Chapter 9

CONCLUSIONS AND SUGGESTIONS
Protection and improvement of public health is one of the serious challenges faced by the global community today in the midst of degenerating air quality that even threatens the survival of human beings on earth. Breathing air has turned to be unbreathe-worthy everywhere, paving the way for the spread of airborne epidemic diseases.

Right to public health has been passing through various stages of evolution both under customary international law and municipal law. In that process it has assumed revolutionary dimensions. In the beginning it was viewed as a part of life emanating from natural right and subsequently elevated to the level of human right and became a fundamental right. In India, it is now recognized as part of the ‘right to life’ under Article 21 of the Constitution. It is also considered as the essence of productive life, central to quality of life and as involving individuals, State and international responsibility. Thus, the concept of health has undergone a sea change from absence of illness or infirmity to the ability to lead a socially and economically productive life. This progressive interpretation has thereby placed a positive obligation on the State to protect public health.

The rising air pollution and the consequent degeneration of the quality of breathing air were the main focus of attention at the international level which produced a series of international documents and thereby established the linkage between human rights and the air environment. This, in turn, resulted in the formulation and exposition of accepted environmental and human
rights principles that embody the right of everyone to live in a secure, healthy and ecologically sound environment. The international documents also prescribe the procedural rights, such as the right to public participation necessary for realization of the substantive right and the duties that correspond to such rights.

Extensive human activity with the environment is found to be the root cause of air quality degeneration. Industrialization, urbanization, population explosion, over exploitation of resources, depletion of traditional resources of energy and raw material are its accelerating factors. Industrial emissions, indoor and personal based pollutants, vehicular pollution and noise pollution have now emerged as major public health hazards that affect the breathing air quality and leading towards an unproductive life. It has drastic effects on human health and safety, particularly in children, women and aged population and also on animals and plants. It affects aesthetic air quality, climatic conditions and general environment and brings about socio-economic consequences.

In India, air pollution hazards are now becoming a major threat to nation's growth and peaceful existence. However, ancient Indian people had never been oblivious of the need to preserve, protect and improve public health and the air environment. In the ancient period it was considered as the dharma to protect the nature. The religious and cultural heritage of India makes it clear that since the Vedic age people in India have shown their intense concern for the nature and natural resources. They worshipped trees, animals and believed in pollution-free air. Each individual in the society knew of his duty to protect public health and environment and everyone tried to act accordingly.

India initially followed the common law remedies to control public health hazards arising from air pollution. The rule of 'strict liability' evolved in Rylands was followed and applied by the Indian
courses till 1987 when it was replaced by the rule of ‘absolute liability’
tailored by the Supreme Court in M.C. Mehta. There have been
various statutory provisions in the Indian Penal Code 1860, Criminal
Procedure Code 1973, and the Civil Procedure Code 1908, under
which air pollution could be controlled by envisaging remedial
measures and by punishing the wrongdoer. However, with few
exceptions, these provisions could not be of much help to combat the
problem of air pollution arising from different sources and for
preservation of the air quality.

Under the constitutional scheme, protection and improvement
of public health is conceived as State responsibility and that of the
environment as an obligation of the State as well as a duty on the
citizens. The judicial grammar of interpretation has also treated right
to life as implying right to pollution-free air and the right to live in a
healthy environment by articulating the duty cast on the State under
Articles 47 and 48A as creating a right in favour of citizens. At the
same time, there exists a difference between fundamental rights and
directive principles, in as much as the implementation of directive
principles requires expenditure from State exchequer and is therefore
dependent on the level of economic development of the nation,
whereas fundamental rights impose restriction on the power of the
State and creates negative duty on the State not to violate the rights
through State action. Failure to take notice of this difference between
fundamental rights and directive principles is found to create
difficulties at the implementation stage.

It was found that presence of pollutants in air beyond
certain limits has a detrimental effect on peoples’ health. The Air
(Prevention and Control) of Pollution Act, 1981 was enacted in
furtherance of the decision taken at the Stockholm Conference fully
to meet this challenge. The Act has rather properly defined the term
‘air pollutant’ as including noise as well and has also envisaged
several provisions intended to preserve the air quality and to control
air pollution. The power of the State Government to declare air pollution control area, to ensure standards for emissions from automobiles; power of the Pollution Control Board to restrain persons from causing pollution; to close, prohibit or regulate industry, operation or process; to penalize for operating in control area without consent or for emitting pollutants in excess of the prescribed standards or for violating the directions of the Board appears to be commendable. But, still it has not succeeded in arresting the growing proportion of air pollution or in improving air quality. The major loopholes in the Act are that penalty provisions are not deterrent and that there is no provision for ensuring public participation. The Act does not contain sufficient provisions for helping the implementing machinery by making it functionally independent and sufficiently armed with manpower, equipments and funds. There is also political interference into its functioning.

It is submitted that to supplement the Air (Prevention and Control of Pollution) Act, 1981 and to strengthen the hands of the implementing agencies, Parliament enacted the Environment (Protection) Act, 1986 and this legislation envisages preventive, curative and remedial measures for protecting the environment, which also includes air. Some of the objectives of this enactment are to cover uncovered gaps in the areas of major environmental hazards and to provide for deterrent punishment to those who endanger human environment, safety and health.

From the above development of law it is clear that public health jurisprudence in relation to air quality maintenance never remained hollow in India. Instead, a legal regime has rightly evolved to meet the pressing needs of the time. However, enactment of a statute does not mean that desired goal would be attained automatically. It has to be effectively implemented also.
Air Quality control laws in India suffer from deficiencies with regard to the structure of governance of the Pollution Control Boards, citizens’ suit provision, sampling provision, consent procedure regulations and consent administration system. Problems also persist with reference to the determination of ambient air quality standards and of its enforcement. Poor enforcement of law mainly arise from information asymmetry, budget constrains, lack of skilled manpower and technical facilities for monitoring pollution between regulators and the regulated units. There is absence of pollution charge system as prevalent in US and in the European countries which can generate revenues to governmental agencies. There is also absence of market signaling mechanisms such as eco-labeling of products, adverse publicity for the erring units and enforcement procedures such as blacklisting and placing frequent violators under a special category wherein the possibility of inspection is higher than for the complying units, as measures for ensuring compliance with standards.

Control of Industrial Air Pollution

The problem of industrial air pollution is posing a grave public health hazard. Cottage and small scale industries are also equally contributing to the air pollution load. Industrial pollutants are found to be responsible for ozone depletion, green house effect, global warming and acid rain. All nations have a common responsibility for this phenomenon, although richer nations are technologically and financially better equipped to shoulder this responsibility. Air quality monitoring undertaken in the industrial sector revealed that respirable particulate matter, sulphur dioxide and nitrogen dioxide emissions frequently exceed the permissible limits due to industrial development and poor enforcement mechanism.

At the governmental level, certain measures have been taken to keep industrial air pollution under control, such as environmental impact assessment, prescription of emission standards for industries,
environmental auditing, zoning atlas for siting industries and pollution prevention technologies. But still it has not improved the situation. The concept of sustainable industrial development is yet to gain recognition in the industrial sector. Judiciary has timely intervened to keep industrial air pollution under control and made significant contribution in the areas of quarrying, mining, stone-crushing, hazardous and dangerous industrial activities and in that process, the court has stood for sustainable development to meet equitably the needs of the present and future generations and timely applied the principles of intergenerational equity, polluter pays and public trust doctrine. It has also taken a precautionary approach by ordering shifting of hazardous and dangerous industrial activities. The principle of absolute liability and clean up costs was also tailored to the matters relating to industrial activities. By doing so, the court has explicitly treated the problem of air quality degradation as a social problem. The approach put forth by the judiciary has been that industrial development must continue, but not at the cost of air environment.

To control industrial air pollution, legislative and judicial activism alone is insufficient. There is the need for administrative activism. Government as the policy maker should adopt a multi-linked remedial approach drawing and fixing priorities. Such an approach should concentrate on strengthening of emission standards for various categories of industries aimed towards prevention of pollution than its control. There should be database on clean technology, thrust for cleaner technologies, siting of high pollution potential industries, fiscal measures for pollution prevention, which envisages incentives for environmentally benign substitutes, technologies and energy conservation in the form of customs duty, tax concession, cess rebate. There is the need for strengthening of monitoring network to cover new stations and more air pollutants.
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There is the need for comprehensive urban air quality management strategy envisaging information related to urban planning, ambient air quality, emission inventory, and air quality dispersion models. There should be critical assessment of environmental impact assessment. Environmental audit mechanisms and planned emission load mapping studies should be undertaken at regular intervals by developing emission factors fit for Indian conditions.

There should be greater emphasis given for information dissemination, mass awareness and training. State-of-the-art technologies should be used for wider dissemination of environmental information. For that purpose, transparency and access to the data should be improved. Measures such as publication of pollution bulletins and air pollution forecasts should be started on a regular basis. Massive thrust should be provided to mass awareness campaigns involving community organizations such as residents association, students, voluntary bodies and NGOs. Strategic action plan for implementation of policies in letter and spirit should be devised. Supportive measures such as training and education for the industry, governmental agencies, and institutions are other necessities considered to be important.

A management policy for industries should be newly evolved at the governmental level or the existing policy and standards for industries should be reformulated by incorporating environmental strategy, regulation, institutional capacity building, corporate social responsibility, economic incentives and penalties. Such a policy should insist that industries should be located outside the city and that the location of industries should be as per the environmental guidelines. Industries should strictly obey the prescribed standards of emissions. The Pollution Control Boards must enforce environmental legislations in various types of industrial units depending on their process, technology and pollution potential. Particular attention must
be paid to highly polluting industries. To generate popular pressure, people should know who is polluting their air and to what extent. Constant monitoring and auditing of industries should also be considered as viable methods to control air pollution in the industrial sector.

In the industrial sector, there is the need for green initiatives. Green cover should be increased through appropriate design of green belts and barriers and proper selection of plant species. Companies, both private and public, should be encouraged to have green procurement and green products. Every industry should have Environmental Management Division comprising of experts who should evolve and implement green initiatives for the industry.

There is the need to encourage and popularize Best Available Techniques (BAT) in production process and to set the emission limits for individual industry in accordance with BAT standard aimed at reducing harmful atmospheric emissions. Flue gas desulphurization should be adopted for achieving reduction of sulphur dioxide and nitrogen oxide emissions and carbon capture for reducing carbon dioxide emission.

Control of Indoor and Personal Air Pollution

Pollution of air due to indoor and personal sources is having a tremendous impact on the health and quality of life of the population, besides imposing heavy burden on health costs. Children, women and aged population are its immediate victims. Indoor sources of air pollution include bio-fuel burning and household burning in rural areas, waste burning by the method of incineration, open burning of agricultural residues etc. Smoking is the most prevalent form of personal air pollution. These activities discharge gaseous emissions, toxic fumes, smoke, dust, vapour etc. into the atmosphere. The institutional mechanisms, economic and technological approaches now adopted are inadequate and failure in general and this points to
the need for consultation with stakeholders and people's participation in these areas.

To get rid of the problem from bio-fuel burning, use of alternate clean fuels such as biogas, solar stoves, kerosene, liquefied petroleum gas or electricity should be insisted. Cooking with kerosene should be encouraged for household use, for which, kerosene should be made available at reasonable price for the rural population. Design of biogas plants should be improved by developing reliable and cost effective community designs. For this purpose, municipal legislation should be amended to incorporate a provision making it compulsory to provide for installation of appropriate systems for generating energy from alternative sources of energy like biomass, hydropower, wind, solar, waves, tidal and waste in all plans submitted to municipality or local body for putting up all kinds of buildings residential or otherwise. As far as State of Kerala is concerned, it requires amendment to Section 387 of the Kerala Municipality Act, 1994. A further provision should also be added in the municipal law which requires that completion certificate shall be issued only on installation of such units or systems as indicated in the plan submitted, as a measure to encourage the use of energy produced from alternative sources and to avoid dependence on one source of energy alone.

The problem of uncontrolled burning of solid waste through incineration and open burning should be got rid off by making applicable strict emission standards so that the hazardous gases are not directly released into the environment. This would also eschew the chances of poisonous fog formation. Waste burning and household burning and burning of agricultural residues or refuse incineration should be substituted by efficient garbage removal and landfill management to harvest methane. For this, municipal legislation should provide for a provision requiring vermicompost production or biogas production with every residential building as a
Tobacco smoking has become a lifestyle. It is the primary cause of several illnesses. The primary outcome of smoking is pulmonary disease. Secondhand smoking/passive smoking is equally dangerous. Smoking in public places has been regarded by the judiciary as a nuisance and a potential threat to clean air affecting the lives and sustenance of human beings. So much so, judiciary has expressed its deep concern in this arena. Dangers of passive smoking were also exposed by the courts by declaring that a person is entitled to protection of law from being exposed to the hazards of passive smoking under Article 21 of the Constitution. The court has taken the view that passive smoking adversely affects the life of the citizen by slow and insidious poisoning of the air environment thereby resulting in reducing the lifespan itself. It was also held that passive smoking is indirect deprivation of life without any process of law and hence non-smokers cannot be compelled to become helpless victims of pollution caused by smoking. The court has also canvassed for the strict implementation of anti-smoking law by holding that inaction in the matter amounts to failure of the rule of law.

It is submitted that it is a mystery that still the country is not tobacco-free or smoke-free and smoke nuisance continues in public places like bus stands, railway stations, as the ban on smoking has failed to evince any public response. There is the indisputable evidence that implementing 100% smoke-free environment is the only effective way to protect the population from the harmful effects of smoking. For attaining this position, apart from a comprehensive, clear and enforceable legislation, the role of the civil society is also important. Government should evolve an implementation plan and provide infrastructure for its enforcement. Implementation process should be monitored and their impact measured and experiences must be documented. Government should also evolve educational
strategies to reduce secondhand smoking exposure in the home. Fiscal strategy of the government should cover bidi sales also and incidence of taxation should be high on tobacco products to have deterrent effects on its consumption. There should be effective warning labels and public campaigns to reduce tobacco consumption. Above all, people should be educated and made conscious of the necessity to regulate their harmful and injurious lifestyles.

Though after Stockholm and Rio, series of global and national endeavours were made to regulate the release of gaseous emissions and toxic fumes into the atmosphere, still the situation has not improved. In these circumstances, there is the need for a Public Health Code to meet present day health hazards by envisaging a clear definition of nuisance corresponding to public health by making certain things to be nuisance. The definition of nuisance should include premises in such a state as to be prejudicial to public health; factory, workshop or work places not provided with sufficient means for ventilation or not kept clean and free from noxious effluvia; any fire place or furnace which does not consume the smoke arising from the combustibles used therein; chimneys sending forth smoke in such quantities prejudicial to health; irritating smell or offensive odor produced by any place which is a nuisance to the neighbourhood. The Code should authorize the local authorities to detect nuisance by conducting periodical inspection and to take abatement measures. Most important of all the measures is peoples' participation, for which citizens should be seen as allies and they should be empowered through information and vigorous public awareness campaigns.

**Control of Vehicular Pollution**

Vehicles constitute a major source of air pollution and are greatly responsible for the unhealthy air quality. Any Government committed to constitutional values and peoples' health cannot shrink
from its responsibility to abate or at least minimize this public health hazard. In cities, automobiles contribute about 50 per cent of the total air pollution. The worst thing about vehicular pollution is that it cannot be avoided as vehicular emissions are emitted at the near-ground level where one breathes. In India, older vehicles are predominant in vehicle vintage, accompanied by inadequate inspection and maintenance facilities. There is predominance of two stroke two wheelers, adulteration of fuel and fuel products, improper traffic management system and chaotic road conditions. There is high level of pollution at traffic intersections and absence of effective mass rapid transport system and intra-city railway networks. High population exodus to the urban centers is also found to aggravate the problem. It is true that advanced manufacturing techniques have considerably reduced emission from automobiles. However, the benefits are upset by the rapid increase in the number of vehicles and the poor maintenance of the Indian roads.

The legal control of vehicular pollution in India exist in the form of some scarce provisions contained in the Air (Prevention and Control of Pollution) Act 1981, Motor Vehicles Act 1988, and Motor Vehicles Rules 1989. Administrative measures are only directed towards emission norms, fuel quality inspection and maintenance, thus leaving policy and information gaps. From time to time, various public interest litigations have been filed in the Supreme Court and different High Courts in the country to curb vehicular pollution, wherein the courts have played an activist role and developed the principles of clean air jurisprudence and wholesome environment as mitigation measures. The Supreme Court has adopted precautionary approach and became Supreme Court for Indians and even took upon itself different roles as constitutional governors, super administrators and policy makers. The institutional role of the court has been refashioned to readily enforce social rights and to impose positive obligations on the State.
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The Court has given directions for improving the traffic conditions, disciplining private vehicles and towards clean fuel. It has found diesel as not a safe fuel and ensured that vehicles are run on safe fuel. In addition to dealing with CNG supply problems, the Court also considered issues related to the pricing of CNG, safety inspection and maintenance of CNG vehicles and monitoring implementation of the CNG policy in the critically polluted cities. It also considered the necessity of parking policy. The Court has also mercilessly handled defiant attitudes. The court has treated protection of public health and environment as divine proclamations and adopted a bold approach. The Court has given directions to the concerned authorities to enforce the relevant provisions of law and take all effective steps to control the vehicular pollution. Automobile manufacturers were directed to ensure that an in-built mechanism should be fitted to reduce the pollution. The legitimacy for such extent of judicial activism arises from inaction on the part of executive. However, it is difficult for the courts to monitor the control of vehicular pollution. The first responsibility is of the citizens to keep their vehicles in the proper condition so that their vehicles do not become the major source of air pollution. It has been noticed that most of the government vehicles, buses and trucks are not maintained properly and they become the major source of pollution. It is suggested that the Government should act as a “model” to maintain its transport fleet in a proper condition. The competent authorities should enforce the anti-pollution laws effectively.

It has come to the notice of the researcher that in some cities people obtain ‘pollution certificate’ without getting their vehicles checked. In fact every petrol pump should have pollution checking device and the petrol should be given only after proper checking of the vehicles and ensuring that their emission is under control. There is also need to regulate the traffic in cities. Ensuring unimpeded vehicular movement by way of widening of roads, construction of
flyovers and subways and introduction of underground rails are also worth consideration for reducing vehicular emission as part of the general strategies.

Together with the general strategies, short-term and long-term measures must also be evolved. Short term measures must envisage measures to phase out old vehicles from urban areas; use of catalytic converters for vehicles; effective monitoring of vehicular emissions; strict emission testing, taxing of vehicles for differential pollution; proper maintenance of engines; introducing free environment awareness course in different cities; schemes of penalty and rewards; people’s participation; strict implementation of licensing conditions; constituting visionary authority with political will to implement relevant measures; promoting walking and cycling and giving preference to bicycles in parking near bus stand, railway station etc.

Long term measures must include introduction of four stroke engines (both for fuel efficiency and low emissions); improvement of fuel quality; development of intensive plantation to reduce dust, smoke and other pollution; granting incentives for the use of electric, propane, battery operated vehicles or LPG or CNG based transport means etc. Similarly, disincentives should be created for diesel vehicles, as diesel particulates are more hazardous to human beings than petrol emission. This may be made possible by imposing environment cess on diesel. The money collected as cess by the government can be utilized for implementation of clean air policy. Low carbon economy is a viable method to reduce the accumulation of carbon dioxide and other greenhouse gases in the atmosphere and compressed air-engine car is an innovative system for low carbon economy.

There is a need for practical approach that reduces both vehicular emissions and congestion, using a mixed set of instruments dictated by command and control and by the market based
principles. There is the need to undertake pollution source inventory surveys to assess the contribution of each source to the total pollution load. Improvements should be brought in the vehicular emission norms and auto fuel quality throughout the country and in cities that have high vehicular pollution; city-specific measures should be taken, to reduce pollution from old in-use vehicles. Similarly, strategies should be evolved to discourage use of private vehicles by ways like levying of parking fee, road pricing, imposing restriction on entry, encouraging car pools and constructing bus ways, which increase the productivity of buses and induce people to change their modes of conveyance.

An exclusive legislation in the form of Clean Air Act must be enacted for containing the problem of vehicular pollution. Such legislation should confer power on the State Government to issue a notification declaring that all the motor vehicles in use within the State shall use CNG/petrol/ LPG/electricity as fuel in a phased manner. Time frame should be fixed in respect of existing vehicles including State owned buses to convert as to make them fit for using CNG, LPG or electricity. After the above cut off date, no diesel vehicle should be allowed to be operated in the State. Persons acting in contravention should be punished with imprisonment up to one month or fine up to Rs.5000/-, besides recording the punishment in the Registration Certificate as well as in the driving license. In the event of repeating the offence, the user should be punished with imprisonment up to 3 months and fine up to Rs.1,00,000/-.

Control of Noise Pollution

Noise is considered to be an insidious form of air pollution as it invades the air environment in dangerous proportions, causing nuisance and annoyance. It infringes the natural right to quietness. It is considered to be an air pollutant under the Air(Prevention and Control of Pollution)Act, 1981 and the Environment(Protection) Act,
1986. Its sources are industrial like boiler, machinery, foundry, flour-mill, cutting machines and non-industrial like loudspeakers, aircrafts and trains, construction work, domestic appliances, religious rituals and festivals, social and political gatherings, generator sets etc.

Noise has physiological, psychological and behavioral effects on human beings and it affects other living beings and non-living things also. Noise becomes actionable when it turns to be excessive, undesirable and unreasonable. Noise related problems are mounting up daily bringing out dreadful and hazardous consequences especially in the urban and industrial belts.

Control of noise pollution requires initiation of legislative and non-legislative measures. Legislative measures consider it as a tort and as an offence and for which remedies are prescribed under various enactments like Indian Penal Code 1860, Criminal Procedure Code 1973, Motor Vehicles Act 1988 etc., apart from the remedies envisaged under the Air(Prevention and Control of Pollution)Act 1981 and the Environment (Protection)Act 1986. Besides these general legislations, local legislations also operate to control noise arising especially from music, use of loudspeakers, fireworks etc. However, an exclusive rule making attempt to regulate and control noise generated from loudspeakers and generator sets can be found in the Noise Pollution (Regulation and Control) Rules 2000 and it provides for ambient air quality standards in respect of noise for different areas, namely, industrial, commercial, residential and silent zones both during day time and night time in reference to decibel levels and also confers power on the State Government to categorize the area into any of the above categories and to take measures for abatement of noise including noise from vehicular movements. There is obligation on the local bodies and development authorities to take steps to prevent noise pollution as a parameter of quality of life.
Rules place responsibility on the designated authority to enforce noise pollution control measures and ensure compliance with ambient air quality standards. Restrictions on the use of loudspeakers/public address system and consequences for offences committed in silence zones are also prescribed. The Rules also provide for complaint mechanism and the power to prevent, prohibit, control or regulate continuous music, sound or noise.

Judiciary has also shown its deep concern over the noise hazard and has filled the cavernous gaps left by legislation to make the air environment free from noise pollution. It has evaluated noise control legislation from the stand point of constitutional freedoms guaranteed under Articles 19(1)(a), 19(1)(g), 21, 25 and 26 and has also reconciled inter-provisional constitutional conflicts. Judiciary has also considered the ethical issue pertaining to the subject and built up law based on ethics. Even when public health was not provided as a ground for restricting the constitutional freedoms under Article 19(2) or 19(6), the vigorous and progressive process of interpretation adopted by the Court has thus resulted in creating a public health jacket to protect the environment from unhealthy noise.

Courts have also responded timely and positively against the impending public health danger arising from the uncontrolled use of firecrackers and sound emitting fireworks associated with religious practices, cultural festivals and political celebrations. In that process, it has made a stark distinction between sound emitting and light emitting fireworks and imposed severe restrictions on the use of sound emitting fireworks and also issued directions for tightening the licensing system and licensing conditions and directed the authorities to undertake continuous monitoring of fireworks activities, thus leaving no stone untouched. From all these developments, it can be seen that the approach of the Court in this arena was remarkable in resolving the dichotomies existing between individual freedom versus community interest and religious practices versus social order. In the
efforts to check industrial noise, court declared that persistent noise arising from industrial activities infringes Article 21 of the Constitution. In the use of loudspeakers, court has also balanced religious rights with noise free environment and in the process distinguished between religious practices and religious faith and declared that the protection under Articles 25 and 26 operates only in respect of religious faith and that religious practices must be subject to public order, morality and health. The Court has also recognized that life without good health is denial of life, while exposing the ill-effects of noise pollution on human health.

The existing law against noise pollution is highly insufficient. Nuisance action under the Indian Penal Code is a poor remedy as it is nominally punitive rather than preventive or compensatory. The provisions in other legislations are also inadequate as they cover restricted area of noise pollution control and do not provide for remedies based on scientific calculations. It is therefore high time to enact a specific, detailed and uniform legislation, taking into consideration the analysis about the sources, effects and control of noise pollution and the Indian social and economic aspects on noise pollution control. Additionally, the existing enactments dealing with noise also need to be elaborated and effective provisions incorporated by suitable amendments which provide for enhanced punishment for nuisance by noise in the Indian Penal Code or alternatively, Sections 278 and 290 be amended to enhance the present prescribed punishment of fine to a maximum of ten thousand and five thousand rupees respectively and a sentence of imprisonment for a maximum of three years to five years may also be specified in both the sections. The offence should be made cognizable and non-bailable. In cases where the offence of public nuisance is committed by a Company or concern, the officials responsible for running the business that causes the noise nuisance should be held liable for imposition of the proposed sentence of imprisonment.
Industrial laws such as the Factories Act need to incorporate safety provisions against noise pollution to safeguard the workers, such as provision for ear plugs, muffs and insulation in addition to the provisions for reduction of noise at source by proper machine design, maintenance, lubrication, use of baffles, use of sound proofing materials like walls, ceilings, floors etc. The Motor Vehicles Act should provide for a provision specifying the limit of noise in terms of decibels.

General strategies should be adopted such as installation of decibel meters in highways and public places, green belt vegetation, inclusion of noise level specification while designing machinery and transport system, undertaking of sound level surveys, planned programme on acoustical protection, creating awareness through media. Licensing should be made compulsory for all public address system, fireworks display and other noise generators, specify the place, restrict their use at night, limit the period, monitor the activity, cease and confiscate the equipment, compensate the victims, provide penalty, make registration mandatory for the provider. All products should be labeled according to noise standards. Noise by vehicles should be reduced by banning honking, streamlining traffic, ensuring good body and silencer designs and imposing special tax. Noise checking squads should be appointed under the control of District Medical Officers. Special courts should be constituted in every district to try the offence of nuisance by noise. Monitoring Committees should be established at State level. Noise Cells should be attached to Pollution Control Boards. Environmental noise mapping should be adopted. Vibration standards should be prescribed and personal liability should be imposed on the enforcement authorities for non-performance of duties.
Need for Vitalizing Traditional Remedies

Traditional remedies provide convenient tools of access to justice for the common man to meet the problem of air pollution and air quality degradation. Traditional law regards air pollution problem basically as a nuisance and accords to citizens a choice among a common law tort action against polluter, a citizen’s suit or a writ petition to enforce statutory compliance. However, the common law action for nuisance in India has been of limited success to get damages in air pollution cases.

Though, the Supreme Court has evolved the principle of absolute liability in modification to the rule of strict liability, judicial approach has limited its invocation, by placing severe constrains on rule's application. That apart, judges in India often seeks statutory basis to support their view of reasonableness, which lessons the utility of common law which is centered on subjective standards of reasonableness. This vacuum is filled to a certain extent by the general laws like Indian Penal Code 1860 and the Code of Criminal Procedure 1973. But the provisions of Sections 133 and 144 of the Criminal Procedure Code are not impressive enough as they contain only scanty provisions, hardly enough to control air pollution. Though the remedy under Section 133 Criminal Procedure Code is different and wider in its application and mutually exclusive of the remedy under the Air(Prevention and Control of Pollution) Act 1981, the benefit of this remedy is not adequately taken advantage of by the people due to ignorance. Hence, there is the need for educating the people to make them aware of the remedies under the traditional law to be used as effective weapon for resolving air pollution problems.

Some General Suggestions

The fear of false public interest litigation, lack of scientific and technical expertise and the difficulty faced in monitoring the
implementation of court orders have inhibited the judicial attempts of air quality control to a large extent. It is, therefore, suggested that the Government should not delay in creating independent “Environmental Courts” in the Australian Model comprising of experts to handle matters relating to environmental pollution exclusively, as proposed by the Law Commission of India in its 168th Report, 2003. The possibility of constituting Ecological Sciences Research Group to help the court and the government as an information bank should also be explored. Judiciary should consider public opinion when interpreting the Constitution because such opinion represents the evolving social mores of the community. Similarly, the jurisdictional authority and powers of National Environment Appellate Authority should also be broadened. The sensitized civil society must act as a pressure group for promotion of societal interests.

Right to environment should be included as a specific fundamental right, as suggested by the National Commission for the Review of the Working of the Constitution. An exclusive legislation in the form of Clean Air Act for preservation of air quality and for prevention, control and abatement of air pollution is also desirable. There is the need to bring ‘public health’ within the concurrent list and it should also be included as a ground for restricting the freedoms in Article 19.

Executive must be awakened from its deep slumber and made committed for the cause of healthy air environment. Central Government should make use of the powers under Environment (Protection) Act, 1986 to ensure that industries do not pollute the air. Section 24 (2) of the Environment (Protection) Act which has taken away the deterrent effect of Section 15 should be removed by suitable amendment. Similarly, the requirement of giving 60 days notice under Section 19 of the Environment (Protection) Act for citizens’ suit
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should be done away with. There is a need to place reliance on environmental reporting as a tool for regulation.

It is found that laws on air quality controls are observed more in breach, than in compliance. Administration is not performing its duty to implement legislative mandate. The judicial orders are also not obeyed in time, and implemented only after initiation of contempt proceedings in courts. The absence of clear cut implementation protocols have led to the erosion of the system itself. Under these circumstances, the feasibility of using pre-litigatory remedial measures such as conciliation, mediation, community participation to resolve air pollution problems also requires serious consideration.

An analysis of the air quality control laws in India shows that they are repressive and prohibitive, state-rule based and state-discretionary. It is true that control of air pollution is a difficult task. Complete eradication or prevention is impossible and undesirable, as it would deprive the society of the benefits of productive economic activity. Besides control is also a technical problem to be solved by engineering methods such as containment, replacement and dilution and not merely a legal issue to be resolved by legislative and regulatory measures alone. Despite the same, effective air quality controls have many social benefits, as clean air not only means reduction in health costs, but healthier and brighter environment as well. It is submitted that the necessity of public health protection in the midst of degenerating air quality is not the problem of any individual nation. It is a global problem and it has to be tackled globally also with the co-operation of all the countries.

The situation as now exists warrants a clear perception and imaginative planning at every stage by the Government and local bodies. It also requires sustained efforts and result oriented strategic action. Indeed, there is a need to evolve a national policy to protect public health from degenerating air quality and further the need for a
'co-operative' model of society, in which the major task of the executive becomes one of finding alternatives through which the various agencies of the society can co-operate with each other to attain the common ends. If the life is to be peaceful, happy and satisfied, people should be made aware of public health hazards and the vice of pollution. The right of the posterity demands that there should be acceptance of responsibility by individuals and communities in the efforts to maintain air quality and to control air pollution. In this context, it would be appropriate to recall the words of Winston Churchill:

"The dark ages may return....on the gleaming wings of science; what might now shower immeasurable material blessings upon mankind, may bring about its destruction. Beware, I say, time is short."\(^1\)

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\(^1\) As cited by Justice Chettur Sankaran Nair in *Mathew Lukose v. Kerala State Pollution Control Board*, 1990(2) K.L.J. 717 at p.725.