dioxide has declined in many urban areas. However, the widespread use of liquid fuel in automobiles has meant increased production of carbon monoxide, nitrogen oxides and volatile organic compounds.[96]

Air pollution control procedures are increasingly an important part of civic administration, although their goals are far from easy to achieve. It is also noticeable that although many urban concentrations of primary pollutants, for example, smoke and sulphur dioxide, are on the decline in the developed countries but this is not always true in the developing countries. Here the desire for rapid industrialisation in the pursuance of high economic growth has often lowered the urban air quality. Secondary air pollutants, produced by processes initiated

[95] *Fossil fuels* are types of sedimentary organic materials, often loosely called bitumen, with asphalt, a solid, and petroleum, the liquid form. *Source:* Environmental Encyclopedia (2nd Edition), p. 432.
[96] "Air Pollution", *Environmental Encyclopedia (2nd Edition)*, p.24.

through photochemical reactions,[97] are generally proving a more difficult problem to eliminate than primary pollutants like smoke.

The need to control air pollution was recognised in the earliest cities. In the Mediterranean at the time of Christ, laws were developed to place objectionable sources of odour and smoke downwind or outside city walls. The adoption of fossil fuels in the thirteenth century England focussed particular concern on the effect of coal smoke on health, with a number of attempts at regulation with regard to fuel type, chimney heights and the time of use. Given the complexity of the air pollution problem it is not surprising that these early attempts at control only met with limited success.

The nineteenth century was typified by a growing interest in urban public health. This developed against the background of continuing industrialisation, which saw smoke abatement clause incorporated in the growing body of sanitary legislation in both Europe and North America. However a lack of both technology and political will doomed these early efforts to failure, except in the most blatantly destructive situations, for example, industrial settings such as those around the Alkali Works in England. In addition to this, the century has also seen the development of a range of broad air pollution control strategies. Some of them are:

(1) The rise of environmental awareness in the last quarter of the 20th century has reminded us that air pollution ought not to be seen as a necessary product of industrialisation. This has redirected responsibility for air pollution towards those who create it. Thus the notion of "making the polluter pay" is Air quality management strategies that set ambient air quality standards so that emissions from various sources can be monitored and controlled;

(2) Emission standards strategy that set limits for the amount of pollutant that can be emitted from a given source. These may be set to meet their quality

[97] "Air Pollutant", *Environmental Encyclopedia (2nd Edition)*, p.33.

standards, but the strategy is optimally seen as one of adopting the Best Available Techniques Not Entailing Excessive Costs (BATNEEC);

(3) Economic strategies that involve charging the party responsible for the pollution. If the level of charge is set correctly, some polluters will find it more economical to install air pollution control equipment than to continue polluting. Other methods utilize a system of tradable pollution rights;

(4) Cost benefit analysis, which attempts to balance economic benefits with environment costs.

In general air pollution strategies have either been air quality or emission based.

In the United Kingdom, emission strategy is frequently used; e.g. the Alkali and Works Act, 1863 specifies permissible emissions of hydrochloric acid. By contrast, the United States has aimed to achieve air quality standards, as evidenced by the Clean Air Act[98]. One criticism of using air quality strategy has been that while it improves air in poor areas it leads to degradation in areas with high air quality. Although the emission standards approach is relatively simple, it is criticised for failing to make explicit judgements about air quality and assumes that good practice will lead to an acceptable atmosphere.

Until the mid twentieth century, legislation was primarily directed towards industrial sources, but the passage of the United Kingdom Clean Air Act, 1956, which followed the disastrous smog of December 1952, directed attention towards domestic sources of smoke. While this particular Act may have reinforced the improvements already underway, rather than initiating improvements, it has served as a catalyst for much subsequent legislative thinking. Its mode of operation was to initiate a change in fuel, perhaps one of the oldest methods of control. The other well-tried aspects were creation of smokeless zones and an emphasis on the tall chimneys to disperse the pollutants.

[98] *United States The Clean Air Act, 1990.*

As simplistic as such passive control measures seem, they remain at the heart of such contemporary thinking. Changes from coal and oil to the less polluting gas or electricity have contributed to the reduction in smoke and sulphur dioxide concentration in the cities all around the world. Industrial zoning has often kept power and large manufacturing plants from centres of human population, and "superstacks", chimneys of enormous height are now quite common. Successive changes in automotive fuels – lead free gasoline, low volatility gas, methanol or even the interest in the electric automobile – are further indications of these methods of control.

The fact that there was no defined perspective, let alone a legal perspective, on prevention of air pollution in ancient and medieval India is because it is usually associated with industrialisation and urbanisation, which are modern phenomena. Thus, a legal regime on pollution began to take shape only in the nineteenth century. Attempts to regulate air pollution began to be made by the British Government by legislating laws. Even though there was no law specifically made to prevent pollution, there were enactments that could be used to achieve the objective even though in a limited way. Following the enactment of the Indian Penal Code, 1860, the Easements Act, 1882, the Bengal Smoke Nuisance Act 1912 and the Smoke Nuisance Act, 1914 were the earliest legislations that sought to check air pollution.[99]

Air Pollution Legislations in the United Kingdom

The history of atmospheric pollution dates back to early times. The prohibition on certain activities producing smoke is probably the first instances of environmental pollution legislation in Great Britain.

Pollution of the local atmosphere from emissions has been easy to identify since such problems date back to the early uses of coal in domestic fires.

[99] Sanjay Upadhyay & Videh Upadhyay, *Water Laws, Air Laws and the Environment: A Handbook on Environmental law, Vol-2 (1st edn.)*, Butterworths, (2002), p. 99.

In 1661, John Evelyn published his famous work on air pollution in city areas, *Fumi Fugium,* which not only outlined the problems that atmospheric pollution from smoke caused, but also more importantly, tried to suggest methods by which the problem could be resolved.[100]

With the advent of the more complicated processes in the late eighteenth century, the problems of atmospheric pollution grew more severe. The industrial revolution increased the use of coal to drive new machinery and, more importantly, produced very acidic emissions as a consequence of the 'alkali works'.

The consequences of these new processes were the areas of the country were rendered desolate by this highly acidic moist air, burning trees, shrubs and hedges. This concern led to the setting-up of a Royal Commission to look into the problem of alkali pollution, which subsequently made recommendations which led to the first Alkali Act passed in 1863.

Under this Act, a new Inspector was appointed to regulate the alkali processes. The Act did not attempt to deal with smoke but introduced stricter controls over production of acidic emissions. There was a requirement under the Act that 95 percent of all noxious emissions should be arrested within the plant and 5 percent of the previously emitted fumes were allowed into the atmosphere.

The initial effect of the legislation was a dramatic reduction in the production of acidic emissions from almost 14,000 tonnes to about 45 tonnes. This improvement, however, was temporary. As the Act only set reduction for acidic emissions in terms of percentage of each plant, the overall concentration of such emissions rose as the number of factories increased.

The introduction of the Alkali Act, 1874 attempted to redress the balance by introducing the concept of best practicable means (BPM).The application of BPM was used to widen the scope of the previous emission limits to include all noxious an offensive gases. The limits saw the introduction of

[100] Stuart Bell and Donald McGillivray, *Environmental law,* (5th edn.), Universal Law Publishing Co. Pvt.Ltd. (2001), p. 409.

the first proper emission standards in British Legislation by specifying actual amounts of certain substances per cubic metre of emitted gas. If these emission limits were being met, then it was presumed that any legislation was being complied with and that the best practicable means were being used. The use of the concept of the best practicable means ensured that there was to be a conciliatory and co-operational approach as the Alkali Inspectorate sought a method of enforcement which would not take place 'an undue burden on manufacturing industry'.

Neither of these Act, nor the consolidation Act of 1906, namely, Alkali, etc, Works Regulation Act, 1906, dealt specifically with the control of smoke from either industrial or commercial premises. Attempts were made to control the emission of smoke through such Acts as the Public Health Act, 1875, the public health (Smoke Abatement) Act, 1926 and the Public Health Act, 1936, but these dealt generally with smoke nuisances. These powers could not rid industrial cities of the problems of smoke pollution. The physical evidence of this pollution could be seen on blackened buildings by the frequency of smog. Such smog was caused by fog forming in the winter months and combining with smoke particles to produce a compound of gases which could cut visibility at lower levels. With a heavy concentration of smog hanging over the city and the air was very still and the convection was low. With the onset of these calm conditions, the dispersal of emissions was much more difficult. Such a lethal cocktail was bound to produce tragic effects, but this was fairly minimal until December 1952 when smog descended upon London which did not clear for five days. Nothing unusual was noticed until prize cattle at the Smithfield show started to suffer from respiratory problems. When the smog had lifted, it was estimated that nearly 4000 people had lost their lives as a consequence of smoke and other emissions.[101]

The government immediately responded by setting up the Beaver Committee to report on the difficulties surrounding to

[101] *Ibid* at p. 411.

smoke pollution. The recommendation of the Committee was to introduce a legislation to eliminate particulate emission such as smoke, dust and grit so that such conditions would not arise again. With the introduction of the Clean Air Act, 1956, later supplemented by the Clean Air Act, 1968, controls were introduced for the first time to restrict the production of smoke, dust and grit from all commercial and industrial activities not covered by the Alkali Acts but also, importantly, domestic fires as well. The Acts introduced such concepts as the smoke control areas and the complete prohibition on 'dark smoke' from chimneys.

As we have seen, the control of smoke dust and grit from industrial and domestic fires were largely ineffective in dealing with the problems associated with such emissions in the early part of the twentieth century. Although the public Health (Smoke Abatement) Act, 1926 attempted to control certain categories of industrial smoke, domestic smoke was prohibited only if it amounted to a 'nuisance'. The Clean Air Act, 1956, later amended and supplemented by the Clean Air Act, 1968 provided a comprehensive control mechanism of the environment from smoke, dust and fumes. These Acts were consolidated in the Clean Air act, 1993 hereinafter also called the Act of 1993.

The Legislation controls emission of smoke; also grit and dust. Section 1 of the 1993 Act prohibits the emission of 'dark smoke'[102] from a chimney of 'any building'. This prohibition extends, with appropriate modifications as to the identity of persons liable for the commission of offences, to railway locomotives,[103] vessels within specified coastal waters,[104] and chimneys serving furnaces of boilers or industrial plants attached to or installed on land.[105] Emissions of dark smoke from industrial and trade premises other than via chimneys are generally controlled by the Clean Air Act, 1993.

[102] Section 3(1) of *the Clean Air Act, 1993*, *'as darker as or darker than shade 2'* on a Ringlemann Chart.
[103] Section 43 of the *Clean Air Act, 1993.*
[104] Section 44 of the *Clean Air Act, 1993.*
[105] Section 1(2) of the *Clean Air Act, 1993.*

Under section 4 of the Act of 1993 new furnaces, save those used solely or mainly domestically and having a maximum heating capacity of less than 16 – 12 kilowatts, must be, as far as practicable, capable of continuous operation without emitting smoke when used with design fuel.

Section 14 of the Act of 1993 applies to any furnace served by a chimney. Furnaces must not be used by, or with the permission of, the occupier of a building where they burn pulverised fuel, or a solid matter of a rate of 45.4 kg or more per hour or burn liquid or gaseous matter at a rate of 366.4 kilowatts or more unless the height of the ancillary chimney has been approved, and the conditions of any approval have been complied with.

Under section 18 of the Act of 1993, any local authority may, by order, declare all or any part of their district a 'smoke control area'. Section 19 of the Act empowers the Secretary of State to require authorities to create smoke control areas where it is considered expedient to abate smoke pollution in a particular area. Once an order is in force under section 20, the occupier of any building in the said smoke control area commits an offence if smoke is emitted from a chimney of that building, and similarly if smoke is emitted from the chimney of a furnace, fixed boiler or industrial plant. Once a smoke control order is in operation in an area the local authority has power[106] to require owners and occupiers of private dwellings to adapt their fire places so as to avoid contraventions under section 20 of the Act of 1993.

The secretary of state has power under section 30 of the Clean air act, 1993, for the purpose of limiting or reducing air pollution, by regulation to impose requirements as to composition and content of any motor vehicle fuel, and, where such requirements are in force, to prevent or restrict production, treatment, distribution, import, sale and use of fuels intended for use in the U.K. and failing to comply. Before masking regulations, consultations must take place with representatives

[106] Section 24 of the *Clean Air Act 1993.*

of motor vehicle manufacturers and users, motor vehicle fuel producers and air pollution experts. Regulations may apply standards and tests, etc, laid down in the documents not forming part of the regulations and may authorise the Secretary of state to grant exemptions. Regulations may also require that information as to composition and content of regulated fuel is displayed in prescribed ways. Under these provisions E.U. fuel composition standards are implemented in the U.K.

The 1994 regulations replace previous provisions on lead content of motor fuel and sulphur content of gas oil, and lay down requirements for the composition and content of motor fuel based on British Standards specifications BS 4040: 1988, BS EN 228: 1993, BS 7800: 1992 and BS EN 590: 1993. To distribute a non-complying motor fuel from a refinery or import terminal is an offence, as is the retail sale of such fuel at a retail filling station, subject to certain minor exemptions, for example with regard to experiments in connection with the composition or content of fuel.[107]

Since 1990 the previous legislation has largely been replaced by provisions of the Environmental Protection Act at various dates. The prime issue to note about the environment protection Act, 1990 is that for the most complex processes the scheme of regulation is Integrated Pollution Control (IPC) whereby the Environment Agency has supervision of emissions to all environmental media, such as air, water and land. Less complex processes on the other hand are regulated by the local authorities under the provisions of Local Authority Air Pollution Control (LAAPC). Incidentally the sections in the environment Act, 1990 related to IPC and the LAAPC came into force principally on January 1991.[108]

The 1990 Act is not, however, the recent legislation relevant to atmospheric pollution, though there is the principal enactment under which the United Kingdom (UK) meets its international and European Union (EU) obligations.

[107]David Hughes, *Environment Law* (3rd edn.), Butterworths (1996), p.498.
[108]*Ibid* at p. 471.

The successes of Clean Air legislation are catalogued in 'The Royal Commission on Environmental Pollution' (RCEP) 10th Report. The average urban concentration of smoke index fell from 260 in 1960 to under 40 in 1980. Total industrial and domestic smoke emission from coal combustion declined from almost 2 million tonnes in 1960 to less than 0.5 million tonnes in 1980. This was not, however, entirely due to legislation, but also partly due to changes in fuel usage, technological advance, dispersion techniques, conservation measures and decline in certain industries.

It has been said that it is arguable that the 1993 Act is partly redundant in view of the LAAPC and statutory nuisance powers, particularly with regard to powers concerned with new furnace approval, dust and grit emission rates approval and approval of chimney heights. The government accordingly proposed partial repeal of the legislation in 1993 under the Deregulation and Contracting Out Act, 1994 but such proposal has, however, been resisted by the local authorities who point to the preventive nature of the powers in question, while statutory nuisance controls are essentially reactive. Even so it has to be remembered that the clean air legislation essentially reflects concerns current some thirty-forty years ago and that it takes scant account of the problems of traffic pollution, hence the next major development in law.[109]

The 1990 Act applies generally throughout England, Wales and Scotland, though there are detailed distinctions 'north and south of the border': in particular, of course, Scotland has its own Scottish Environment Protection Agency (SEPA).[110]

The control of air pollution has, as noted above, been a classic example of the use of reactive legal controls to regulate specific problems as they arise. Although the legal controls had been modernised and broadened, it was only in the 1990s that a coherent strategy was developed to deal with the problem of atmospheric pollution. When the then conservative Government

[109] *Ibid* at p. 492-93.
[110] *Ibid.*

published its policy on sustainable development in January 1994, urban air quality was identified as a priority area for improvement. In March 1994, the Department of Environment (DoE) issued a consultation paper on air quality which bluntly described previous policy initiative on air pollution as 'the fortuitous sum of a large number of unrelated regulatory decisions and individual choices'. It was not until the beginning of 1995 that the first steps were taken towards a coherent air quality management system and the Environment Act, 1995 has a variety of framework provisions.[111]

A number of factors led to this acceleration of policy-making. First, there was increase evidence linking health problems with poor air quality, with the increase of the incidence of asthma and other diseases connected with a variety of atmospheric pollutants.

Secondly, the quality of provision of information on air quality was improved with an increase in the number of background monitoring stations. Thirdly, the link between air pollution and transport, in particular motor transport, had become much more pronounced. The RCEPs Eighteenth Report concentrated on environmental effects of vehicle emissions.[112] In addition there has been a range of measures designed to tackle pollution from motor vehicles. Finally, as in other areas of environmental policy, the EC has made moves towards streamlining policy on atmospheric pollution. This culminated in a new framework directive on air quality assessment and management with proposals to set Air Quality Standards for twelve significant pollutants.

The new initiative founded on Part IV of the Environment Act 1995, is designed in particular to ensure cleaner air in towns and cities 'with a view to protecting human health' and is a national strategic plan for maintaining and improving air quality.

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[111] Stuart Bell and Donald McGillivray, *Environmental law,* (5th edn.), Universal Law Publishing Co. Pvt.Ltd, (2001), p. 414.

[112] The pollution from motor vehicles was acknowledged as significant in the *RCEP's First Report* Where the Royal Commission had warned of the dangers of ignoring environmental implications of traffic growth.

It follows on from the government's proposals 'Air Quality: Meeting the Challenge' (January 1995). The Secretary of State is under an obligation by virtue of the 1995 Act to prepare a National Air Quality Strategy (NAQS) which will enable the U.K. to meet International and E.U. obligations. NAQS is to be periodically reviewed and modified throughout the lifetime of the current sustainable development policy. In particular NAQS will contain standards on air quality with reduction targets for all main pollutants; restrictions on the levels at which particular substances are present in the air; measures to be taken by local authorities and other bodies.[113]

Under NAQS it will be a central government duty to identify a target or base standard toward which air quality should move, and alert thresholds which will trigger remedial action if they are exceeded by particular pollutants. The object was to achieve the base target by 2005.

One of the principal concerns of NAQS will be with transport where it is officially accepted progress is needed in order to reduce pollution and improve air quality. To this end the government has adopted five 'key themes' on transport and air quality.[114]

(1) Continued action to encourage improvements in vehicle standards, fuel technology, which entails: full participation both at the E.U. and domestic levels in promoting progressive improvements in vehicle emission standards, enhanced research into fuel and remote sensing of vehicle emission, examination of retro fitting particulate traps to certain diesel powered vehicles.

(2) Development of land and transport planning policies to achieve air quality improvements – this entails increasing emphasis on air quality issues when setting objectives for local authority transport expenditure; development of best practice guides; undertaking

[113] David Hughes, *Environment Law (3rd edn.)*, Butterworths (1996), p. 493.
[114] *Ibid* at p. 495.

further research into traffic management and its impact on air quality; consultation with London authorities on developing a common approach to transport plans and programmes across the metropolis; consideration of establishing air quality monitoring subsequent to road development.

(3) Ensuring that passenger transport, road haulage and taxi services play a full part in bringing about air quality improvements which entails: consultations with relevant undertakings on improving their environmental performance targets being set for, for example, London Transport; greater considerations by Traffic Commissioners of emission performance when considering disciplinary and other action against transport operators; enhanced inspection of taxi exhausts by local authorities with a view to appropriate action; consideration of extending the statutory nuisance regime specifically to cover emissions from vehicle depots.

(4) Tighter enforcement of vehicle emission standards – it is a small minority of offenders who emit the largest amount of pollution.

(5) More effective guidance for industry, commerce and the public.

Motor vehicles contribute 36 per cent of hydrocarbon pollution, 51 per cent of Nitrogen dioxide (NO_x), 89 per cent of Carbon monoxide (CO), 70 per cent of lead, 42 per cent of black smoke and 19 percent of Carbon Dioxide (CO_2). With 24 million road vehicles already and a predicted 115 per cent increase to 51 million by 2025 it is clear, both in the U.K. and throughout the E.U. generally, that merely to control vehicle emissions further will not be enough to prevent environmental degradation. It may well be that NAQS will have to contemplate what to many remains unthinkable: legal restrictions on the use of vehicular transport coupled with financial disincentives for car use and incentives to use revived and extended public transport systems. Air quality plans may: advocate setting up of more

pedestrian only areas; impose speed restrictions; encourage companies to restrict free parking and replace company cars with free public transport passes. As a 'last resort' measures plans could provide for vehicle to be banned from particular roads at particular times.[115]

The Position in the United States of America

The Constitution of the United States of America is a federal one. The government, too, is a Presidential form of government. That means there is more freedom of making laws to the States which is 50 in number.

Public choice arguments for federal environmental regulation in the United States rest a part on the empirical claim that States largely disregard environmental problems before 1970, the year the Congress enacted the first major Federal statutes. At that time the deck was stacked against the State regulation. Federal government is better suited than States to provide scientific information about the adverse health and environmental effects of various pollutants, because of the economies of scale in developing such information. Before 1970, the Federal government did comparatively little in this area and it continues to underinvest in such scientific information even today. The States may not have regulated significantly because they lacked this information. Regardless, the view widely held in the legal literature that the States ignored environmental problems before 1970 is simply not correct. The most extensive research, which focuses on air pollution, shows that States and Municipalities were making considerable strides before the federal regulatory era. In particular, the number of States, counties and municipalities with regulatory programmes to control air pollution was increasing rapidly, and the concentrations of important air pollutants were falling at significant rates.[116]

[115] *Ibid* at p. 496.

[116] Richard L. Revesz, *Federalism and Environmental Legislation: A Public Choice Analysis*, 115 Harv. L. Rev. 578 (2001).

A comprehensive survey of State and local air pollution control found that the number of municipalities with effective controls of air pollution rose to 40 in1920, 52 in 1940, 84 in 1960 and 107 in 1970, and that the number of counties with such controls rose from 2 in 1950 to 17 in 1960 and 81 in 1970.[117]

At the turn of the century, probably most cities in the United States were more closely associated with heavy smoke, poor visibility and dark days.[118] Jurisdictions had passed laws and ordinances but had failed to implement them. Pittsburgh, one of these cities passed a number of smoke control ordinances in the 1890s and the early 1900s, but they were weakly enforced and generally unsuccessful. In 1941, however, Pittsburgh passed an effective smoke control ordinance that triggered an important shift from bituminous coal to the use of smokeless fuels.

In the 1910s, the state efforts at regulation sought to control black smoke in metropolitan areas. By the 1950s and 1960s, the smoke problem had been greatly ameliorated as a result of changes in fuel use, spurred in some cases by municipal programmes such as Pittsburgh. In 1951, Oregon became the first State to create a State Air Pollution Control Agency with broad jurisdiction. California followed in 1957 with a regulatory programme for automobile emission.

By 1960, eight States had general air pollution control laws; another nine had undertaken measures to control air pollution under their general public health laws; and eight others had authorised local air pollution control agencies to transcend municipal boundaries in their regulatory efforts. By 1966, ten states had adopted at least some ambient air quality standards, which covered fourteen substances as well as deposited matter. In addition, six States had emission standards covering some stationary sources.

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[117] Arthur C. Stern, *History of Air Pollution Legislation in the United States,* 32 Journal of Air Pollution Control Association 44, 44 (1982).

[118] *Ibid*

State efforts to reduce air pollution received a boost from passage of the Clean Air Act, 1963,[119] one of the predecessors of the modern federal regulatory regime. Though the Act did not impose regulatory requirements, it made grants-in-aid available to States that adopted air pollution control measures. Perhaps as a result of these incentives, the number of States with regulatory regime increased from eleven in 1963 to fifty by 1969.[120] One commentator has deemed these incentives, rather than the extensive federal regulatory involvement pursuant to the Clean Air Act, 1970, the most significant result of federal air pollution control legislation.[121]

Three studies have attempted to quantify improvements in the ambient air quality levels for sulphur dioxide and particulates before 1970. The studies focussed on these two contaminants because scientists understood their adverse health consequences before the 1970s.

Robert Crandall of the Brookings Institution conducted the first of the studies, using data compiled by the Conservation foundation.[122] The second one was conducted by Paul Portney for Resources of the Future, based on data compiled by the Environmental Protection Agency (EPA)[123] and the final study appears in a book by Indur Goklany,[124] using data compiled by the Council on Environmental Quality (CEQ).

The three studies, which suggest that States responded vigorously to those air pollution problems that were understood at that time, are consistent with the leading analysis of the genesis of the federal environmental legislation. That Study maintains that the 1965 and 1967 predecessors to the clean Air Act, 1970 were responses to industry pressure for federal intervention that would discourage States from more stringent

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[119] *Public Law No.88-206, 77 Stat. 392 (1963)* (codified as amended at 42 U.S.C. ss. 7401-76719(1994 & Supp. V 1999)).

[120] Stern, *Supra* note 118, at pp. 47-48.

[121] *Ibid* at p.48.

[122] Robert W. Crandall, *Controlling industrial Pollution: The Economics and Politics of Clean Air*, 16-22 (1983).

[123] Paul R. Portney, *Air Pollution Policy*, in *Public Policy for Environmental Protection* 27, 28-29, 50-51 (Paul Portney ed. 1990).

[124] Indur M. Goklany, *Clearing the Air: The Real Story of the War on Air Pollution* (1999).

(and non-uniform) standards. But the automobile industry became a supporter of federal standards as a way to avoid disparate and potentially more stringent State standards.

If State political processes exhibit public choice pathologies that undermine the effectiveness of environmental groups, State governments should exhibit less concern about environment problems than does the Federal government.

Not every State is active in environmental regulation. The citizens of some states may prefer more lax environmental regulation than the federal government requires and may therefore have no reason to adopt additional environmental programmes. But many States are adopting innovative forms of regulation and imposing costs on in-state firms.

Motor vehicle emissions reduction plays a critical role in improving national air quality. Emission reductions are being implemented through federal and state regulatory frameworks stressing technology-forcing requirements and allowing relative flexibility in achieving those requirements. Attaining emission reduction targets requires stringent regulations that force industry to develop new vehicle technology. Flexibility within the regulatory framework allows industry to develop the means to focus on cleaner air as an end result. However, conflict between these two principles will arise if the emphasis on technology-forcing requirements overwhelms the choices between competing technologies. From the perspective of renewable fuels such as ethanol and biodiesel this is the problem with the both of the clean-fuel vehicle programs established under the 1990 Clean Air Act Amendments. The 1990 Amendments established two Clean Fuel Vehicle programs: a Clean-Fuel Fleet Program (CFF) and a California Pilot Test Program. The CFF program will be run by the individual states that have not opted out of this program under their State Implementation Plan, while the Pilot Test Program is a federal program administered in California only. The vehicle emission requirements under these programs favour a level of emission reductions that can best be achieved through the use of dedicated-technology vehicles, notably

natural gas and electric. Diesel vehicles might qualify as Low Emission Vehicles (LEV), as long as they meet that emission standard when running on both petroleum-based diesel and/or a renewable-based fuel, and thus be eligible for inclusion. However, as of this date, no such vehicles have yet to be certified by EPA as meeting LEV emission standards. Until this happens, there is no viable role for biodiesel within these two Federal programs. Furthermore, assuming a manufacturer is willing to certify a diesel engine family as meeting LEV standards on both biodiesel and petroleum diesel for use in the CFF programs, the issue of whether or not biodiesel can be considered a clean alternative fuel under the Clean Air Act will remain.

California pioneered the regulation of automobile emission. Its regulatory regime dates back to 1960, when the State enacted its motor vehicle pollution control programme.[125] The first emission control requirements on automobiles registered in California took effect in 1965. The Federal government, however, did not regulate automobile emissions until the passage of the federal Motor Vehicle Air Pollution Control Act of 1965.[126] The first set of federal controls became effective in the 1968 model year.

California's Standards are considerably more stringent than the federal standards established in the Clean Air Act's 1990 amendments. EPA estimated that under the national Low Emission Vehicle (LEV) programme which is no stringent as California's, emissions would approximately lower than under statutory standards prescribed in the Clean Air Act.

After Congress enacted the 1990 Clean Air Act amendments and California adopted its LEV programme, other States began to consider the choice between the California standards and the less stringent federal requirements. These States included Texas, Michigan, Illinois, and Wisconsin, as well as the twelve north-eastern states and the District of Columbia, which

[125] Robert V. Percival, Alan S. Miller, Christopher H. Schroeder & James F. Leape, *Environmental Regulation: Law, Science and Policy (2nd edn.)*, 1996, p.840.

[126] *Motor Vehicle Air Pollution Control Act of 1965*, Pub. L. No. 89-272 Ss 202 (a), 79 Stat. 992.

comprised the Ozone Transport Commission (OTC),[127] an organisation established under the 1990 amendments to combat interstate ozone pollution.

UNITED STATES AIR POLLUTION LAWS WITH AMENDMENTS *(Clean Air Acts of 1955, 1963, 1970, 1990)*:[128] In 1955, after many state and local governments had passed legislation dealing with air pollution, the federal government decided that this problem needed to be dealt with on a national level. This was the year Congress passed the Air Pollution Control Act of 1955, the nation's first piece of federal legislation on this issue. The language of the bill identified air pollution as a national problem and announced that research and additional steps to improve the situation needed to be taken. It was an act to make the nation more aware of this environmental hazard.

Eight years later, Congress passed the nation's Clean Air Act of 1963, this act dealt with reducing air pollution by setting emissions standards for stationary sources such as power plants and steel mills. It did not take into account mobile sources of air pollution which had become the largest source of many dangerous pollutants. Once these standards were set, the government also needed to determine deadlines for companies to comply with them. Amendments to the Clean Air Act were passed in 1965, 1966, 1967, and 1969. These amendments authorized the Secretary of Health, Education, and Welfare (HEW) to set standards for auto emissions, expanded local air pollution control programs, established air quality control regions (AQCR), set air quality standards and compliance deadlines for stationary source emissions, and authorized research on low emissions fuels and automobiles.

By 1970, the issue needed to be addressed again. Although important legislative precedents had been set, the existing laws were deemed inadequate. Although technically an amendment,

[127] The *OTC* consists of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, Vermont, and the Consolidated Metropolitan Statistical Area, which includes the District of Columbia and a portion of Virginia.

[128] *http://www.ametsoc.org/sloan/cleanair/cleanairmobile.html* accessed and viewed on January 12, 2010.

the Clean Air Act of 1970 was a major revision and set much more demanding standards. It established new primary and secondary standards for ambient air quality, set new limits on emissions from stationary and mobile sources to be enforced by both state and federal governments, and increased funds for air pollution research. It was soon discovered that the deadlines set were overly ambitious (especially those for auto emissions). To reach these standards in such a short period of time, the auto industry faced serious economic limitations and seemingly insurmountable technological challenges. Over the next decade, the legislation was once again amended to extend these deadlines and to mandate states to revise their implementation plans. Congress did not amend the Clean Air Act during the decade of the 1980s, in part because President Reagan's administration placed economic goals ahead of environmental goals.

In 1990, after a lengthy period of inactivity, the federal government believed that they should again revise the Clean Air Act due to growing environmental concerns. The Clean Air Act of 1990 addressed five main areas: air-quality standards, motor vehicle emissions and alternative fuels, toxic air pollutants, acid rain, and stratospheric ozone depletion. In many ways, this law set out to strengthen and improve existing regulations.

Air Pollution Control Act of 1955: "An Act to provide research and technical assistance relating to air pollution control"

This was the first federal legislative attempt to control air pollution at its source. It granted $5 million annually for five years for research by the Public Health Service. The act did little to prevent air pollution, but it made the government aware that this problem existed on the national level. It recognized the dangers facing public health and welfare, agriculture, livestock, and deterioration of property, and reserved for Congress the right to control this growing problem.

Amendments of 1960: Extended research funding for four more years.

Amendments of 1962: These amendments enforced the principle provisions of the original act. They also called for research to be done by the U.S. Surgeon General to determine the health effects of various motor vehicle exhaust substances.

Clean Air Act of 1963: "An Act to improve, strengthen, and accelerate programs for the prevention and abatement of air pollution"

This first piece of legislation bearing the name "clean air", in essence, sought to promote public health and welfare. It granted $95 million over a three year period to state and local governments and air pollution control agencies in order to conduct research and create control programs. This act also recognized the dangers of motor vehicle exhaust, and it encouraged the development of emissions standards from these sources as well as from stationary sources. Interstate air pollution from the use of high sulphur coal and oil also needed to be reduced; therefore, this act encouraged the use of technology which removed sulphur from these fuels. To continue action in this area, the Clean Air Act promoted ongoing research, investigations, surveys, and experiments.

Amendments of 1965 (*Motor Vehicle Air Pollution Control Act)*: These amendments focused on establishing standards for automobile emissions. They also recognized the serious problem of transboundary air pollution and promoted research on its damaging effects on the health and welfare of Canada and Mexico.

Amendments of 1966: These amendments, in summary, expanded local air pollution control programs

Amendments of 1967 (Air Quality Act): These revolutionary amendments divided parts of the nation into Air Quality Control Regions (AQCRs) as a means of monitoring ambient air. The government also established national emissions standards for stationary sources, which brought about debate because many officials thought that it should be dealt with industry by industry, but one national standard was set. These standards established a fixed timetable for state implementation plans (SIPs), and

recommended control technologies to achieve the ultimate goals of the SIPs. Again, appropriations were granted to continue research in the area of air pollution control.

Amendments of 1969: Extended authorization for research on low emissions fuels and automobiles.

Clean Air Act of 1970: "An Act to amend the Clean Air Act to provide for a more effective program to improve the quality of the Nation's air."

The amendments in 1970 were an entirely rewritten version of the original Clean Air Act. In principle, it was a law that would show excellent results; however, in the midst of environmental enthusiasm throughout the country, the Clean Air Act proved to be a highly ambitious piece of air pollution abatement legislation. It set National Ambient Air Quality Standards (NAAQS), to protect public health and welfare, and New Source Performance Standards (NSPS) that strictly regulated emissions of a new source entering an area. Standards were also set for hazardous emissions and emissions from motor vehicles. Funds of $30 million went toward research on the growing problem of noise pollution in larger cities. Also, as a new principle, this Clean Air Act allowed citizens the right to take legal action against anyone or any organization, including the government, who is in violation of the emissions standards.

Amendments of 1977: The major debate during the creation of these amendments was that of motor vehicle emissions standards. Ultimately, the deadline to meet them, as well as the deadline to meet the ambient air standards, was extended. Also at this time, the government made its first attempt to prevent the destruction of stratospheric ozone. This law also modified the Prevention of Significant Deterioration (PSD) policy designating regions as one of three different classes. By this time the government realized how ambitious the Clean Air Act of 1970 was; therefore, they passed these amendments to set realistic goals.

Clean Air Act of 1990: "An Act to amend the Clean Air Act to provide for attainment and maintenance of health protective national ambient air quality standards, and for other purposes."

After a decade of virtual dormancy, Congress finally drastically amended the Clean Air Act again to attempt to solve problems of the past as well as deal with new issues. As in the past, the federal government designated states as being responsible for non-attainment areas, but it allowed them to establish deadlines for each source considering the severity of its pollution. It also raised automobile emissions standards and set a definite timetable for reductions in order to tighten control in this area. Through this legislation, the government encouraged the use of low-sulphur fuels as well as alternative fuels as a means of reducing sulphur dioxide in the atmosphere which is a main component of acid precipitation, one of the new problems needing to be dealt with. Also, it mandated the instalment of the Best Available Control Technology (BACT) to reduce the amount of air toxics. The government also called for a reduction in the amount of chlorofluorocarbons (CFCs) being used as a way of preventing ozone depletion, a new issue needing to be addressed.

THE U.S. ENVIRONMENT PROTECTION AGENCY (USEPA/EPA): The U.S. Environmental Protection Agency (EPA or sometimes USEPA) is an agency of the federal government of the United States charged with protecting human health and the environment, by writing and enforcing regulations based on laws passed by Congress.

On July 9, 1970, citing rising concerns over environmental protection and conservation, President Richard Nixon transmitted Reorganization Plan No. 3 to the United States Congress by executive order, creating the EPA as a single, independent agency from a number of smaller arms of different federal agencies. Prior to the establishment of the EPA, the federal government was not structured to comprehensively regulate environmental pollutants. The agency conducts environmental assessment, research, and education. It has the

primary responsibility for setting and enforcing national standards under a variety of environmental laws, in consultation with state, tribal, and local governments. The agency also works with industries and all levels of government in a wide variety of voluntary pollution prevention programs and energy conservation efforts.

Since its inception the EPA has begun to rely less and less on its scientists and more on non-science personnel. EPA has recently changed their policies regarding limits for ground-level ozone, particulates, sulphur dioxide, nitrogen oxides, carbon monoxide and lead. New policies will minimize scientist interaction with the agency and rely more on policy makers who have minimal scientific knowledge. This new policy has been criticized by Democrats. On March 12, 2008, the Federal government of the United States reported that the air in hundreds of U.S. counties was simply too dirty to breathe, ordering a multibillion-dollar expansion of efforts to clean up smog in cities and towns nationwide.

In July 2005, an EPA report showing that auto companies were using loopholes to produce less fuel-efficient cars was delayed. The report was supposed to be released the day before a controversial energy bill was passed and would have provided backup for those opposed to it, but at the last minute the EPA delayed its release.

The state of California sued the EPA for its refusal to allow California and 16 other states to raise fuel economy standards for new cars. EPA administrator Stephen L. Johnson claimed that the EPA was working on its own standards, but the move has been widely considered an attempt to shield the auto industry from environmental regulation by setting lower standards at the federal level, which would then pre-empt state laws. California governor Arnold Schwarzenegger, along with governors from 13 other states, stated that the EPA's actions ignored federal law, and that existing California standards (adopted by many states in addition to California) were almost twice as effective as the

proposed federal standards. It was reported that Stephen Johnson in making this decision, ignored his own staff.

The Supreme Court ruled on April 2, 2007 in *Massachusetts v. Environmental Protection Agency*, that the EPA has the authority to regulate the emission of greenhouse gases in automobile emissions, stating that "greenhouse gases fit well within the Clean Air Act capacious definition of air pollutant." The court also stated that the EPA must regulate in this area unless it is able to provide a scientific reason for not doing so.

Jason K. Burnett, former EPA deputy associate administrator, told the United States Congress that an official from Vice President Dick Cheney's office censored congressional testimony by Julie L. Gerberding, director of the Centers for Disease Control and Prevention. Reportedly, the testimony excluded said that "CDC considers climate change a serious public health concern."

On December 7, 2009, the Agency responded to the Supreme Court's 2007 ruling by releasing its final findings on greenhouse gases, declaring that "greenhouse gases (GHGs) threaten the public health and welfare of the American people". The finding applied to the "six key well-mixed greenhouse gases": carbon dioxide, methane, nitrous oxide, hydro fluorocarbons, perfluorocarbons, and sulphur hexafluoride.

Air (Prevention and Control of Pollution Act), 1981

The Air (Prevention and Control of Pollution Act 1981 is a Centrally legislated law and is in application country wide. This enactment was not the first statute to deal with the pollution of air but it is one of the most comprehensive laws in that particular area and the authorities entrusted and empowered with its application, namely, the Central and the State Pollution Control Boards are autonomous bodies.

GENISIS OF THE AIR (PREVENTION AND CONTROL OF POLUTION) ACT, 1986: The United Nations Conference on Human Environment (UNCHE), in which India has participated as one of the member countries, was held in Stockholm, from June

5 to 16, 1972. Decisions were taken in the Conference to adopt appropriate steps for the preservation of the natural resources of the earth, which, among other things, include the preservation of the quality of air fit for breathing and the control of air pollution. The Government decided to implement these decisions as manifested in the Stockholm declaration with an aim to preserve, protect and improve the environment. Air being one of the ingredients of the environment it became imperative to make laws to regulate air pollution and maintain ambient air quality.

The presence in the air of the various pollutants, with various degrees of poisonousness, discharged from various sources such as industries, vehicles, domestic activities, etc. has had a detrimental effect on the health of human beings as also on animal life, vegetation and property.

The Stockholm Declaration as signed by India as one of the front runner member country obligated the Indian parliament to take certain legislative measures. Firstly a constitutional amendment, namely, the Constitutional (forty-second amendment) Act, 1972, was passed in the Parliament. In addition to this, to implement the decision taken in the United Nations Conference on Human Environment and to adopt an integrated approach for tackling the environmental problem it was decided to have a uniform law on the subject. Thus, a couple of environmental legislations were also passed, namely, the Air (Prevention and Control of Pollution) Act, 1981 and the Environment (protection) Act, 1986.

The said constitutional amendment[129] inserted two new Articles in the Constitution, namely, Article 48-A[130] and Article

[129] See Sections 10 & 11, the Constitution (Forty-Second amendment) Act, 1976. These sections were enforced vide Notification No. G.S.R. 2 (E), dated 3rd January 1977, published in Gazette of India, Extra; Part-II, section 3(i) dated January 1977, p.5.

[130] Article 48A.**Protection and improvement of environment and safeguarding of forests and wildlife** - the state shall endeavour to protect and improve the environment and to safeguard the forests and wild life of the country

51A (g).[131]And this positive development also had far reaching impacts in the environmental law and policy of India.

Another major step towards this direction was the debate initiated in August 11, 1980 in the Lok Sabha on the subject "Rape of the Earth". The late Prime Minister Shrimati Indira Gandhi while speaking on the occasion clarified various aspects of national policy on environmental policy.

Again The National concern for the protection and improvement of the environment was demonstrated on January 23, 1980 when for the first time during the 1980 General Elections the major political parties[132] indicated that the subject of environment transcends political difference.[133] The President of India while addressing the first joint session of the Parliament stressed the need for setting up specialised machinery to maintain the ecological balance. Accordingly the Government of India on February 23, 1980 constituted a high-powered committee under the Chairmanship of the then Deputy Chairman of the Planning Commission to recommend legislative measures and administrative machinery for ensuring environmental protection.[134] The Committee on September 15, 1980 in its report recommended that a Department of Environment should be set up to provide explicit recognition to the pivotal role that the Environmental conservation must play. Thus, the Department of Environment was born on November 1, 1980.

Mean while the Central government appointed a National Committee on Environment Planning and Co-ordination (NCEPC) to act as a high advisory body to the Government. The National Committee on air pollution appointed by the Central government submitted the draft legislation. In pursuance to the above recommendations, the Air Prevention and Control of Pollution)

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[131] Article 51-A (g) **Fundamental Duties** - It shall be the duty of every citizen of India to protect and improve the environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures.

[132] The Congress (I), the Indian National Congress, the Lok Dal, the Janata Party,-etc. *The Hindustan Times*, January 24, 1980.

[133] Again it has been voiced that pollution control should be made a poll issue, *The Hindu Times*, February 3, 1984, p. 3.

[134] Department of Science and Technology, Government of India Resolution No. 1/4/80 dated 29/2/80.

Bill, 1978 was conceived. The said Air (Prevention and Control of Pollution) Bill, 1978 was introduced in the Lok Sabha on April 17 1978.[135] On November 5, 1980 it was again introduces in the Lok Sabha as Bill No. 187 of 1980. The Bill was passed as Bill No. 14 0f 1981 and it received the assent of the President on march 29, 1981 and was published in the Gazette of india on march 30, 1981[136] as The Air (Prevention and Control of Pollution) Act,1981. Under section of the said Act the Central Government is to bring the Act into force on such date as it may by notification in the Official Gazette appoint. Accordingly the Central Government notified[137] on May 15, 1981 that the Act shall come into force from May 16, 1981.

In this section of Chapter II we are going to look into the functioning of the Air (Prevention and Control of Pollution) Act, 1981, hereinafter called the 'Air Act' or simply the 'Act', and how far is it useful to bring about positive changes in preventing, controlling and abating Air Pollution, especially caused by vehicles. We will discuss the issue of sustainable use of automobile and how far will the provisions of the Air Act help us in achieving it successfully.

Thus taking into the abovementioned facts and propositions we look into the facts and circumstances under which the said Act was legislated by the Indian Parliament.

We already know that the then Prime Minister, late Indira Gandhi a signatory on behalf of India was on the forefront of the conference and the reason for her enthusiasm in the Conference on Environment was that India was a developing country. The Air Act was technically enacted under Article 253 of the Indian

[135] The draft bill presented in the Lok Sabha on 17 April 1978 was referred to a joint committee of the two houses under the Chairmanship of Dr. Karan Singh, which presented its report in the Lok Sabha on 18 may 1979. However, the bill lapsed due to the dissolution of the Lok Sabha. It was again presented on 23 December 1980 and was passed by the Lok Sabha on the same date. The bill came up for discussion in the Rajya Sabha on 25 February 1981. The Rajya Sabha passed the bill subject to certain amendments. The amendments proposed by the Rajya Sabha were considered and passed by the Lok Sabha on 23 March 1981.

[136] *Gazette of India, Extraordinary, Part-II*, Section I, No. II dated March 30, 1981, pp. 55-80.

[137] Notification No. G.S.R. 351(E) dated May 15, 1981, published in the *Gazette of India*, Extraordinary, Part 3(1), No. 179, dated May 15, 1981, p. 934-4.

Constitution,[138] a constitutional provision which allows the parliament to legislate laws on any of the lists in the Seventh Schedule[139] of the Constitution with an aim to implement any treaty, agreement or convention, either bilateral or multilateral, or any decision taken at an International Conference, Association or similar bodies.

Thus The Air (Prevention and Control of Pollution) Act, 1981 was one of the legislation created or enacted by the Indian parliament to implement the mandate of the Stockholm declaration[140] with the aid of Article 253 of the Constitution.

It is felt that it would be relevant to at least glance through the Statement Objects and Reasons of the Act or popularly known as the "Preamble" of the Act. We should atleast be informed regarding what led to the birth of the legislation and what were the aims and objective sought by the framers of the enactment. This is done for the simple reason that as we move on to discuss the workings of the Act and how far it would aid in achieving the sustainable use of automobile, the basic or the fundamental objective of the Act, i.e. to prevent, control and abate air pollution, is ingrained in our minds.

The Statement of Objects and Reasons of the Air Act are:

1. With the increasing industrialisation and the tendency of the majority of industries to congregate in areas which are already heavily industrialised, the problem of air pollution has begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are densely populated. Short term studies conducted by the National Environmental Engineering Research Institute (NEERI), Nagpur, have confirmed that the cities of Calcutta (now Kolkata), Bombay,

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[138] *Article 253.*

[139] *Seventh Schedule* consists of three lists, namely, the Union list or List I, the State List or List II and the Concurrent List or List III. There are 97 entries in List I, 66 entries in List II and 47 entries in List III. Usually, the parliament can only make laws on the entries in list I, the State legislatures on entries on List II and both the Parliament and the State Legislature on entries in List III without conflict

[140] *Stockholm Declaration* is the document signed by all the United Member countries attending the United Nations Conference on Human Environment.

Delhi, etc., are facing the impact of air pollution on a steadily increasing level.

2. The presence in air, beyond certain limits, of various pollutants discharged through industrial emissions and from certain human activities connected with traffic, heating use of domestic fuel, refuse incinerations, etc., has a detrimental effect on the health of the people as also on animal life, vegetation and property.

3. In the United Nations Conference on the Human Environment held in Stockholm, Sweden in June 5, 1972, in which India participated, decisions were taken to take appropriate steps for the preservation of natural resources of the earth which, among other things, include the preservation of the quality of air and control of air pollution. The Government has decided to implement these decisions of the said Conference in so far as they relate to the preservation of the quality of air and control of air pollution.

4. It is felt that there should be an integrated approach for tackling the environmental problems relating to pollution. It is, therefore, proposed that the Central Board for the Prevention and Control of Water Pollution constituted under the Water (Prevention and Control of Pollution) Act, 1974, will also perform the functions of the Central Board for the Prevention and Control of Air Pollution and of a State Board for the Prevention and Control of Air Pollution in the Union territories. It is also proposed that the State Boards constituted under the said Act will also perform the functions of the State Boards in respect of prevention control and abatement of air pollution. However, in those States in which State Boards for the prevention and Control of Water Pollution has not been constituted under the Act, separate State Boards for the Prevention and Control of Air Pollution are proposed to be constituted.

5. The Bill seeks to achieve the above objectives.

6. The notes on clauses appended to the Bill explain the detail the various provisions thereof.

As mentioned by the last statement above, there is a Notes on Clauses appended to the Air (prevention and Control of Pollution) Act, 1981 which give the reasons and explanations assigned to the various clauses of the Bill. There are fifty four such notes on clauses. Out of those fifty four notes on clauses relevant ones are mentioned specifically in the course of this Chapter.

The Air (Prevention and Control of Pollution Act), 1981 hereinafter called the Air Act or simply Act 14 of 1981, has been enacted on the lines of the provisions of the Water (Prevention and Control of Pollution) Act, 1974 hereinafter called the Water Act wherever mentioned in this Chapter or simply Act 6 of 1974. The Central and State Pollution Control Boards hereinafter called the Central Board and the State Boards respectively and collectively called 'Boards', created under the Water Act carry out the functions of the Boards envisaged under the Air Act. In the functions of the Boards, the two legislations make identical provisions with regard to criminal and administrative sanctions, powers of the government vis-a-vis the actions of the Boards and the rule making powers of the Central and the State Governments Although the Air Act is a Central statute, executive functions under the said Act is to be carried out in the states by the respective State pollution Control Boards under delegation as permitted by the provisions in Article 258[141] of the Constitution. The Central Government is, however, required to

[141] *Article 258.* Power of the Union to confer powers, etc. on States in certain cases. – (1) Notwithstanding anything in this Constitution, the President may with the consent of the government of a State, entrust either conditionally or unconditionally to that Government or to its officers functions in relation to any matter to which the executive power of the Union extends.
(2) A law made by Parliament which applies in any State may, notwithstanding that it related to a matter with respect to which the legislature of the State has no power to make laws, confer powers and impose duties, or authorize the conferring of powers and the imposition of duties, upon the State or officers and authorities thereof.
(3).....

compensate[142] the States for the cost of carrying out these delegated functions.[143]

The Air Act has been enacted not to eradicate air pollution from the atmosphere absolutely (which is an impossible feat altogether) but it strives to regulate the emissions from various sources of air pollution, both mobile and stationary, such as industries, vehicles, etc. This is done with an aim to preserve the quality of air and the environment in general.

The Act is said to be abound with administrative and practical difficulties to implement as has been admitted and pointed out by the enforcement agencies, such as the boards mentioned below, within some years of the Act being brought into force. Some amendments took place and the most substantive amendment took place in the year 1987 by the Air (first amendment) Act, 1987. But after the coming into existence of the Environment (Protection) Act, 1986 the function of the Air Act has been curtailed since the Environment Protection Act also meets the problems of air pollution. It is called umbrella legislation for nothing.

The Air Act of 1981, as amended in 1987, contains several interesting features.

This enactment has empowered autonomous bodies to implement the Act. These autonomous bodies are in the form of the boards, namely, the Central Pollution Control Board and the State Pollution Control Boards hereinafter called simply the 'Central Board' and the 'State Boards'. The Central Board has been constituted under section 3 of the Act and the State Boards are constituted under section 4 of the Act.

The act also grants discretion on each State government to designate particular areas as 'air pollution control areas'.[144] Within a declared air pollution control area, neither the board nor the State government may exempt the polluter from the

[142] *Ibid* Sub-article (3)
[143] Atul K. Tiwari, *Environmental Laws in India (1st edn.)*, Deep and Deep Publications (2006), p. 63.
[144] Section 19 of *Act 14 of 1981.*

purview of the Act.[145] Polluters located outside such air pollution control areas cannot be prosecuted by the State board, but every industrial operator in within an air pollution control area must obtain a permit, called a 'consent order' in the Act from the concerned State board.[146]

The Act enables a magistrate, not below the rank of a Metropolitan Magistrate or a judicial magistrate of the 1st Class, to restrain an air polluter from discharging emissions[147] and empowers both the Central and the state boards to give directions[148] to industries in pursuant to performing their functions under the said Act, which they are bound to comply and if not followed, can be enforced by the Board by closing, prohibiting or regulating any industry, operation or process. Such directions can be carried out, further, by stopping or regulating the supply of electricity, water or nay other utility service to the said industry, operation or process.

Finally, citizens cannot sue to enforce the Act but to route the air pollution complaint through the respective Boards. But if after giving a notice of period of sixty days of his intention to make a complaint to the Board in the prescribed manner, he may approach the court of a Metropolitan Magistrate or a Judicial Magistrate of the 1st class.[149] In such an event, the citizen can also require the Board to provide him with the relevant reports, e.g. emission data of industries, etc., needed to build his case which may be in the interest of the public.[150]

Procedurally in the Air Act, the Central Board and the State Boards administer a system of consent orders, monitor activities and enforce the law through fines and criminal prosecutions. The Air Act specifies that Central and State pollution control authority is to be exercised by the said Boards.[151]

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[145] *K. Muniswamy Gowda v State of Karnataka*, 1998 (3) Kar. L.J. 594.
[146] Section 21 of *Act 14 of 1981.*
[147] Section 22A of *Act 14 of 1981*
[148] Section 31A of *Act 14 of 1981.*
[149] Section 43(1) of *Act 14 of 1981.*
[150] Section 43(2) of *Act 14 of 1981.*
[151] Armin Rosencranz and Shyam Divan, *Environmental Law and Policy in India (3rd Impression)*, Oxford University Press (2002), p. 245.

The State board is required to carefully examine all relevant facts including the measures taken to prevent pollution, when processing a consent application.[152] Although there is no express mandate in the Air Act requiring community consultation or transparency at this stage, the Supreme Court has intervened to review the Board's decision, where the consent issued affected the community at large.[153]

The Air Act, as a matter of practice, operates in tandem with the environment (Protection) Act, 1986(EPA). Being a self contained statute, the Air Act empowers the State boards to independently notify standards under section 17(g). There is an overlap however. The EPA enables the Central Government to lay down emission standards[154] which are found in the schedules appended to the Environment (Protection) Rules, 1986 (EPR). By operation of section 24 of the EPA, the EPR norms take precedence and hence in practice the State Boards generally re-notify the EPR standards under the Air Act.[155]

The rules framed under the EPA prescriber emission norms for specific industries[156] and general emission which are 'concentration based', 'equipment based' and 'load/mass based'.[157] The general standards apply in the absence of industry specific norms.[158] In addition to emission norms, National Ambient Air Quality Standards (NAAQS) are notified for industrial, residential and rural areas, and sensitive regions.[159] The NAAQS are levels of air quality intended to protect public health, vegetation and property with an adequate margin of safety. Two other major areas where standards have been issued under the EPR are ambient air quality standards in

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[152] *Mahabir Coke Industry v Pollution Control Board,* AIR 1998 Gau. 10.
[153] *Supra* Note 152. p.245.
[154] Section 3 and 6 of the *Environment(Protection) Act, 1986*
[155] Armin Rosencranz and Shyam Divan, *Environmental Policy and Law in India (3rd Impression),* OUP (2002), p. 245.
[156] Schedule I of the *Environment (Protection) Rules, 1986.*
[157] Part D, Schedule VI of the *Rules, 1986.*
[158] Rule 3 of the *Rules, 1986.*
[159] Schedule VII. of the *Rules, 1986.*

respect of noise[160] and emission standards for motor vehicles/automobiles.[161]

The Air Act, as the nomenclature suggests, deals with any activity in the form of an industry, operation or process which pollutes the air and as such provides for taking steps and measures to prevent, control and abate the same. The Act substantially deals with the regulation of air pollution from any industry, operation or process and using an automobile can be very well placed in the category of an operation or process. This placing of the vehicle use in the category of an operation or process has been seriously undermined by section 20 of the Act.[162] The said provision confers upon the state government the power to instruct the registering authority under the Motor Vehicles Act, 1988 to register vehicles only if they comply with the standards laid down by the state board under section 17(1) (g) of the Act.

The specific sections which is directly related with the prevention and control of vehicular pollution is clause (g) of subsection (1) of section 17 of the Air Act[163] which states that one of the functions of the State Board is to lay down, in consultation with the Central Board, the emission standards of air pollutants allowed to be discharged from any source, mobile

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[160] Schedule III. Noise standards are also prescribed under the *Noise Pollution (Regulation and Control) Rules of 2000* framed under the *Environment (Protection) Act, 1986.*

[161] Schedule IV of the Rules, 1986.

[162] **Section 20.** ***Power to give instructions for ensuring standards for emission from automobiles*** – With a view to ensuring that the standards for emission of air pollutants from automobiles laid down by the State Board under clause(g) of subsection (1) of section 17 are complied with, the state government shall, in consultation with the State Board, give such instructions as maybe deemed necessary to the concerned authority in charge of registration of motor vehicle under the Motor Vehicles Act, 1988(Act 59 of 1988), and such authority shall, notwithstanding anything contained in that Act or rules made thereunder be bound to comply with such instructions.

[163] **Section 17. Functions of the Board.** – (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974 (Act 6 of 1974), the functions of the State Board shall be-
(a).....
(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft
Provided that different standards for emission may be laid down under this clause for different industrial plants having regard to the quantity and composition of emission of air pollutants into the atmosphere from such industrial plants.
(h).....

or stationary. Section 20 of the Act which seems to be more substantive in attaining the object of preserving the quality of air and as such preventing and controlling vehicular pollution after taking into consideration the prescribed standards of emissions laid down by the abovementioned section, i.e. section 17(1)(g).

By virtue of these sections, the State Pollution Control Board or simply the State board prescribes standards for emissions of air pollutants from exhaust of automobiles. These standards vary from place to place, standards of urban areas, especially cities, are much higher than the rural areas or smaller towns because of the density of vehicular traffic and such standards for emissions are implemented more stringently in the cities than in the rural towns since the enforcement machinery is more concentrated in the cities and environmental activists with their NGOs are more vigilant here. The State government in consultation with the State board give such instruction as is deemed necessary to ensure that such pollution standards are complied with. These instructions are actually given to the Motor Vehicles Department, the department concerned with the registration of automobiles and other related matters. They are to incorporate these instructions while making their own rules regarding registration of vehicles or while granting permits or certificate of fitness, etc. as the case may be.

Thus, a registering authority dealing with the registration of automobiles under the Motor Vehicles Act, 1988, may refuse to register an automobile even if it fulfils all the conditions required for the grant of certificate of registration as laid down by the Motor Vehicles Act, 1988 but fails to comply with the rules regarding the emission standards as prescribed by the state Board in consultation with the Central Board and instructed by the State government to incorporate in the registration of vehicle rules.

This difficulty does not arise since the transport department has already incorporated the State government instructions

under Rule 115 of the Central Motor Vehicle Rules (CMVR), 1989 and most of the State transport departments have followed suit.

In *Murali Puroshottam v Union of India*,[164] an advocate practicing in the Kerala High Court filed a petition focussing the attention of the court on the menace and consequences of air pollution created through uncontrolled and unmitigated automobile spitting and hence prayed for issuing appropriate directions to the officials concerned for the proper enforcement of statutory measures to reduce or lessen the gravity of the problem. The Court held that the relevant rules have already been incorporated in the Central Motor Vehicle Rules, 1989, taking the obvious cue from section 20 of the Air Act. Rule 115 provides for the fixing of standards for emission of smoke, vapour, etc, from automobiles and directs that every motor vehicle shall be manufactured and maintained in such condition and shall be so driven so that smoke, visible vapour, grit, sparks, ashes cinder or oily substances do not emit therefrom. Rule 115(2) of the Rules states that on and from the date of commencement of the said rule every motor vehicle shall comply with the standards laid down therein. These standards have varied from time to time taking into the considerations the developments taking place in the modern science and technology and its effects in the field of vehicle manufacturing. In this context, the Supreme Court in *M.C.Mehta v Union of India*[165] had directed the registering authorities of the Delhi Administration to register only those vehicles which complied with the Euro I emission standards from the 1st day of June 1999 and further no petrol or diesel driven automobiles were to be registered by the said authorities unless they conformed to Euro II norms (Bharat 2000 standards) with effect from the first day of April 2000.

Further the court observed that Rule 116 of the C.M.V.Rules, 1989 provides for the adoption of tests for smoke as well as Carbon Monoxide level emitted from the automobiles. As already discussed, the rule empowers an officer not below the

[164] AIR 1993 Ker. 297.
[165] (1999) 6 SCC 12 at p. 13.

rank of a Sub-Inspector of Police or a Motor Vehicles inspector to take actions against the errant drivers or person incharge of such vehicles which emit smoke and other pollutants in excess of the emission limit. The Certificate of Registration, Certificate of Fitness and/or Permit, if any, of such automobiles are liable to be suspended or also cancelled under the Motor vehicles Act, 1988.

The Court finally directed the State government to issue relevant instructions, as are deemed necessary, to all authorities incharge of registration of motor vehicles within three months of the date of the order to comply with the legislative mandate enshrined in section 20 of the Air Act, 1981 and also to expedite steps to provide equipment, such as smoke meters and gas analysers to every town. This is a case where the court has expressly made use of section 20 of the Air (Prevention and Control of Pollution) Act, 1981 to check and take measures to reduce vehicular pollution and make sustainable use of automobiles.

In *Santosh Kumar v Secretary, Ministry of Environment, New Delhi,*[166] two writ petitions were filed in the Gwalior bench of the Madhya Pradesh High Court by the petitioner with an intention to curb the menace of air pollution in the city of Gwalior and the surrounding areas. This menace was caused due to the plying of a large number of automobiles using unauthorised kerosene and diesel oil, causing health hazards to the local inhabitants. Here also the court quoted section 20 of the Air Act, 1981 and the relevant rules of the Central Motor Vehicle Rules, 1989, namely, Rules 115 and 116. It held that any vehicle failing to comply with the prescribed standard of vehicular emissions is bound to have its registration certificate suspended together with the permit, if any granted to such vehicle under chapter V or Chapter VI of the Motor Vehicles Act, 1988 unless a fresh 'Pollution under Control' or PUC certificate is obtained by the defaulting vehicle.

[166] AIR 1998 M.P. 43.

Thus, we can see that the provisions found in the Air (Prevention and Control of Pollution) Act, 1981, especially for checking and reducing the pollution of air or curbing the menace of vehicular pollution, is more in the form of a foundation and guidelines. They form the basis of achieving the sustainable use of automobile but the Act itself does not have any prosecuting power against the vehicles since it is empowered more to deal with the immobile sources of air pollutions such as industries, operations and processes. The relevant provision in the Act related to vehicles, namely, section 20 forms the basis as general instructions are given to the transport authorities to incorporate rules regarding the emission standards while framing rules regarding registration of motor vehicles.

It has been discussed above that the specific provision of the Air Act applicable in the case of sustainable automobile use is section 20, which empowers the State Government in consultation with the State Board to give instructions deemed necessary to the concerned authority in charge of Registration, namely, the Regional or State transport Authority, with a view to ensuring that the standards for emission[167] of air pollutants from automobiles laid down by the Board is complied with and the provisions of that section has been given complimentary support by clause (g) of subsection (1) of section 17 of the same Act which actually lays down the prescribed emission norms for the different types of vehicles or same type of vehicles using different kinds of fuel.

In addition to those provisions and keeping in mind that the Act is dominantly put to use in the case of industrial pollution, we can make an attempt to explore whether certain other provisions of the said Act can be used effectively for the achievement of sustainable automobile use. The preamble[168] of

[167] The prescribed emission standards are usually overridden by the prescribed emission standards laid down by the Central government under the Environment (Protection) Act, 1986 and the Rules made thereunder. Actually there is a compromise between the two standards which are almost the same and the objective to be achieved is also similar. The prevailing emission standards are the *Euro IV* norms in the megacities and *Euro III* norms in most of the places in the rest of the country w.e.f. 1st April 2010.

[168] The Statement of Objects and Reasons of the *Air Act.*

the Act is very clear when it expresses that the aim of the Act is to prevent, control and abate air pollution. The second paragraph [paragraph (2)] of the statement of objects and reasons that "the presence in air, beyond certain limits, of various pollutants discharged through inter alia from certain human activities connected with traffic, etc...." has a detrimental effect on the health of the people, vegetation and property. The target mainly are to secure the health of the people, vegetation and property and as such further steps in addition to section 20 read with section 17(1)(g) is very much permitted. The following are some of the provisions of the Air Act which can be usefully applied to achieve the goal of minimising air pollution by motor vehicles and promote the use of automobile sustainably.

At the very outset, the terms used for the application of the Act in general are 'industry', 'operation' and 'process'. The term industry excludes automobiles from the purview of applying majority of the provisions of the Air Act but the terms 'operation' and 'process' can be understood as including automobiles since an engine of a vehicle is activated by a combustion process and the use of a motor vehicle itself is meant to be an operation.

The one provision which can be mentioned that it deters a researcher from delving into the Act to find attractive sections which might help in attaining sustainable use of automobile is section 19. Section 19 of the Act states that the government after consultation with the State Board is empowered to designate particular areas as "air pollution control areas". Further, the State government again in consultation with the State Board can notify the approved fuel to be used in such area together with the use of approved appliance in the premises situated in an air pollution control area. The provisions of the said section apparently seems to exclude application of the major portion of the Air Act to vehicular pollution since a motor vehicle, especially long distance commercial and transport vehicles, cannot be used only in certain restricted air pollution areas. But this provision will be very useful to restrict vehicles from entering congested areas or make the vehicles off limits if

they are not using the approved fuel,[169] for example Compressed Natural Gas (CNG), and making such vehicles off limits the city.[170] This will certainly lower pollution levels in the air in the form of both smoke and noise. Again automobiles can be restricted from entering city limits or congested areas of the smaller towns of a State if certain vehicles, especially polluting ones, do not fulfil the criteria of an approved appliance[171] as notified by the state government in consultation with the respective State Board.

In *Karnataka Lorry Malikara Okkuta v State of Karnataka,*[172] the grievance of the petitioners was that an impugned notification completely banning the entry of vehicles which are aged more than fifteen years old from outer Ring Road in a phased manner, would affect the fundamental right guaranteed under Article 19 (1) (g) of the Constitution. The respondents stated that the impugned notification had been issued to preserve the quality of air and control air pollution and as such give effect to the Air (Prevention and Control of pollution) Act, 1981. the Karnataka High Court upheld the notification but directed the State government to allow some time to the vehicle owners for replacement of old vehicles, in a phased manner and to have the vehicles converted to Compressed Natural Gas(CNG) fuel in a phased manner.

Thus section 19 of the Act can be used very effectively to prevent and control vehicular pollution and in the event promote sustainable automobile use in the country since its provisions have the potential to disallow polluting vehicles or automobiles being used unsustainably.

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[169] Section 2 (d) of the *Air Act*:"approved fuel" means any fuel approved by the State Board for the purposes of this Act.

[170] Section 19(2) of the *Air Act.*

[171] Section 2 (C) of the *Air Act:* "approved appliance" means any equipment or gadget used for the burning of any combustible material or for generating or consuming any fume, gas or particulate matter and approved by the State board for the purposes of this Act.

[172] ILR 2004 KAR 4206: 2004 (6) Kar. L.J. 1.

Section 22 A[173] of the Act [inserted by section 11 of the Air (Prevention and Control of Pollution) Amendment Act, 1987][174] is another provision which can help immensely in the quest for an environment of sustainable automobile use. This provision empowers the Board to approach the court at times of apprehended pollution or when there is an apprehension that the prescribed standards laid down by the board is not complied with by an industrial plant or *otherwise*. The word otherwise would fairly enough be used to include a motor vehicle from polluting, even if it is an apprehension. So the authorities can check a vehicle in a restricted area even if it is using the mandatory approved fuel and appliance but suspects that the emission norms prescribed for restricted areas has not been complied with. The court in such circumstances have wide powers of directing the errant person to desist from taking action which is causing pollution and can even make order of suspending or cancelling the relevant documents of the automobile required for operating it legally. Further it may order the Board itself to implement the direction given to the aforementioned person in a manner specified by the court and all expenses incurred by the Board can be recovered from the polluter as arrears of land revenue or of public demand.

The penalty provisions of section 38 can also be utilised fruitfully since punishment is a deterrent to committing an

[173] 22A. Power of Board to make application to court for restraining person from causing air pollution.
(1) Where it is apprehended by a Board that emission of air pollutant, in excess of the standards laid down by the Board under clause (g) of subsection (1) of section 17, is likely to occur by reason of any person operating an industrial plant or *otherwise* in any air pollution control area, the Board make an application to a court, not inferior to that of a metropolitan Magistrate or a judicial magistrate of the 1st Class for restraining su8ch person from emitting such air pollutant.
(2) On receipt of the application under sub-setion (1), the court may make such order as it deem fit.
(3) Where under sub-section (2), the court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order, -
(a) Direct such person to desist from taking such action as is likely to cause emission;
(b) Authorize the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement all directions in such manner as may be specified by the court.
(4) All expenses incurred by the Board in implementing the directions of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.

[174] Act 47 of 1987 (*w.e.f. 1st April 1988*)

offence. Clause (d) of section 38 states that whoever fails to furnish to the Board or such officer or other employee of the Board any information required by the board or such officer or other employee for the purpose of this Act, commits an offence under this Act. This seems to be a broad proposition empowering the board, its officers or its employees to inquire or ask for information, any vehicle driver or person incharge of such vehicle to furnish the regular Pollution under Control (P.U.C.) Certificate or any other relevant document such as certificate of fitness.

And clause (e) of section 38 states whoever fails to intimate the occurrence of the emission of air pollutants into the atmosphere in excess of the standards laid down by the state Board or the apprehension of such occurrence, to the State Board and other prescribed authorities or agencies, for example, the District Magistrate, the Disaster Management Department, the Heath Department, etc., is also an offence under this Act.

On the violation of the aforementioned provisions of section 38 of the Act, the erring person can be punished with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both. Here it is pertinent to note that the punishment under the Air Act, if attracted, is much higher than the punishment meted out under the Motor Vehicles Act, 1988 for a similar offence.

Again section 39 is a residual penalty provision which states that whoever contravenes any of the provisions of this Act or orders or directions issued thereunder, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention, with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention. This provision makes it possible to attract punishment to the erring person in the form of a driver or any person incharge of an automobile when he violates even

an order made under this act or fails to carry out the directions made under this Act. This is the most prospective penalty provision which can be attached to a person violating the rules and norms of sustainable automobile use.

Section 42 of the Act provides protection to any officer representing government or any member or any officer or other employee representing and of the Board from any suit, prosecution or legal proceeding if in the course of his duty he may make misjudgements as long as it is done or intended to be done in good faith and in pursuance of this Act or rules made thereunder. This will afford a useful opportunity to the people working for the Board and the government in pursuance to fulfilling the objectives of the Act subject to it being done in good faith.

We have in many cases that most of the rogue vehicles violating the emission norms are commercial vehicles, especially the Buses, Trucks and Lorries. These Buses and Lorries are mostly run collectively in the garb of corporations, companies, firms or government departments. To counter this menace, the offences committed by such errant vehicles can make the directors, managers, etc., of the company, firm, etc., for example, private bus companies, and the head of the Departments of government running transport, for example the Delhi Transport corporation (D.T.C.), Karnataka State Road Transport corporation (K.S.R.T.C.), etc. liable for violating the prescribed emission norms laid down by the Board or any provision of this Act. This can be carried ut under sections 40[175] and 41[176] of the Air Act.

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[175] **40. Offences by companies.**
(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was directly in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:
Provided that nothing contained in this sub-section shall render any such 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..
(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, is attributable to any neglect on the part of the of, any director, manager, secretary or other officer of the company, such director, manager, secretary or other

The Environment (Protection) Act, 1986

Environmental pollution is a major crisis of our times. Almost everyone in today's literate society knows about it. This crisis basically erupted from the continued pollution of air, water and soil, which are vital ingredients of nature that support and nurture lives of all living organisms on planet earth. As cardinal realities of nature; air, water and soil, along with fire were once held sacred throughout the ancient world. With the advent of the Industrial Revolution in the mid-nineteenth century, this sacredness gradually vanished from mankind's cultural consciousness giving way to rapid declination in the extent and quality of the environment.

Today's environmental crisis is directly linked to the post Renaissance man's desire to accumulate limitless wealth through senseless exploitation of god given natural resources. Thus, Increase in environmental pollution is directly related to the increase in economic activities of man. In its quest for unlimited wealth our growth oriented society produces unimaginable quantity of waste products on an everyday basis. Along with the exploitation of natural resources, waste products ranging from city garbage and chemical debris to deadly radioactive wastes are responsible for choking the breath of our environment in a huge manner.

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officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation – For the purpose of this section,-

(a) means anybody corporate, and includes a firm or other association of individuals; and

(b) Director", in relation to a firm, means a partner in the firm.

[176] ***41. Offences by Government Departments.***

(1) Where an offence under this Act has been committed by any Department of Government, the head of the Department shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this section shall render such head of the Department liable to any punishment 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..

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a Department of Government and it is proved that the offence has been committed with the consent or connivance of, is attributable to any neglect on the part of the of, any officer, other than the head of the Department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

The idea of accumulating limitless wealth, often expressed as a quantity of wealth that can feed seven generations, is not only weird but extremely vulgar, too. In classical economy, the extent of wealth is measured with the amount of natural resources along with capital and labour, utilized to create that wealth. Therefore, how can one create unlimited wealth from the limited and ever depleting natural resources is anybody's guess. Something seems to be terribly wrong with our logic and principles. Hence if we want to save our environment from the gruesome grip of human greed, some degree of sanity has to dawn upon our senses. A radical shift in our perspective is the need of our times. It would be better for today's man to shift the modern definition of wealth for material gains to the ancient wisdom of human enrichment. In this regard, one /Buddhist sutra in Digha Nikaya offers an illuminating advice: "..... a householder should accumulate wealth as a bee collects nectar from a flower." This has been elaborated by Dr. Lily de Silva, University of Sri Lanka as, "The bee harms neither the fragrance nor the beauty of the flower, but gathers nectar to turn it to sweet honey". Viewing from this particular angle makes the bee, morally and ethically, a more enriched living being compared to modern day man who, due to his insatiable greed, looks contrastingly like an ugly monster

Environment in its generic comprises of air, water, land and the things imbibed as also embedded in the land. Protection of these important elements of mother earth from environmental pollution caused by man is universally recognised to be pressing and alarming need of the hour. It can draw from that human psychology can possibly be moulded by legislative measures rather than moral principles.

In his greed for socio-economic progress and his curiosity to probe of and understand the philosophy of the God's creation, man has initiated the exploitation, not only of his co-humans and other related beings but also the bounty of natural resources. In this process, man has reached an extreme stage of polluting his own surroundings thereby endangering the very peaceful existence and natural living of all beings.

Reports today indicate that environmental pollution is threatening the earth and its inhabitability, in such a manner and to such an extent that by the end of this century the eco catastrophe shall ensure in all probability.[177] "Human Race is like an ape with a hand grenade, nobody can say when he will pull the pin."[178]

The Stockholm Conference on Human Environment (UNCHE) convened by the United Nations Organisation and its declaration, namely, the Stockholm Declaration and Action Programme for the protection of the environment has awakened the mankind and alerted it to undertake all possible ways and means to control the growing pollution on Mother Earth, air and of space, or prepare to face the disastrous consequences which would make life impossible here in the years to come. As a member of the united nation organisation and as a signatory to the Stockholm Declaration, India with the forecast of the adverse impact as a growing menace of environmental; pollution in juxtaposition to the need for improving its economic and industrial progress, has undertaken enactments of a catena of laws of which the Environment(Protection) Act, 1986 is one.

Although there are existing laws, dealing directly or indirectly with several environmental matters, some civil[179] in nature and others criminal[180] in nature, it was found necessary to have a general legislation for environmental protection due to various reasons discussed later. Before the enactment of the Environment (Protection) Act, 1986 hereinafter called simply the environment Act, there were laws dealing with particular mediums of the environment and they were specifically focused on those mediums, namely, water[181] and air[182] or the issue of environmental pollution was being also dealt with by some

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[177] Dr. N. Maheshwara Swamy, *Law Relating to Environmental Pollution and Protection (new edn.)*, Asia law House (1998).

[178] Dasmann, R.F., *Environmental Conservation*, (New York,1976)

[179] Nuisance, Negligence, Strict Liability, etc, under the *Common Law (Torts)*.

[180] Section 289 of *Indian Penal Code*-Public Nuisance; Section 133 of the *Criminal Procedure Code* - Removal of Public Nuisance, etc.

[181] *Water (Prevention and Control of Pollution) Act 1974 (Act 6 of 1974).*

[182] *The Air (Prevention and Control of Pollution) Act, 1981 (Act 14 of 1981).*

constitutional provisions.[183] After all these major areas of issues related specifically to environmental hazards were not covered properly. There also existed some uncovered gaps in safeguards against major environmental hazards such as handling of hazardous substances, such as poisonous chemicals, etc, and issues of environmental safety arising out of those situations. The control mechanisms to guard against some polluting agents, especially the newly discovered chemical compounds, in the environment were inadequate and weak, before this legislation came into existence. Another drawback was the multiplicity of regulatory bodies and as such a need was felt for an authority which could assume the lead role in tackling matters in regard to studying, planning and implementing long term requirements of environmental safety; to give directions and to co-ordinate between various agencies and bodies for a speedy, immediate and adequate response to the emergency situations threatening the environment. Above all a powerful authority was required which could enforce the law to its logical goals without any dissent from agencies, authorities and bodies both enforcing the laws and violating them.

In view of what has been stated above, the Environment (Protection Act, 1986 fulfilled the need for the enactment of such a general and broad-based legislation for environmental protection. The Act would enable the co-ordination of activities of various regulatory agencies, creation of an authority or authorities with adequate powers for the protection and improvement of the environment; regulation of the discharges of environmental pollutants and safeguards and handling of hazardous substances. Speedy responses and as far as possible speedy recoveries at the time of accidents that threaten the elements of environment and deterrent punishment to those who endangers human safety, health environment, in the garb of running their businesses, for their personal gains.

The threat of pollution to the environment has been multidimensional in as much as it may in the form of air

[183] Articles 21, 47, 48-A, etc, of the *Constitution.*

pollution, water pollution, noise pollution, and space pollution, thought pollution, heat pollution, food pollution and pollution caused by birth and death and as also by acts of God. For the better understanding of the subject of environmental protection, it is essential to understand first as to what 'environment' actually is and includes.

Etymologically, the term 'environment' connotes surroundings. It is a composite term referring to the condition in which organisms consisting of air, water, food, sunlight, etc., live and become living sources for all the living and non-living beings including plant life. Environment, simply speaking, is the life support system. It is from the environment that all necessities of life are derived. Clean environment possibly keeps both the mind and the body clean and sound. A sound mind in a sound body obviously helps in achieving prosperity by an individual which in turn contributes to the progress and well being of a country, in general and the world, at large.

'Environment' a defined under section 1(2) of the Environment Protection Act, 1990 of the United Kingdom, includes of all or any of the following media, namely, air, water and land; and the medium of land includes the air within the buildings and air within other natural and manmade structures above and below the ground.

In the United States of America, according to the United States Council on Environmental Quality, 'Environment' means man's total environmental system including not only the biosphere, but also his interactions with his natural and manmade surroundings.

In India 'Environment' according to section 2(a) of the Environment Protection Act, 1986, is defined as follows:

In this Act, unless the context otherwise requires-

'Environment' includes water, air and land and the inter-relationship which exists between water, air and land, and the human beings, other living creatures, plants, micro-organisms and property.

"Environmental Pollution"[184] means the presence in the environment of any "Environmental Pollutant"[185] and environmental Pollutant, means any solid, liquid or gaseous substance present in such concentration as may be, or tend to be, injurious to the environment.

Environmental pollution may be broadly classified into natural and artificial pollutions. Natural pollution includes earthquakes, flood, drought, cyclone, avalanche, etc. whereas artificial pollution includes human activities such as burning of fuel in domestic requirements, industrial pollution and vehicular among other things.

Environmental pollution can further be classified further as Air pollution, Water pollution, Land pollution, Food pollution and radioactive pollution.

The Environment protection Act, 1986 is, in fact, enacted keeping in mind the various economic activities and their consequences, namely, industrialisation, urbanisation, population growth, rise in the number of vehicles, etc. and their fallout, i.e. pollution. The Act specifically covers the industries, manufacturing processes, handling hazardous substances, etc but unlike the Air (Prevention and Control of Pollution) Act, 1981, it does not mention anything specifically regarding vehicular pollution. There are certain provisions in the Act from where inference can be drawn to include vehicular pollution, a feature of the unsustainable use of automobile. Further, the Environment Protection Rules, 1986 lays down the prescribed emission standards to be maintained by the different types of vehicles using different types of fuel. The Rule[186] lays down such standards in one of its schedules.[187]

Automobiles and their contribution to the economy in the modern world cannot be equated with any other mode of surface transportation, but human life, we know, is more important than the economy and vehicles. Though the Environment protection

[184] Section 2(c) of the *Environment(Protection) Act, 1986 (Act 29 of 1986)*
[185] Section 2(b) of *Act 29 of 1986.*
[186] Rule 3 of the *Environment Protection Rules, 1986.*
[187] Schedule IV of the Rules including Annexures I to IV.

Act, 1986, hereinafter simply called the Act is actually not enacted keeping in mind the perils of sustainable automobile use but the pollution of the environment by the handling and management of hazardous substances by almost all the industries, operations and processes. The enactment, however, does not totally skip the area connected with the sustainable use of automobile and as such there are certain provisions enumerated in the few sections of the Act which would be very much applicable to our endeavour, which is the prevention and control of vehicular pollution. It helps us to draw this conclusion since this legislation is enacted with the aim and object to protect and improve the environment and unsustainable use of automobile is one element harmful to the environment and as such this Act has to guard against. A very important feature arising out of the said Act and in connection with the sustainable use of automobile is the Noise Pollution Rules, 2000. Some portions of the Rules of 2000 happen to deal with noise pollution from vehicles, especially horns. This feature arising out of the Act and the Schedules prescribing the emission standards to be maintained by motor vehicles make us believe that there is something in the Act which cares for the sustainable use of automobile.

Section 3(1) of the Act states that subject to the provisions of this Act, the Central government shall have the power to take all such measures as it deems necessary or expedient as for the purpose of protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution. Thus this provision empowers the Central government to take all necessary steps to protect and improve the environment together with preventing, controlling and abating environmental pollution. As per the definition of environmental pollution given in the Act, vehicular pollution qualifies very much as an environmental pollution and the Central government has been invested with the power to take any or all of the measures to prevent, control and abate such pollution as an objective to protect and improve the environmental quality, especially of air. And in doing that it also

helps substantively in promoting sustainable automobile use in the country.

Subsection (2) of section 3 of the Act enumerates various steps and measures that the Central government can take with the aim to execute the function as has been provided by subsection (1) of section 3 aforementioned without having any prejudicial effect in carrying out that general function. All or any of those measures allowed by section 3(2) of the said Act are just directions which are to be followed or undertaken to arrive at the desired result of preventing, controlling and abating environmental pollution with the prime objective of protecting and improving the environment. Out of those steps and measures enumerated in the said provision of the Act only a few can be purposefully utilised for curbing the menace of vehicular pollution with the desired results.

Therefore, the Central Government can take into consideration some of the provisions enumerated in section 3(2) of the Act, namely, co-ordination of the actions by the State Governments, officers and other authorities under this Act, or the rules made thereunder; or under any other law for the time being in force which is relatable to the objects of this Act.

The Central Government has constituted a Central Pollution Control Board, or simply the Central Board,[188] under the Water (Prevention and Control of pollution) Act, 1974 hereinafter called *the Water Act* or the Air (Prevention and Control of Pollution) Act, 1981 hereinafter called *the Air Act*, as the case may be. Similarly, there is a State pollution Control Board[189] or simply the Board in every state and the Central Board act as a State Board in the Union Territories.[190]

These Boards are responsible for carrying out the tasks conferred on them by the Acts, namely, the Water and the Air Acts, to attain the objective of the respective Acts, i.e. the

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[188] Sections 2(a), (b) & 3 of the *Water Act, 1974(Act 6 of 1974)*; *See* also sections 2(f), (g) and 3 of the *Air Act, 1981 (Act 14 of 1981)*.

[189] Sections 2 (a) (h) & 4 of the *Water Act, 1974*; See also sections 2(e), (o), 4 & 5 of *The Air Act, 1981*.

[190] Section 4(4) of the *Water Act, 1974*; See also *section 6* of the *Air Act, 1981*.

prevention, control and abatement of water and air pollution respectively. Presently, there is a Ministry of Environment in the Central and the State Governments by whatever nomenclature, and every now and then one or the other authority is always constituted to report in some facet of environmental pollution and mostly constituted by the governments on the directions of the Courts. The main objective of all these activities is to protect and improve the environment.

This provision of the Act empowers the Central Government to co-ordinate the actions of the aforementioned authorities in the form of Boards, Committees, both governmental and non-government agencies, etc. Such co-ordination is very important and useful. The reason being that an action taken by each such authority, whether the Ministry, the Boards, the Central and the States, the Committees and the agencies, may be independent and different but the objective may be the same. The objective has to be the same obviously and that is basically protecting and improving the environment by preventing, controlling and abating environmental pollution. Thus there will a chain and unity of command and as such team work flourishes. Further the Central Government, represented by the Ministry of Environment and Forests will be at the top of the command pyramid which is powerful in a Democratic set up. That means everybody adheres to its directions and carries out its policy without any reluctance.

Section 3(2) (v) states that the Central Government in pursuant to its function of protecting and improving the quality of the environment and as such preventing, controlling and abating environmental pollution can put restriction on areas in which any industries operations or processes shall not be carried out or shall be carried out subject to certain safeguards. In *M.C. Mehta v. Union of India (Regd. Link Road Filling Station)*,[191] the Central Government in consultation with Ridge Management Board had ordered the shifting of a petrol filling station on the ground that being adjacent to the ridge area the site be developed having attributes of the Ridge, it environment and

[191] (1998) 5 SCC 610.

ecology. The Supreme Court directed that the Link Road Petrol Filling Station need not be shifted from its present location on the ground that the road to which the said petrol filling station adjourns to have not been closed to be part of the Ridge area and as such was subservient to the road. There were already a number of vehicles travelling on that road. The said petrol filling station was deemed to be outside the restricted area and as such it was found to be out of the regulation under section 3(2)(v) of the Environment Protection Act, 1986.

In *M.C.Mehta v Union of India (Regd. Pusa Service Station)*,[192] the Supreme Court directed the M/s Hindustan Petroleum Ltd. And other officials concerned to pass appropriate consequential orders so that the applicant Filling Station gets legitimised at the site where it is working in Karol Bagh. Similarly like the aforementioned Petrol Filling station, this petrol Filling Station had also been asked to be moved from its present location on the adjacent side of the Ridge by a government order. The Court observed: "The case of the applicant is squarely covered by the decision made by this court in *M.C.Mehta v. Union of india*[193] for it is admitted position that the site of the applicant in Karol Bagh is not a part of the Ridge Area but is adjacent thereto and is adjunct to the road passing nearby from which the applicant filling station has access. There is no case made out for the site of the filling station at Karol Bagh being subservient to the purpose of the Ridge."[194]

Again if the Central Government finds it necessary or expedient to constitute an authority for the purpose of exercising powers and performing functions of the Central Government as provide under the Act together with taking the appropriate steps and measures with respect to matters generally connected with the prevention, control and abatement of pollution, It is done so by an order in the form of a notification published in the Official Gazette. It is in this notification that the nomenclature, the name and designation of

[192] (1998) 5 SCC 611.
[193] *Supra* (1998) 5 SCC 610.
[194] *Ibid* at p. 612(para 2).

the members; the nature of functions; the powers allotted (subject to the supervision and control of the government), etc. are specified. And further the powers exercised and the functions performed by the said authority, in the form of a commission or committee, is said to have been done as if such authority has been empowered by the Act itself. Thus the said Authority gets the status of a statutory body.

The Central Government has failed to utilise this power on its own altogether, forget using it beneficially to achieve the aims and objectives laid down in the Act.[195] Almost every time when an environmental crisis occurs in the country, the Supreme Court, on the basis of a petition filed by a public spirited individual or a pro bono publico, goads the government in making use of this provision. Not only does the Court direct the government to do so but it takes active part in constituting such authorities, even to the extent of suggesting the names of prospective members.

The Environment (Protection) Act of 1986 gave the Union Government the authority to act in the interests of "protecting and improving the quality of the environment and preventing, controlling and abating environmental pollution".[196] Recognising the need for expertise in specific cases, the drafters of the Environment (Protection) Act, 1986 also empowered the Central Government to establish committees to handle these individual cases.

Exercising this authority regarding air pollution, especially vehicular pollution, in Delhi, the Central Government through the Ministry of Environment and Forests (MoEF) established one such committee. The said Committee was, actually, constituted under sub-section (3)[197] of section 3 by the Central Government

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[195] See Statement and Objects and Reasons of the *Environment Protection Act, 1986.*

[196] Section 3(1) of the Environment (Protection) Act, 1986.

[197] Sec3 (3). The Central Government may, if it considers it necessary and expedient so to do for the purposes of this Act, by order, published in the Official Gazette, constitute an authority or authorities by such name or names as may be specified in the order for the purpose of exercising and performing such powers and functions (including the power to issue directions under section 5 of the Central Government under this Act and for taking measures with such of the matters referred to in subsection (@) as may be mentioned in the order and subject to the supervision and control of the Central Government and the provisions of such order, such authority or authorities

under the direction of the Supreme Court can be found in *M.C. Mehta v Union of India.*[198] Here, a case *inter alia* dealing with the problems of unsustainable automobile use, the Apex court directed the constitution of a Committee, namely, the Environmental Pollution Prevention and Control Authority (EPPCA), headed by Shri Bhurelal, a distinguished and retired bureaucrat in January 1998.[199] The EPPCA was to prepare and submit a report for the steps and measures to be taken for preventing, controlling and abating air pollution, especially vehicular pollution(a consequence of unsustainable automobile use),and matter related to it in the National Capital Region (NCR) of Delhi.

The Committee consisted of Shri D.K.Biswas, the then Chairman, Central Pollution Control Board (C.P.C.B.); Shri Anil Agarwal; Shri Jagdish Kattar and Smt. Kiran Dhingra including Shri Bhurelal.

This five-member committee was originally composed of representative from the Central Pollution Control Board, the Automobile manufacturers Association of India, the Centre for Science and Environment (an Environmental NGO), the Transport Department and the Central Vigilance Commission.[200]

The Committee was designed to express the interests and expertise of the major affected parties and thus, the Supreme Court has consistently looked into the Committee as its fact finding commission and has relied almost exclusively on its findings when arriving at its decagons in the *Delhi Pollution Case.*[201]

The Bhurelal Committees' legality has been reiterated by the Apex Court time and again and the Committee's directions and findings has been accepted and incorporated as part of its

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may exercise the powers or perform the functions or take the measures so mentioned in the order as if such authority or authorities had been empowered by this Act to exercise those powers and perform those functions or take such measures.

[198] (1998) 5 SCC

[199] *Ministry of Environment and Forests (India),* Order (January 29, 1998).

[200] *Ibid.*

[201] A series of decisions, namely, *M.C.Mehta V Union of India* arising out of the original Writ (Civil) Petition no. *13029* of *1985.*

orders. The Supreme Court expressing the legality and further establishing the powers and functions of the Committee has observed, in M.C.Mehta v Union of India[202] as follows:

"The Bhurelal Committee had been set up under the Environment (Protection) Act and it was directed by this Court that the Committee could give directions towards effective implementation of the safeguards of Environment Protection Act, more particularly in matters aimed at preventing air-pollution. Directions issued by the Bhurelal Committee have, thus, legal sanctions and when accepted and incorporated by this Court become a part of its order, binding on all parties. Besides, directions given for safeguarding health of the people, a right provided and protected under Article 21 of the Constitution, would override provisions of every statute if they militate against the constitutional mandate of Article 21."[203]

The Bhurelal Committee has really been true to its objectives, i.e. the prevention and control of air pollution in Delhi, especially vehicular pollution, and is still functioning under the auspices of the Environment Protection Act, 1986. It is ably assisting the Supreme Court in containing the air pollution due to unsustainable automobile use and some of its findings as has been published in its reports have been very useful for the directions it issues under the armour of the Supreme Court orders. These directions in the Supreme Court orders have proved to be novel in comparison to the steps taken by the government for the same cause before the petition (which gave rise to the Comprehensive Delhi Pollution case) found its way into the portals of the country's highest and top most judicial forum.

In addition to the function of co-ordinating the actions of the State governments, officers and authorities mentioned in clause (i) of subsection (2) of section 3, there are some important provisions mentioned in the same section, i.e. the

[202] AIR 2001 SC 1948.
[203] *Ibid* at p. 1950 (para 7).

measures which are very important for the curbing of vehicular pollution.

These measures include the planning and execution of a nation-wide programme for the prevention control and abatement of environmental pollution;[204]laying down standards for the quality of environment and its various aspects[205]and laying down standards for emission or discharge of environmental pollutants from various sources whatsoever and provided that different standards for emission or discharge may be laid down under this clause from different sources having regard to the quality or the composition of the emission or discharge of environmental pollutants from such sources.[206]

In this count, The Central and several State governments have taken various steps to make the people aware from the harm and dangers of vehicular pollution in particular and environmental pollution in general. They have urged the Non-Governmental Organisations (NGOs) acquainted with the perils of environmental pollution, to undertake research work and submit the reports of such research works for relative and relevant action to be taken. Also organising seminars, conducting workshops, performing street plays, etc. to train various target groups and stakeholders, like Motor Vehicles department personnel, Traffic policemen, drivers of various vehicles, petrol pump attendants, etc. The Supreme Court even went to the extent of directing the government, media and other related authorities to make use of the media, both electronic and print, to create such awareness in the society and also pressed for making the subject of environment protection as part of the teaching curriculum in the school and colleges. Accordingly the schools and college syllabi have included environmental law as part of their curriculum and such the subject has been made compulsory, meaning that failing in that subject would deprive a student from promotion.

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[204] Section 3(ii) of *the Environment (Protection) Act, 1986 (Act 29 of 1986).*
[205] Section 3(iii) of Act 29 of 1986.
[206] Section 3 (iv) of Act 29 of 1986.

In the exercise of the power to take measures enumerated in section 3(2) (iv) of the Act, the government has laid down standards for emission or discharge of environmental pollutants. Such standards are to be maintained by the person incharge of the source which emits such pollutants, for example, in the case of an automobile, the driver or person in charge of such motor vehicle will have to maintain the prescribed standard of vehicular emissions as has been laid down under the Act and the Rules made thereunder.[207]

According to Rule 3 of the Environment protection Rules, 1986 hereinafter simply called the Rules, 1986, the standards of emission or discharge of environmental pollutant from various sources, both mobile and stationary, such as industries, operations and processes, are specified in Schedule Ito IV of the Rules,1986. The standards to be maintained by vehicles of different types and using different fuels as laid down in the various annexure of the said Schedule IV of the Rules, 1986.

There are four annexures contained in the Schedule and each of them has separate functions. Annexure I of the Schedule lays down the mass emission standards for petrol-driven vehicles. The breakdown of operating cycle used for the emission test has been specified in annexure 2. The reference fuel for all such emission tests has been specified in annexure 3 and finally the diesel-driven vehicles are to c0omply with the mass emission standards based on the standard gas opacity which is specified in annexure 4 pt Schedule IV of the Rules 1986.

The Schedule also consists of some paragraphs explaining the contents of the schedules. One of the said paragraphs, namely, paragraph 7, explains the method of conducting tests and that is as follows:

(a) Any officer, not below the rank of a Sub-Inspector of police or an Inspector of Motor Vehicles, who has reason to believe that a motor vehicle by virtue of

[207] Relevant rules are framed in the exercise of the power conferred on the government under sections 6 and 25 of *Act 29 0f 1986.*

smoke or pollutants, like Carbon Monoxide, Sulphur Dioxide, etc, emitted from it is likely to cause environmental pollution and as such endangering the health or safety of the public or any other user of the road, may direct the driver or the person in charge of such vehicle to submit the vehicle to undergo a test for measuring the emission standard of the smoke of any of the aforementioned pollutants.

(b) The said driver or person incharge of such vehicle shall upon demand by any officer referred to in sub-paragraph (a), subject the vehicle for the purpose of measuring the standard of smoke or the standard of any of the pollutants. Here the driver or the person in charge of such vehicle cannot take the defence that he possesses a valid 'pollution under control" (P.U.C.) certificate. Usually a pollution under control certificate issued by an authorised Emission Control testing centre is valid for six months. But such order of the said officer cannot be dispensed with by merely producing a valid P.U.C. certificate. Thus, a driver or a person in charge of an automobile ordered to undergo a test cannot refuse to do so by contending that he already has a valid P.U.C. certificate in his possession.

(c) The measurement of smoke emission standard shall be done by a smoke meter of a type approved by the State Government and the measurement of other pollutants, namely, carbon monoxide, sulphur Dioxide, etc, shall be done with appliances approved by the State Government.

The procedure to be followed for conducting a test for the purpose of measuring the standard of smoke emission or standard of any of the other pollutants aforementioned given in paragraph 7 of Schedule IV of the Environment Protection Rules, 1986 is similar to that of Rule 116 of the Central Motor Vehicles Rules (CMVR), 1989. The only difference that lies between them is that Rule 116 of the CMVR, 1989 is more detailed and it also consists of penal provisions for violating the same. Whereas

neither the Environment Protection Act, 1986 nor the Environment protection Rules contain any provision which is related to the violation of prescribed emission norms for vehicles laid down under them. Thus Neither the Environment Act nor the Rules made thereunder contain any provision which can be used for enforcement at a time when an automobile violates the prescribed emission standards laid down under the said Act.

Since there are two other statutes(already discussed earlier), namely, the Motor Vehicles Act, 1988 and the Air(Prevention and Control of Pollution) act, 1981 which are very much involved in dealing with the problem of unsustainable use of automobile and that too, substantially. Here it is pertinent to mention section 24 of the Environment Protection Act, 1986 herein after called simply the Act of 1986.

Section 24 of the Act of 1986 states that subject to the provisions of subsection (2), the provisions of this Act and rules or orders made therein shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act. This clearly means that by virtue of the non-obstante clause, the provisions of the Act of 1986 and the rules made thereunder or the orders issued therefrom shall have an overriding effect over any other legislation dealing with a similar issue, most probably, the protection and improvement of the environment. But this is subject to the provision in subsection (2) of section 24. Section 24 subsection(2) states that where any act of omission constitutes an offence punishable under this Act and also under any other Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act. This provision explains that even though the Act of 1986 prevails over any other statute while giving effect to the provisions of this Act. But once the person is found guilty and that there is punishment for similar offence in the other statute, then the guilty person will be penalised under the other enactment.

Therefore, if a driver or a person incharge of an automobile has maintained the motor vehicle in such a way that it fails to

comply with the prescribed emission standards or standards of discharge of air pollutant, he has, in fact, violated provisions both the Environment Protection Act, 1986 and the Motor Vehicles Act, 1988.[208] According to section 24(2) of the Act of 1986, the driver of the person incharge of the automobile will be penalised and as such fined under the Motor Vehicles Act, 1988 in the aforementioned circumstances. Further the Act of 1986 does not have any specific penal provision that would enable the authority to penalise the erring driver or person incharge of the automobile.

If such an offence is also an offence under the Air (Prevention and Control of Pollution) Act, 1981, then the offender, on conviction, would have to be punished under this act instead of the Environment Protection Act, 1986. But the fact is that, again the Air Act, 1981 does not have any specific penal provision in respect to vehicular pollution or in the event of not maintaining the prescribed emission standards.

Finally in this situation, the errant driver of the person incharge of such motor vehicle would be liable under the Motor Vehicles Act, 1988 (Act 59 of 1988) or the other enactment as notified under section 24(2) of the Environment protection Act, 1986.

The Motor Vehicles Act, 1988 imposes a fine on the errant driver or the person incharge of the Motor vehicle together with the owner of such vehicle, if any, under section 190(2)[209] for failing to comply with prescribed emission norms.[210] Such offence can also render his registration certificate and permit, if any, to be suspended by the Registering authority unless the vehicle is repaired and made compliant of the prescribed emission standards. Further, such order of suspension of the Registration certificate and permit can be converted into a cancellation order of the same.

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[208] Section 190 of *the Motor Vehicles Act, 1988 (Act 59 of 1988).*

[209] Section 190(2): Any person who drives or causes or allows to be driven, in any public place a motor vehicle, which violates the standards prescribed in relation to road safety, control of noise and air pollution, shall be punishable for the first offence with a fine of one thousand rupees and for any second or subsequent offence with a fine of two thousand rupees.

[210] See *Schedule IV* of the Environment Protection Rules, 1986.

The Indian Penal Code, 1860

'Nuisances' are conducive to the injury, destruction, danger or annoyance of a person or persons collectively. In the Indian Penal Code hereinafter simply mentioned as the Code of 1860, Chapter XIV which includes sections 268 to 294 deals only with such nuisance which affects the public. The definition given in section 268 makes this sufficiently clear. The rest of the chapter then describes and provides punishments for specific nuisances – those not so covered being punishable under the residuary provisions of Sec.290. There are eleven principal cases of nuisances specifically dealt with.

Section 290 provides punishment for public nuisance, which otherwise is not punishable under the said enactment, with a fine which may extend to two hundred rupees and as such refers to cases not otherwise provided for in the Code. These sections then include all that is regarded as nuisance in English law. Besides them, there are other cases of minor nuisances against which provision has been made in the various special and local laws dealing with the health and sanitation of towns and urban areas.

Chapter XIV of the Indian Penal Code deals with various kinds of offences related to Public Nuisance. It is an offence affecting the public health, safety, convenience, decency or morals. According to Blackstone, "common nuisances are a species of offence against public order and the economic regimens of the State; being either the doing of a thing to the annoyance of all the King's subjects, or neglecting to do a thing which the common good requires.[211] A nuisance, nocumentum, or Annoyance signifies anything that worketh hurt, inconvenience or damage. Public or common nuisance is one of the two kinds of nuisance – other being private nuisance[212] also known as private wrong affecting as they do only a member of the public and not the public generally, and redressible by a civil action. Where, however, being injurious to a private person,

[211] Hawk, P.C. 197, cited in 4 Black. 166 seen in Dr. Sir Hari Singh Gaur's *Penal law in India,(10th edn.)*, Law Publishers (India) Pvt. Ltd.(1996),

[212] See Chapter 5: *Common Law Liability.*

they are detrimental to the public they are treated as public nuisance, and are then punishable by a public prosecution.

There is no statutory definition of a public nuisance in English law. One such definition was attempted by the authors of the Digest of Criminal Law from which the Indian Law Commissioners have largely borrowed for the purposes of this Code.[213]

This statute deals also with other cases of nuisances, referred under appropriate sections and considered as offences. Chapters X (sec 133 - 146) and XI (sec.144) of the Criminal Procedure Code, 1973 hereinafter called the Code of 1973, prescribe the procedure relating the abatement of nuisances, Sec 144, Cr.P.C dealing with a nuisance in case of urgency. The powers conferred by those sections on certain magistrates are confined to the nuisances described in sec.133 which however is another working definition of the term. Proceedings under chapter X. of the Cr.P.C are optional and the fact that no proceedings were taken under the Criminal Procedure Code cannot be pleaded as a bar to prosecution under this section.

Section 268- *A person is guilty of a public nuisance who does an 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, or danger or annoyance to persons who may have occasion to use any public right.*

Public nuisance of common nuisance is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general, or by neglecting to do anything which the common good requires. It is an act affecting the public at large, or a considerable portion of them; and it must interfere with the rights which members of the community might otherwise enjoy. It depends in a great measure upon the number of houses and the concourse of people in the vicinity; and the annoyance or neglect must be of a real and substantial

[213] *Chapter XIII*, Art.1

nature. Acts which seriously interfere with the health, safety, comfort, or convenience of the public generally, or which tend to degrade public morals have always been considered public nuisances. Any trade which can be shown as to render the enjoyment of life and property uncomfortable may be public nuisance.

Persons who conduct 'offensive' trades and thereby pollute the air, or cause loud and continuous noises that affect the health and comfort of those dwelling in the neighbourhood are liable to prosecution for causing a public nuisance. The penalty of this offence is merely is Rs. 200, which makes it pointless for a citizen to initiate a prosecution under section 268 by a complaint to a magistrate.

Thus unsustainable automobile use which results in the belching of smoke consisting of poisonous fumes (we have already discussed this earlier) and unreasonable noise affecting the health and peaceful environment of the public can be dealt with effectively under section 268 of the Indian Penal Code hereinafter called simply the Code of 1860. Again, we will see later that section 278 of the Code would provide a more useful measure to control vehicular pollution in particular and thus promote sustainable automobile use in India.

In *Venkataramaiah v State of Karnataka*, the Karnataka high Court held that it is not a *sine qua non*(a condition precedent) that annoyance should injuriously affect every member of the public within its range of operation. It is sufficient that it should affect people in general who dwell in the vicinity. But it is not sufficient proof under this section to say that the complainant and a few of his tenants represent the people in general who occupy property in the vicinity, there being no other people dwelling in the unpleasant range.[214]

Public nuisance can only be subject of one indictment, otherwise a party might be ruined by a million suits and such indictment will fail if the nuisance complained of only affects one or a few individuals.

[214] *K.T.Hing v I.N.Silas*, (1929) 57 Cal 849.

Again a common nuisance is not excused on the ground that it causes some convenience or advantage. It is immaterial whether the act complained of is convenient to a larger number of public than it inconveniences, but the fact that the act complained of facilitates the lawful exercise of their right by any part of the public may show that it is not a nuisance to any of the public.[215]

No prescriptive right can be acquired to maintain, and no length of time can legalise a public nuisance though in private nuisance or nuisance of tort can be acquired legally by prescription and it is one of the effectual defences of the tort of nuisance.[216]

Vehicular pollution, being one of the major components of Air pollution, is directly related to Public nuisance because vehicles are plying in areas habited by the public and smoke and noise have been found to harm and injure the health and convenience of the people.

Some sections in Chapter XIV Indian Penal Code which has a bearing in various degrees on vehicular pollution are:

Section 278 - *Making atmosphere noxious to health;*[217]

Section 279 - *Rash driving and negligent riding on a public way;*[218]

Section 285 - *Negligent conduct with respect to fire or combustible matter;*[219]

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[215] *Stephen's Digest of Criminal Law, (9th edn.)* Art 235.

[216] *The Commissioner of the Suburbs of Calcutta v Mahomed Ali,* (1871) 7 Beng LR 499

[217] **278. Making atmosphere noxious to health.** - Whoever voluntarily 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 which may extend to five hundred rupees.

[218] **279. Rash driving or riding on a public way.** – Whoever drives any vehicle, or rides, on a public way in a manner so rash or negligent so as to endanger human life, or to be likely to cause hurt or injury to any other person, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

[219] **285. Negligent conduct with respect to fire or combustible matter.** – Whoever does, with fire or any combustible matter, any act so rashly or negligently to endanger human life, or to be likely to cause hurt or injury to any other person,

Section 287 – *Negligent conduct with respect to machinery;*[220]

Section 290 – *Punishment for Public Nuisance in cases not otherwise provided for.*[221]

Section 291. - *Continuance of nuisance after injunction to discontinue.*[222]

According to section 278[223] of the Code of 1860 anybody who makes the atmosphere noxious to health of persons in the neighbourhood or passing along a public way shall be punishable with fine which may extend to five hundred rupees.

Unlike contamination of water, contamination of air in the atmosphere under aforementioned section affects the neighbours. It is an element of the offence that the vitiated atmosphere should be injurious to health of the neighbours or of those who pass along a public way.

Though concepts of air and ecological pollution were rather new at the time of the codification of the I.P.C. It must be credited to the first Law Commission, drafting the Code of 1860 as they did it in the first half of the nineteenth century, were not obvious of the social needs.[224]

Or knowingly or negligently omits to take such order with any fire or combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter,

Shall be punished with imprisonment of either description for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

[220] **287. Negligent conduct in respect to machinery.** – Whoever does with any machinery any, act so rashly or dangerously as to endanger human life or to be likely to cause hurt or injury to other person,

Or knowingly or negligently omits to take such order with any machinery in his possession or under his care as is sufficient 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 fine which may extend to one thousand rupees or with both.

[221] **290. Punishment for Public Nuisance in cases not otherwise provided for.** - Whoever commits a public nuisance in any case not otherwise punishable by this Code shall be punished with fine which may extend to two hundred rupees.

[222] **291. Continuance of nuisance after injunction to discontinue.** - Whoever repeats or continues a public nuisance, having enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance, shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both.

[223] *Supra* Note 218.

[224] Ratanlal & Dhirajlal's *Indian Penal Code,* (27th edn.), Wadhwa and Company (1992), p.283.

Section 279[225] requires two things, namely, (1) Driving of a vehicle or riding on a public way; and (2) Such driving or riding must be so rash or negligent as to endanger life or is likely to cause hurt or injury to any other person.

The two ingredients of section 279 qualify for an unsustainable use of vehicle. Here not only it affects the health comfort convenience such offence directly relates to the safety of the public, a very important feature of unsustainable automobile use. It is connected with directly injuring and harming the public or any person on the roads even to the extent of killing him. When we talk of affecting the health and safety of the public by smoke and its poisonous cancer creating ingredients or unbearable noise the consequence appears to be indirect whereas a vehicular accident due to rash and negligent driving results in the harm, injury or even death of a person directly.

Section 285[226] and 287[227] states that anybody who does an act so rash or negligently with fire or any combustible matter so as to endanger life or cause hurt or injury to any other person and anybody who does any rash and negligent act with any machinery as to endanger human life or cause hurt or injury to other person shall be punished with imprisonment for a period which may extend to six months or fined up to rupees one thousand for each count respectively.

Both this sections can be taken together because they are connected with the fuel (combustible matter) and engine (machinery) and this term is very much connected with automobiles. Collectively the said sections indicate that they can be utilized to curb unsustainable automobile use if we take into consideration the meaning of an automobile given under the Air (Prevention and Control of Pollution Act) 1981. Section 2(e) of the aforementioned Act states that *an automobile means a vehicle powered either by internal combustion engine or by any*

[225] *Supra* Note 219.
[226] *Supra* Note 220.
[227] *Supra* Note 221.

method of generating power to drive such vehicle by burning fuel.

Machinery is dangerous to human life if proper caution is not taken to its working. Thus, If such automobile is not maintained properly or any act is carried out negligently or rashly so as to make the automobile emit a lot of smoke and as a result of that failing to comply with the prescribed emission standards as laid down by the authorities, an action can be brought under this Code. Such action can render the offender liable to imprisonment to the extent of six months (or one year together) or fined to the extent of one thousand rupees (two thousand in total) or with both.

Section 290[228] of the Code of 1860 provides for the punishment of a nuisance falling within the four corners of the definition of public nuisance given in section 268 of the said Code but not punishable under any other section. It functions as a residuary penal provision in regard to public nuisance. Thus it is suitable to attract the wrongs of not making sustainable automobile use by any person who cannot be dragged to court under any of the prior or earlier provisions of Chapter XIV of the Indian Penal Code, 1860.

In *Kurnool Municipality v Civic Association, Kurnool* [229], it was held that a Municipality can be convicted for not maintain the cleanliness of the town under section 290.

The Kerala High Court held in *K.Rmamakrishnan v State of Kerala*[230] that smoking, in any form, in a public place is a public nuisance and cases can be filed under section 290 of the Code of 1860. The Court further has popularly stated that cigarette smoking in public is violative of the right to life provided under Article 21 of the Constitution.

Finally section 290 of the I.P.C. punishes a person repeating or continuing a nuisance after he is enjoined by a public servant not to repeat or continue the said offence. Here it

[228] *Supra* Note 222.
[229] 1973 Cr.L.J. 1277 (AP)
[230] AIR 1999 Ker 385.

is pertinent to mention that sections 142 and 143 of the Code of Criminal Procedure, 1973 empower a magistrate to forbid and act causing public nuisance.

This section is bound to be attracted at times of an offence committed under this chapter, namely, Chapter IV, since the offender is bound to repeat or continue since the punishments are negligible and further a man is by nature commits petty wrongs similar to that laid down in the said Chapter of the Code of 1860.

Since the punishments provided for the violation of the aforementioned provisions of the Code of 1860 connected with the different aspects of environmental pollution, especially air pollution here, are too meagre, looking to the gigantic problem of environmental degradation and its effect on public health. Thus, most of these provisions are found to be ineffective and are not very helpful in curbing the problem of environmental pollution.

The Code of Criminal Procedure, 1973

PREVENTIVE AND PRECAUTIONARY MEASURES: The primary object of the Criminal Procedure Code, hereinafter called Cr.P.C. or simply the Code of 1973, is to provide machinery for the administration of the substantive criminal law. The Code therefore enacted elaborate provisions as seen in the proceeding chapters, for investigation, inquiry and trial in respect of every crime alleged to be committed. In addition, it was felt expedient and necessary in the Code certain pre-emptive measures for prevention of crime and certain other precautionary measures for the protection and safety of the society. These matters are contained in Ss. 106-124 and Ss. 129-153.

The chapter is divided into six parts and among other things part IV discusses the provisions for the removal of nuisances (Ss.133-143).

The preventive actions of the police are discussed in part I (Ss.149-153); they are purely executive in nature. The preventive and precautionary measures contemplated by the

other parts are quasi judicial and quasi executive in nature, and the police cannot take action on their own unless backed by an order of the Executive or the Judicial Magistrate concerned.

Part IV considers the provision relating to removal of public nuisances. The circumstances creating public nuisances are not as dangerous as those mentioned in the other abovementioned parts; however as they are reasonably fraught with potential dangers, he magistrates are empowered to take suitable action for removal of all such nuisances.

Section 133 is designed to afford a rough and ready procedure for removal of nuisances, and is intended to be used in urgent cases.[231] The public nuisances no doubt are not as dangerous as the situations requiring the use of security proceedings, nor are their removal so urgent as the dispersal of unlawful assemblies; however they are yet fraught with potential danger requiring summary action for their removal.

The provisions of the Code of Criminal Procedure provides a mush speedier and summary remedy against public nuisance, in comparison to the Air (Prevention and Control of Pollution) Act, 1981 hereinafter mention simply as the Air Act, the Water (Prevention and Control of pollution) Act, 1974 hereinafter mentioned simply as the Water Act and the Environment (Protection) Act, 1986 hereinafter Called the Environment Act. The reason being that these enactments provide cumbersome procedure for prosecution.

Criminal law provisions as contained in sections 268, 277, 278 and 290 of the Indian Penal Code and the provisions of Chapter X (sections 133 to 143) of the criminal Procedure Code of 1973 provide effective, speedy and preventive remedies for public nuisance cases sanitary conditions ,air, water and noise pollution.

The remedies are quite old but during the recent years the higher judiciary has imparted new dimensions to these remedies by their extensive construction to enable citizens to bring actions

[231] The Law Commission of India,37th Report, p.91, para 330

against the public bodies to force them to be vigilant to keep the environment unpolluted. The public duty of the Magistrates, namely, the District magistrate, the Sub-Divisional magistrate, or any other executive magistrate, empowered by the Code to come to the rescue of hapless citizens in such cases have been emphasized.

Section 133 of Cr.P.C. empowers a magistrate to pass an order for the removal of a public nuisance within a fixed period of time. The District Magistrate (D.M.) or a Sub-Divisional magistrate (S.D.M.) or other Executive Magistrate, specifically empowered in this behalf may make such an order on receiving the report of police-officer or other information (including complaint made by a citizen and on taking such evidence as he thinks fit. If he considers among other things –

(a) That any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or

(b) That the conduct of any trade or occupation, or the keeping of any goods 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 goods or merchandise should be removed or the keeping thereof regulated; or

(c) .....; or

(d) .....; or

(e) .....; or

(f) .....;

Such Magistrate can make a conditional order requiring such person causing such obstruction or nuisance or carrying on such trade or occupation , or to keeping any such goods or merchandise, ..., within a time to be fixed in the order –

(i) to remove such obstruction or nuisance; or

(ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or

(iii) .....; or

(iv) .....; or

(v) .....;

(vi) .....:

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

(2) No order duly made by a Magistrate under this section shall be called in question in any Civil Court.

Explanation. – A "public place" includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreational purposes.

This is the third branch of preventive jurisdiction is the power of magistrate to deal with public nuisances. Though not so dangerous as occasion for keeping the peace or good behaviour, not so urgent as unlawful assemblies, they are yet sufficiently fraught with potential danger as to warrant a summary action on the part of the magistracy. The power can be exercise either on receipt of a police report or to information derived from any source, and arises under six circumstances.[232] We are, at the most, concerned with the two circumstances in this work, namely, clause (a) and (b) of subsection (1) of section 133 Cr.P.C.

[232] M. Hidayatullah (Justice) & S.P.Sathe, *Ratanlal & Dhirajlal's The Code of Criminal Procedure (14th edn.)*, Wadhwa and Company Law Publishers (1994), p.139.

The order is conditional because it is only a preliminary order but when a person fails to appear and showcase against the order, or when the court is satisfied on the evidence adduced that the initial order was proper, the order is made final, otherwise it is vacated. Further, the court may carry out the order and recover costs from the defaulter. A magistrate however may not pass a final order that exceeds the conditional order in scope as was seen in *Gobind Singh v. Shanti Sarup.*[233]

In this case, the conditional order required a baker to demolish within 10 days an oven and chimney that emitted smoke 'injurious to the health and physical discomfort of the people living or working in the proximity'. In the final order, the magistrate went beyond the conditional order and completely prohibited the baker from carrying on his trade. The Supreme Court found the impugned final order far too broad and narrowed its scope to require the baker to demolish the offending oven and chimney within a month. The baker, however, in the mean time was allowed to carry on with his trade.

Analogically speaking, the power of the said magistrate is somewhat like of a court granting a temporary injunction preliminary in a plaint praying for permanent injunction under the Specific Relief Act. And further making the aforementioned order absolute on the disposal of the suit if it finds for or in favour the plaintiff.

Further defiance of the said order or if the said order is ignored will render the offender liable under the provisions of section188[234] of the Indian Penal Code (I.P.C.) hereinafter simply called the Code of 1860.

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[233] AIR 1979 SC 143.

[234] **188. Disobedience to order duly promulgated by public servant.** – Whoever, knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management disobeys such direction.

shall, if such disobedience causes or tends to cause obstruction, annoyance or injury, or risk of obstruction, annoyance or injury, to any person lawfully employed, be punished with simple imprisonment for a term which may extend to one month, or with fine which may extend to two hundred rupees, or with both;

The offence under the aforementioned section has now been made cognizable offence under the Cr.P.C. Though a bailable offence, it can be made non-bailable by a notification by the State Government under section 102(2) of the Criminal Law Amendment Act, 1932.[235]

The positive signal of environment protection is manifest in the judicial trend as set in the judgement delivered by V.R. Krishna Iyer and O. Chinappa Reddy, JJ in *Ratlam Municipality v Vardichand*,[236] wherein the Apex Court realising the gravity of pollution observed, "Public nuisance because of pollutants being discharged by big factories to the detriment of poorer section is a challenge to the social justice, component of the rule of law.[237]

In the above case, the residents of a locality within the limits of Ratlam Municipality tormented by stench and stink caused by open drains and public excretions by nearby slum dwellers and the failure of the municipality to prevent the discharge of malodorous fluids in the public streets moved the magisterial jurisdiction under section 133 Cr.P.C., 1973 to do its duty towards the members of the public. Consequently, conditional order, which was passed by the magistrate, was found unjustified by the session court but upheld by the High Court. The Supreme Court, highlighting the role of the judiciary in nuisance cases and the importance of judicial process in its role to fill in the gaps, tailored the existing public nuisance remedy.

Speaking through Justice Krishna Iyer, the Court observed that:

> "Although these two Codes, namely the Indian Penal Code (I.P.C.) and the Criminal Procedure Code

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and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Explanation. – It is not necessary that the offender should intend to produce harm, or contemplate his disobedience as likely to produce harm. It is sufficient that he knows of the order which he disobeys, and that his disobedience produces, or is likely to produce, harm.

[235] Ratanlal and Dhirajlal, *Indian Penal Code, 1860*, Wadhwa & Company (27th edn.) 1992, p. 209.

[236] AIR 1980 SC 1622.

[237] *Ibid* at 1623.

(Cr.P.C.), are of ancient vintage, the new social justice orientation imparted to them by the Constitution of india makes it a remedial weapon of versatile use. Social justice is due to the people and therefore, the people must be able to trigger off the jurisdiction vested for their benefit in any public functionary like a magistrate under section 133 Cr.P.C. In the exercise of such power the judiciary must be informed by the broader principles of access to justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution."[238]

Rejecting the plea of the municipality that financial inability exonerates it from the statutory liability in public nuisance cases; the Supreme Court held that such an argument has no force in law. The Court observed that:

"The Cr.P.C. operates against statutory bodies and others regardless of the cash in their coffers, even as human rights under part III of the Constitution have to be respected by the State regardless of budgetary provision..... Otherwise a profligate statutory body or pachydermic governmental agency may legally defy duties under the law by urging in self defence a self created bankruptcy or perverted expenditure budget. This cannot be."[239]

The court further observed:

"A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability as decency and dignity are now negotiable facts of human rights and is first charged on local self-governing bodies. Similarly, providing drainage systems not pompous and attractive, but in working condition and sufficient to

[238] *Ibid* at 1628.
[239] *Ibid.*

meet the needs of the people cannot be eroded if the municipality is to justify its existence."[240]

Accordingly, the Court directed the Municipal Council to take immediate action to stop the effluents from the alcohol plant flaming into the street. It also directed the state government to stop pollution and specially asked the Municipal Council to construct a sufficient number of public latrines, provide water service and scavenging service to ensure better sanitation within a period of six months. Industries cannot make profit at the expense of public health. The Court cautioned that failure to comply with the directions will be visited with a punishment contemplated by section 188 of the Indian Penal Code.

Thus the judgement of the Supreme Court in *Ratlam Municipality case* is a landmark in the history of judicial activism in upholding the social justice component of the rule of law by fixing liability on statutory authorities to discharge their legal obligation to the people in abating public nuisance and making the environmental pollution free even if there are budgetary constraints. It is significant also, as it interpreted section 133 Cr.P.C. to impose a mandatory duty on a magistrate to remove a public nuisance wherever one exists.

The judicial response to the public nuisance cases after the trendsetter Ratlam judgement has the effect of introducing the element of judicial activism in most of the subsequent environmental litigations. The guns of section 133 Cr.P.C. have gone into action wherever there has been public nuisance which affected the health, comfort safety or convenience of the public at large. The judiciary has come to the rescue of the environment by issuing the orders of demolitions, or of removal, or closure of industrial units subject to fulfilment of adequate pollution control measures, or stoppage of pollution operations, etc.

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[240] *Ibid.*

The Supreme Court in *Gobind Singh v Shanti Swarup*,[241] pronouncement, even before the Ratlam Municipality case, is noteworthy and certainly a right step to preserve environment free from pollution in the interest of health, safety and convenience of public at large. The apex Court has rightly upheld the view taken by the Sub-Divisional magistrate, Khanna in passing the conditional order under section 133 Cr.P.C. whereby the appellant was called upon to demolish the oven chimney which emitted smoke which was alleged to be injurious to the health and physical comfort of the people living or working in the proximity

In *Krishna Gopal v State of Madhya Pradesh*,[242] the Madhya Pradesh High Court upheld the conditional order passed by Additional district magistrate, Indore under section 133 Cr.P.C.

In this case a glucose saline factory in a residential area was alleged to have emitted ash and smoke all the time and its boilers vibrations resulted in loss of sleep to the complainant's husband who was a heart patient and as such was ordered to be closed and its boiler removed. Justice V.D. Gyani speaking for the court observed:

> "Merely because one complainant has come forward to complain about the nuisance cannot be said to be not a public nuisance contemplated section 133 Cr.P.C."

Speaking on the value of environment, he further observed:

> "A vagrant committing a petty theft is punished for years of imprisonment while a billion dollar price fixing executive comfortably escapes the consequences o his environmental crimes..... Society is shocked when a single murder takes place but air, water and atmospheric pollution is read merely as news without slightest protuberance till people take ill, go blind or die in distress on account of pollutants that too result in filling the pockets of the few."

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[241] AIR 1979 SC 143.
[242] 1986 Cr.L.J. 396.

In *Nagarjuna Paper Mills Ltd. v Sub-Divisional magistrate and Divisional officer, Sangareddy,*[243] the Andhra Pradesh high Court considered a petition from a magistrate's conditional order shutting down a paper mill which had failed to take adequate pollution control measures.

In *K. Ramachandra Mayya v District Magistrate,*[244] the High Court approved the magistrate's order shutting down a stone quarry, where the latter acted on complaints from neighbouring residents that the blasting of rocks at the quarry caused damage from flying stone chips.

Similarly in *P.C. Cherian v State of Kerala,*[245] the Kerala High Court upheld the magistrate's order under section 133 Cr.P.C. directing the petitioners to stop the service of mixing carbon in their rubber factories, the process emitted carbon particles and polluted the atmosphere in the vicinity, until they introduced gadgets or equipments which would prevent dissemination of carbon black into the atmosphere.

In *M.C.Mehta v Union of India,*[246] popularly known as the 'oleum gas leak case', the Supreme Court not only ordered the closure of the factory from where the poisonous gas emanated and injured some people (one person, an advocate died) in a densely populated residential area under section 133 of Cr.P.C. but also extended the concept of 'strict liability' to 'absolute liability'.

In *Madavi v Thilakan,*[247] the petitioners complained against the nuisance created by an automobile workshop adjacent to his house. It is alleged that carbon monoxide fumes, a carcinogen, emanating from the workshop are positive health hazards to the community. The court regarding the nature of public nuisance under section 133 of the Code of 133 and ordering the removal of the workshop said:

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[243] 1987 Cr.L.J. 2021.
[244] 1985(2) Kar. L.J. 289.
[245] 1981 Ker. L.T. 113.
[246] AIR 1987 SC 1037.
[247] 1989 Cr.L.J. 499.

"We recognise every man's home to be his castle which cannot be invaded by toxic fumes, or tormenting sounds. This principle was expressed through law and culture, consistent with Nature's ground rules for existence has been recognised in section 133(1) (b). The conduct of any trade or occupation or keeping of any goods or merchandise injurious to health or physical discomfort of the community could be regulated or prohibited under the section."[248]

In *Smt. Ajeet Mehta v state of Rajasthan,*[249] the complaint of the petitioners was that the business of the opposite party which involved loading, unloading and stocking of fodder had become a serious health hazard to the residents as the whole atmosphere was polluted on account of fine dust particles of the fodder, the inhaling of which causes number of health problems. Appreciating the efforts of the petitioner, Smt. Ajeet Mehta and mentioning the lackadaisical attitude of citizens and the State apathy in matters of environmental pollution, the Rajasthan High Court observed:

"Every individual has a right to have fresh air and water. If one works for his own benefit and causes any inconvenience to others, he would not be excused whatever may be the nature of nuisance, be that as it is, a trivial or major, the individual freedom and liberty cannot be compromised by the other person except in accordance with law. Public health cannot be allowed to suffer on account of personal business of any individual."

In *Tata Tea Ltd. v State of Kerala,*[250] the complaint was against a tea factory for discharge of its effluents into Nallathani River, thereby polluting water in the river which was used for drinking by the people of the locality. The Magistrate passed an order under section 133 Cr.P.C. requiring the petitioner company to make suitable arrangements to check pollution.

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[248] *Ibid* at p. 501.
[249] 1990 Cr.L.J. 1596.
[250] 1984 Ker L.T. 645.

Here an important facet of environmental litigation was exposed. The counsel for the petitioner tea factory submitted that the running of the factory is controlled by the provisions of the Water Act and it had obtained the required consent under that Act in the matter of discharge of effluents. The Water Act is a complete code in itself in the matter of prevention and control of water pollution, therefore it is contended that the provisions of section 133 Cr.P.C., in so far as they relate to water pollution must be deemed to have been impliedly repealed, and thus the magistrate has no jurisdiction to deal with the matter in the present case.

The counter-argument in this case was that there are significant differences between the two statutes, that provisions of section 133, Cr.P.C. are wider in scope and therefore, the theory of implied repeal cannot be accepted.

The court concluded:

> "There is no reason to assume while /executive magistrate could move expeditiously the State Board could not do so. On the other hand, the State Board which has considerable expertise and requisite machinery in aid of its functions can certainly be expected to move purposefully and fruitfully in the case of water pollution. In this view, the provisions of the Act by implication repealed the provisions of section 133 of the Code in so far as they relate to prevention and control of water pollution. Therefore, the Executive magistrate has no jurisdiction to deal with it under section 133 Cr.P.C."

In *P.C. Cherian v State of Kerala,*[251] the petitioner, owner of rubber factories emitting carbon black, claimed that there was no ground to invoke section 133 of Cr.P.C. by the Magistrate as the licence was issued under the Panchayat Act and the Factories Act, 1948 on satisfying the conditions which included absence of health hazards.

[251] 1981 Ker L.T. 113.

The Kerala High Court examining the whole issue came to the conclusion that dissemination of carbon black in the atmosphere was a public nuisance and a health hazard as it affects the respiratory organs of the people. It was also causing discomfort to the community of the area.

The court in the same case considered the question whether the stoppage of working of the factory under section 133, Cr.P.C. would affect the right to livelihood of the employees of the factory. The Court answered in the negative and observed that this argument is not applicable here. It went on further to say:

> "... because the danger that the general public has to face by service mixing of carbon without adequate equipment to prevent dissemination of carbon, outweighs the advantage in the form of jobs for a few persons and that too under hazards to their own health."[252]

Here glimpses of the precautionary principle could be seen and thus being one of the features of sustainable development has been the law of the land.

In *Nagarjuna Paper Mills Ltd. v Sub-Divisional magistrate and Divisional officer, Sangareddy,*[253] too, a paper mill, which had been ordered to close down for having failed to take adequate pollution control measures, challenged the order claiming that the State pollution Control Board had exclusive power to regulate air and water pollution. Rejecting this contention, the Andhra Pradesh High Court upheld the magistrate's power to regulate pollution by restraining a public nuisance and the powers of a Magistrate under section 133 Cr.P.C. to deal with the pollution was neither curtailed by the Air (Prevention and Control of pollution) Act, 1981 nor the Water (Prevention and Control of pollution) Act, 1974.

The court in this case, established a less stringent rule taking the position that section 133 injunctive relief is available

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[252] *Ibid*

[253] 1987 Cr.L.J. 2021.

as long as it does not interfere with an order of the State Pollution Control Board issued under the Special Act, in this case, the Water Act.

However, The Madhya Pradesh High Court has taken the opposite view in *Abdul Hamid v Gwalior Rayon Silk Manufacturing (weaving) Co. Ltd.,*[254] and as such held that special statutes on pollution of water and air, namely, the Water and the Air Act, have to prevail over 133 Cr.P.C. and the provisions of I.P.C. therefore, the magistrate has no jurisdiction to produce with inquiry under 133 Cr.P.C. and thus, the court observed:

> "Prosecution for an act which is an offence under the Special Act, by any agency other than the competent Board, on the ground that it is also an offence under I.P.C. can be characterized as colourable because the offences under the Special Acts are graver ones and labelling the Act as I.P.C. offences is just to evade the requirement of previous sanction under Special Acts.

But views have been expressed against such observations of the court.[255]

In *Krishna Panicker v Appukuttam Nair,*[256]the Kerala high Court held that there was no inconsistency or repugnancy between the two legislations 'so far as to infer, an implied repeal of the provisions of the Criminal procedure Code, 1973 by overriding the effect of the special Act'. The High Court of Rajasthan held a similar view in *Lakshmi Cements v State of Rajasthan.*[257] Again The Karnataka High Court adopted the view taken by the Andhra Pradesh high Court in *Nagarjuna Paper Mill's case* in the case of *Harihar Polyfibres Ltd. v S.D.M. Dharwar.*[258]

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[254] 1989 Cr L.J. 2013

[255] See P.Leelakrishnan, Nair, and Murthy: *Evolving Environmental Jurisprudence* in P.Leelakrishnan: *Law and Environment,* 1992, pp.126-152.

[256] (1993) KLT 777 (D.B.).

[257] 1994 (2) Raj LW 308.

[258] (1997) ILR Kant 1139.

Finally in *State of Madhya Pradesh v Kedia Leather Ltd.*[259] the Supreme Court resolved the controversy. Directing the respondents, the leather factory and their owners to close down their industries on the ground that discharge of effluents to the nearby stream caused public nuisance, The Court declared that the area of section 133, Cr.P.C. and the pollution laws like the Water (Prevention and Control of Pollution) Act, 1974 and the Air (Prevention and Control of Pollution) Act, 1981, are different and not identical in nature. While section 133, Cr.P.C. is in the nature of preventive measure, the provision contained in the above two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and different in their respective fields and there was no impediment for their existence side by side. Moreover, passing of the new pollution control laws, aforementioned, does not render section 133 of the Code of 1973 as repealed.

The court has expressed the above statements as follows:[260]

> "To bring in the application of section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The objects and purposes behind section 133, Cr.P.C. is essentially to prevent public nuisance and involves a sense of urgency in the sense that the Magistrate fails to take recourse immediately, irreparable damage would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances, and on the other hand applies when the nuisance is in existence."

According to the court, if inspite of the provisions in the Water and the Air Act, section 133 Cr.P.C. can be called in aid to remove public nuisance caused by discharge of effluents and air

[259] (2003) 7 SCC 389.
[260] *Ibid*

discharge in case of hardship to the general public, implied repeal can be found only when the provisions of the later Act are inconsistent with the proviso ions of the earlier Act that the two cannot stand together. Also, the area of operation in the Code of 1973 and the two Acts, namely the Water Act and the Air Act, are different with wholly different aims and objects, and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields. While the provisions of the Code of 1973 are in the nature of preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise.

The Court has recognised the wide contours of the law of public nuisance and its removal under section 133 of the Criminal procedure Code.

It surprising that despite activist judicial approach whereby new enforcement control has been introduced into hitherto dull legislation, namely, section 133 Cr.P.C., citizens petitions to stir indolent municipalities into action are still rare in our country. The reason for this is perhaps that people here are not conscious of their rights.

From the above discussion, we can very confidently say that the Statutory laws in India dealing with sustainable automobile use or which can be use effectively for achieving the objective of sustainable automobile use in the country would be the most effective measure compared to the other legal recourse. The main reason for such a proposition is that the legislations dealing with sustainable automobile use, especially vehicular pollution has been kept in mind for the various developments in the law regarding automobiles.

The most direct law for dealing with the abovementioned problem and attaining the desired goal of sustainable automobile use in India is laid down comprehensively in the Motor Vehicles act, 1988 (Act 59 of 1988) with the rules, namely the Central Motor Vehicle Rules, 1989 and the respective State Motor Vehicle Rules.