CHAPTER 7

CONCLUSION AND SUGGESTIONS
An attempt has been made in this study to examine the growth of the environmental legislation - both substantive and procedural - and their implementation for controlling various problems of environment pollution and for preservation and enhancement of the quality of the environment in perspectives of socio-economic and technological advancement of the society. This exploratory analytical approach also intends to explore the new dimensions to which 'the right to life' expands and right to health and other hygienic conditions have been accepted as components of the right to life. This study is based on ethnographic research and, in general, does not deal with question of impact but rather with questions of process. Thus in our discourses naturally we had to resort to find out how various legislations have developed on national and international levels and finally tried to evaluate their implementation processes in perspective of the country as a whole and in Madhya Pradesh in particular. Following conclusions may be drawn from this evaluationary survey of the environmental laws.

The technological advancements have reduced the risk involved in the production and transportation and have made life more comfortable. But, on the side, they are emerging as serious threat to the environment. During the process of production and consumption they produce several hazardous wastes in solid, liquid and gaseous forms. Ultimately these by-products are disposed off in different components of the environment. The expanding giant factories require huge amount of raw materials and energy, which are exploited from the nature and ultimately lead to depletion, degradation and pollution. There are instances in which development projects are polluters. These injurious, harmful and hazardous elements are produced not only through the manufacturing industries but from other social, economic and religious processes also.¹

It is difficult to generalize factors causing environmental deterioration and pollution; however, three basic factors are discussed
widely. They are density and growth of population, which increases pressure on resources exceptionally high resulting in their depletion, scarcity, over exploitation and environmental degradation; the desire of raising the standard of living, and technology are major causes deeply adversely influencing the environment. Fossil fuel based modern technology, which made large-scale production possible, and manufacturing of innumerable artificial products have exerted high strain on natural environment.

Rapid population growth along with growing desires of the people have exerted demand on basic resources (cropped land, forest and water) to such extent that their exploitation exceeds the limit of their reproduction capacity. Among the problems associated with the population growth mention be made of the expansion of cropped area, rapid urbanization and growing non-agricultural uses of good agricultural land, clearance of new-forested land for farming, and intensification of cropping with the help of fertilizers etc. Urbanization has posed serious threat to the environment. The environmental problems of cities include water, air, waste and noise pollution and disposal of toxic and hazardous waste. Lack of sewers or other means to dispose of human excretes safely and the inadequacy of garbage collection services adds to water pollution problems because many of the uncollected wastes are washed into streams. Concentration of industrial units in and around urban centres gives rise to a series of environmental problems. The dumping of industrial waste into rivers is important cause of water pollution. River pollution from city based industries and untreated sewage can lead to serious health problems downstream. The inhabitants of many third world cities suffer form noise pollution from aircraft, industrial, operations, construction activities and highway traffic.

It is important to recognize that nearly every urban centre has two types of population, one well housed and provided with a variety of services and amenities and the other ill housed and excluded from many such opportunities. It is with the later group, known as slum that environmental problems are so pronounced. The explosion of
slums can be imagined from the fact that there are more than 700 slums in and around Delhi, the capital of India. Problems of these settlements are associated with their location. The slums occupy mainly municipal disposal areas and are located on steep hillsides with a high tendency to erosion and in areas prone to flooding near streams and ponds. These slums are deprived of even basic amenities, housing space, potable water and cleanliness and the means to clear their surroundings of refuse and human waste. A large number of health problems result from poor housing. Further, these settlements are illegal and therefore are deprived of local administration. The dramatic growth of slum dominated urban centres is the result of massive migration from rural areas. Because of very rapid pace of growth of population provisions of housing, water supply and sewerage system could not develop proportionately, resulting in bad living conditions and poor level of basic sanitary services in most of the urban areas of the developing world. They lead to several social and environmental problems.

Sewerage and sewage treatment is among the serious problems in the urban communities. Most industries discharge their effluents into sewerage networks or directly into streams without adequate treatment. Ultimately water gets polluted. For instance, urban sewerage nallas, draining dirty and polluted water into Ganga River are major culprits of making this river unsacred. Most towns and cities are unable to manage efficient solid waste system. The major portion of urban solid waste and refuse is either left uncollected which accumulates on streets in open spaces between houses and in wasteland, contributing to serious health problems or disposed off by open dumping in an unhygienic way.

Microbes and bacteria from land based sources contaminate water bodies near major cities. They are also polluted with synthetic compounds, such as pesticides, which accumulate in aquatic organisms. In addition, there is a gradual built up of toxic metals, such as cadmium and mercury, the toxicity of which is magnified as they rise through the food chain with humans as the ultimate
consumer. Thus, pollution from city-based activities is not limited to the immediate hinterland but may also impinge upon the surrounding environment.

Chemical fertilizer is an integral component of the green revolution. This chemical therapy is hazardous to soil and human health. Chemical fertilizer The residuals of fertilizers and other chemicals move with water-to-water bodies and contaminate them, change the chemical composition of water and thus, are hazardous to the water ecosystem. Inorganic nitrogen fertilizer induces an increase in the nitrate content of surface waters, leading to such environmental problems as eutrophication and health effects from ingested water. Fertilizers and pesticides also move with groundwater, polluting it.

Because of vital significance of minerals in industrial development, their exploitation has increased phenomenally recently which was never witnessed in the past. Mining creates large-scale deformation of the earth surface. Mining makes artificial hillocks of debris destroying vegetative cover and accelerates erosion. Water bodies are polluted and content of dust and smoke in the atmosphere reaches to the nuisance level. Processing of minerals leads a large-scale pollution of air and water, and their industrial use generates greater amount of pollutants. Even the transportation of minerals has risk of pollution; such as leakage of petroleum form tanks and pipelines is a grave problem in the Gulf region.

Of course, industries produce desired products but several undesired by-product are also produced. The later group includes industrial waste, polluted wastewater, poisonous gases, chemical residuals, dust, smoke etc. Air, water and land pollution by these hazardous industrial emissions has crossed the bearable limit. Most of these industrial wastes are disposed in running water. Consequently, poisonous elements reach to reservoirs, rivers and other water bodies, which destroy the bio-system of these waters. The dimension of discharge of their effluents can be imaged by citing example of more than 150 leather factories located in Kanpur metropolitan area which discharge more than 5.8 million liters of waste water in the Ganga
River every day. Similarly, in industrially backward state of Madhya Pradesh also, about 500 industrial units, located near rivers, pour large quantum of harmful chemical wastes into rivers and have highly polluted waters of ten rivers.\textsuperscript{10} The water Pollution Control Board of the state, in a survey, found that most serious problem is in the Son and Khan rivers. These processes give birth to several environmental crises.\textsuperscript{11}

With the socio-economic and technological development of the country multidimensional efforts have been made for constitutional and legal provisions and their implementation for preservation, control and improvement of the environment. Laws and provisions pertaining to the environmental pollution have been classified on the basis of the components of the environment and significance for human health and life. At the same time, these laws are classified as either case laws or statutory laws.

Pertaining to the objectives of the present research project, the conclusions of different chapters are summarized below.

I. The Article 21 of our Constitution guarantees the right to life, a life of dignity, to be lived in a proper environment, free of danger of disease and infection. Article 21 has been liberally interpreted by the courts and right to wholesome environment has been included within its ambit in 1976 by the Constitutional Amendment Act 1976. Article 48-A was newly inserted and it has imposed a Constitutional mandate on State to protect and improve the environment. By Art 51-A (g) of the Constitution a duty on every citizen has also been imposed to protect and improve the natural environment. Therefore it is obligatory in the part of the Government to formulate and enforce acts to protect, preserve and improve the environment as the living space of the humanity.

For the first time in 1990 the Supreme Court came close to almost declaring the right to environment in Article 21 Chhetriya Pradushan Mukti Sangharh Samiti v State of U.P.\textsuperscript{12} and Subhash Kumar v State of Bihar.\textsuperscript{13} In Chhetriya Pradushan case,\textsuperscript{14} Chief Justice Sabyasachi Mukerji has observed:
"Every citizen has a fundamental right to have the enjoyment of quality of life and living as contemplated in Article 21 of the constitution of India".15

In Subhash Kumar,16 Justice K.N. Singh observed in a more vivid manner:

"Right to live includes the right to enjoyment of pollution-free water and air for full enjoyment of life".17

The right to life of the citizens is the primary and priority consideration in a democratic form of governance. Any activity in which enforcement agencies of the government, scientists, technicians and interested and affected parties participate in formulating the policies, do require modern techniques. The environmental threats that are faced now a day are originated in diverse phenomenon, ranging from domestic to industrial, urban, transport and agriculture. Identification of such hazardous industries and carrying out a systematic analysis of the wastes is a major task of the enforcement agencies. Formulating necessary legal provisions to regulate such pollution is looked upon as a constructive step in the direction of achieving the goals determined by the Stockholm and other conferences in the field of environmental protection.

II. The problem of environment is not only of national concern but has grown to international dimensions. The Chernobyl nuclear accident deposited radio nuclides throughout the northern hemisphere and ever since, the dominant concern of the world citizenry has been the future risk to health. The cumulative weight of scientific evidence on ozone depletion, acid rain, climate change, deforestation and species extinction has such global impact that new forms of human restraint and international cooperation are necessary to solve the problem. It is also noted that the dangers of the ecological catastrophe are clear and present and they affect not a part of the globe, but the globe as a whole. Because of this fact, norms of the interdependence have emerged at the international level for protecting the environment and making environmental law go beyond the limits of municipal law and extend its authority to the field of international law. The United Nations Conference on the Human Environment in 1972 is a landmark at the international level for the protection of the deteriorating environment. The conference identified the areas and laid down the
principles on which the nations should take and enact laws for protecting and improving the environment. This Stockholm Declaration provided basis for the development of environmental laws in this country. The Rio declaration presented environmental principles for national behaviour.

From the classical literature it is evident that there was no need for the protection of the ecological balance as it was self-enforced by the nature itself. But the acceleration of the scientific and technological developments and rapid industrial development exerted so much burdens on the environment in different forms that it became imperative to formulate and implement environmental laws to protect the environment from degradation and pollution. So first charge on the legal system is to eliminate or control sources of pollution and the second task is to impose appropriate sanction against polluters.

Environmental law is a synthesis of principles, concepts and norms governed by other laws. It has now been accepted, with or without alterations, as concepts of civil liability, which had their origin in tort. The Supreme Court of India has tried to evolve the jurisprudence of strict liability for harm caused by an industry engaged in hazardous or inherently dangerous activities. The attempt was to interpret Article 32 of the Constitution of India by holding that the provisions under it make it possible for the court to fashion any kind of remedies. In the post-Independence era, in 1976 the Act 48-A was inserted in the Constitution by the Constitution (forty-second Amendment) Act, 1976, which explicitly provided for the protection and improvement of the environment. After that several legislations like the Water (Prevention and Control of Pollution) Act, 1974; the Air (Prevention and Control of Pollution) Act, 1981 and Environment (Protection) Act 1986 were passed by the Parliament so as to cater to the need of growing environmental problems and to abide by its obligation of sustainable development. Apart from various laws, the Indian judiciary has placed a seminal role in the development of environmental jurisprudence by means of PIL.

Prior to independence environmental laws in the country were scattered in various legislations which may be called environment-related legal provisions rather than environmental laws. Theoretically though
under Tort law, principle of “strict liability” developed in *Rylends v. Fletcher* was applicable in India but it was seldom applied in the past. Only in the last decade Supreme Court of India applied this principle of liability. But now a day, the concept of strict liability has been transplanted through the very concept of absolute liability by the Supreme Court of India. In the case of M.C. Mehta v Union of India (Oleum Gas Leakage or Shriram Food and Fertilizer Industry case) declared that ‘we have to develop our own law.’ Further, it is explained that such industry must be held strictly and absolutely liable for causing harm as a part of social cost carrying on hazardous or inherently dangerous activity. Such liability is not subject to any of the exceptions that operate under the Rule of strict liability given by the decision in the case of *Rylands v. Fletcher*.

The present legal framework of environmental laws in substantive aspects have been developed in various stages from the Water Act 1974 to National Environment Appellate Authority Act, 1997 and Procedural Rules also framed thereunder. The wide interpretation of Art 21 of the Constitution by the Supreme Court of India has widened the scope of application and implementation of environmental laws through PIL. In addition to supreme and subordinate legislations the Environment Department and Central as well as State Pollution Control Boards in India are taking an active role in developing many guidelines for strengthening a viable legal framework of environmental laws in India in the procedural aspects.

**III** The Constitution of India focuses on creation and maintenance of a society where every citizen has access to the socio-economic framework to achieve equal status and equal opportunity for realization of the dignity of his personality in a harmonious and congenial environment. The Constitution of India originally did not contain any direct provision regarding the protection of natural environment. But careful analysis of various provisions of the Constitution reveals that three Articles 47 (Improvement of Public Health), 48 (Organization of Agricultural and Animal Husbandry on modern and Scientific Lines) and 49 (Protection of National
Monuments from Spoliation, Disfigurement, etc.) relate to environment. However, a duty was imposed on State and citizens by virtue of Art. 48-A and 51 A (9) to protect and improve the environment in the year 1976. Also Article 21 has been liberally interpreted by the courts and right to wholesome environment has been included within its ambit.

The Constitution of India, under Chapter XI, provides for legislative relations between the Center and State Governments. It provides a scheme under which the Center and the States can make laws on the items provided in the Union List and State List attached with the Seventh Schedule. Under certain circumstances, the Central Legislature (Parliament) can also legislate on the items enumerated in the State List. Further, Article 253 of the Constitution empowers parliament to legislate on any matter for implementing the international obligations and decisions taken at the international conference, association or other body's meeting.

Thus, to implement the decisions of the Stockholm Conference of 1972 was within the competence of Parliament and accordingly Parliament passed many laws, viz. the Water (Prevention and Control of Pollution) Act, 1974, the Water (Prevention and Control of Pollution) Act, 1977 and the Air (Prevention and Control of Pollution) Act, 1981. The Environment (Protection) Act of 1986 has also been passed to implement decisions arrived at the International Conference at Stockholm (1972) to preserve natural resources. Thus, inclusion of Articles 48-A and 51-A (g) relating to environment was a reassertion of the powers of Parliament provided under Article 253. It is to be noted that this power of the Indian Parliament has never been disputed. Moreover, it is an enabling provision for Parliament to legislate on the various aspects of environmental laws. The Constitution (Forty-second Amendment) Act, 1976 has made it a fundamental duty to protect and improve the natural environmental

Pollution may appear to be social and economic issues but they also involve problems of access to justice for people. Various legislative and administrative measures adopted by government show its serious concern for protecting environment. Judicial activism provided impetus to the campaign against pollution. Vardhi Chand showed the path for people's
involvement in justicing process, sans which the system would crumble under the burden of its insensitivity.

IV. As right to live under Article 21 is not confined to the protection of any faculty or limb but also covers the right to healthy life as a Constitutional mandate has been imposed upon States by virtue of Art 47 to improve public health. An act which tends to or causes interference with the health, safety, comfort, convenience of the public at large has been considered as public nuisance. It covers all types of pollutions. Section 290 of the Penal Code provides punishment for public nuisance which otherwise is not punishable under the Act.

Chapter X of the Criminal Procedure Code, 1973 (CrPC)-Part B, has provided a provision for public nuisance which relates to environmental pollution. Section 133 of CrPC empowers a District Magistrate, Sub-Divisional Magistrate, to stop the nuisance on receiving information. The imperative tone of Section 133 of CrPC read with punitive temper of Section 188 of IPC make the prohibitory act a mandatory duty. The decision of the Supreme Court in Ratlam Municipality case has made it clear that a citizen can always bank upon Section 133 of the CrPC for the removal of the nuisance of pollution.

The Supreme Court in the State of M.P. v. Kedia Leather & Liquor Ltd. had declared that the area of Section 133 of the Code and 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 is in the nature of preventive measure. The provision contained in above two Acts is not only curative but also preventive and penal. The provisions appear to be mutually exclusive and different in their respective fields.

It has been established that it is both the right and the duty of legislature to make needful regulations for the preservation of public health and the protection of the public interest. The Environmental laws which have been passed by Parliament and State legislatures are based on the recognition of clean environment as a human right or fundamental right. The Supreme Court of India and State High Courts have, while dealing with environmental cases, referred and based their judgments on Right to
Equality (Article 14), Right to Life (Article 21), and Right to Freedom of Trade and Commerce (Article 19(1) (g). Articles 13, 32, 141 and 142 are of considerable importance in Judicial Activism. Article 32 makes the Supreme Court as the protector and guarantor of the Fundamental Rights. The Supreme Court and High Courts have been conferred wide power of judicial review.

The Supreme Court has declared it in unequivocal terms that there is a Constitutional imperative on the Central Government, State Governments and bodies like Municipalities to take adequate measures to promote, protect and improve the environment man made and natural environment. Article 51-A (g) of the Constitution of India confers one of the fundamental duties to protect and improve the natural environment. To protect the public health Governments are authorized to make laws on drugs and poisons to prevent infectious diseases.

V One of the major objectives of this research is the critical assessment of environmental laws particularly concentrating on water, air and noise pollution. Analysis of Acts and other legal provisions pertaining to preservation and control of water, air and noise pollution reveal certain remarkable situations, which are summarized below.

**Water Pollution** - The fresh water that is so essential to our lives. Polluted or contaminated water have been found to be injurious to public health or animals and aquatic life. Pollution was once just a public health problem. Now it is also an economic problem affecting the consumer, the industrialist, and farmer as well as a social problem. The consequences of water pollution on the human race are widespread and range from a reduction in the recreational value of beaches and waterways; to unaesthetic drinking water, to serious health hazards. Effective pollution control was not discernible until the promulgation of the Act of 1974. Unless the Government is serious in combating pollution and there is a determined effort on its part, unless the industrialists develop a sort of introspection and realize that they have no right to jeopardize the lives of the people by indiscriminate discharging the affluent into water bodies, the problem of pollution in general and of water pollution in particular will persist.
The Indian legal system provides four major sources of law for addressing water pollution problems: (1) comprehensive scheme of administrative regulation through the permit system of the Water (Prevention and Control of Pollution) Act of 1974; (2) provisions of the Environment (Protection) Act of 1986 relating to water quality; (3) public nuisance actions against polluters, including municipalities charges with controlling water pollution; and (4) and common right of riparian owners to unpolluted water. In addition, the Union Government's Department of Environment, Forests and Wildlife has developed an action plan for the prevention of pollution of Ganga. The Supreme Court, most notably in the Ganga Pollution Cases, has added to the force of these laws by hearing public interest writ petitions, submitted under Article 32 of the Constitution, that seek implementation of measures to prevent water pollution.

Controlling water pollution owing to the diverse factors is an extremely difficult task. The Water Pollution Act, 1974 established a Central Board for Prevention and Control of Water Pollution and similar Boards in the States. These boards are empowered to control pollution primarily through standards laid down by them and the issue of consent orders. The remedies under the law of tort to abate environmental pollution are the oldest legal remedy. Sections 16 and 17 of the Environment (Protection) Act 1986 enunciated the principle of vicarious liabilities. At the same time, several acts have been passed concerning the problem of water pollution and preventive measures.

**Air Pollution** - Air, being the first pre-requisite of life, the impact of its pollution is devastating. Respiratory diseases like bronchitis, asthma, and lung cancer among humans are but only a few prominent illustrations. Its consequences on animals, plants, and other living things are yet to be evaluated. Causes for air pollution in a scientific era are several. Emissions from industries are the major source. Motor vehicles add to the problem. Courts have gone into expert studies and analysed the problems of air pollutions in an extensive fashion in different cases.

Air (Prevention and Control of Pollution) Act 1981 (Air Act), is the first legislation that deals with air pollution in a comprehensive manner.
There is provision for declaration of air pollution control areas, and to exercise regulation of emissions of polluted air within the area. The State Pollution Control Board, which regulates pollution of water, is in charge of controlling air pollution as well. The Air Act renders more or less the same extent of powers and functions to the Boards as is given under the Water Act. Inevitably, several questions overlap both at the jurisdictional level and the functional level.

**Noise Pollution** - The problem of noise in India is in no way less grave than that in any industrialized country. But no legislation of noise pollution in India has yet been enacted. The problem of noise pollution in residential areas has been considered as the growing menace to personal liberties of the people and to the studies of children. The noise carries its adverse effects on human health. A new problem of noise pollution emerged in recent years as most challenging is the indiscriminate use of loudspeakers. The issuing of license to establish any industry, trade or other noisy work in residential areas has made the problem of noise pollution more critical.

The existing enactments, which directly or indirectly relate to the problem of noise pollution in India, are found inadequate to control it on national level. Keeping in view the seriousness and evil effects of noise pollution, the Superior Courts in India have attempted to control and prevent the malady of noise pollution. Law and judicial process have been pressed into service as an instrument to control noise pollution. The High Courts have played important role in this area as has become evident from the various pronouncements made by them. Under criminal law the problem of noise pollution can be discussed with reference to Indian Penal Code, 1960 and the Code of Criminal Procedure, 1973.

While in India there is neither any specific legislation to control noise pollution nor the courts in the country have yet considered the compensation as an appropriate remedy in the cases of noise. Moreover, they find it quite difficult to assess the damages in the cases of the nuisance of noise under the law of torts. Thus, the people in India still
need some effective legislation on noise pollution to meet the growing menace of noise in the country and to protect their interests against it.

Along with the water and air pollution, the problem of noise in India is in no way less grave than that in any industrialized country. But no legislation of noise pollution in India like some other countries has yet been enacted consequently the problem of noise pollution is rapidly growing all over the country.

VI. It is known fact that the environmental decision-making process is not much different from the administrative process in general. While reviewing environmental decisions made by the government and its agencies, courts cannot ignore the general constraints on judicial review. In most cases, matters impacting on the environment come before the higher judiciary by way of writ appeals. Seldom do they come as appeals from subordinate courts. Environmental cases directly reaching the High Courts do face procedural limitations, such as existence of alternative remedies, laches, bias, and locus standi.

In cases relating to the environment, one finds an exception to the generally accepted limitations to the judicial review. The rigour of locus standi is considerably reduced in these cases. This was particularly due to the rise of public interest litigation (PIL) in the eighties and nineties. There was tremendous growth of environmental jurisprudence during this period. The range of environmental issues sorted out in PIL has been very broad. It extends from the privileges of tribal people and fishermen, to the ecosystem of Himalayas and forests, eco-tourism, land use patterns, compassion to animals, and vindication of an eco-malady of a village. The causes are taken up by a wide spectrum of people in society-lawyers; association of lawyers; environmentalists; scientists; professors; groups and centers dedicated to environmental protection and forest protection; welfare forums including those for tribal welfare, societies registered under Societies Registration Act, consumer centers, and nature lovers forums. The list extends to urban social activists, women's wing of a society for animal protection, Chairman of rural voluntary associations, and residents of housing colonies.
Public interest Litigation (PIL) has come to stay in India. Country to the past practices, today a person acting bonafide and having sufficient interest can move the courts for redressing public injury, enforcing public duty, protecting social and collective right and interests and vindicating public interest In the eighties and nineties there has been a wave of environmental litigation. Most of such cases were in the form of class action and PLI, obviously because environmental issues related more to diffuse interests than to ascertaiunable injury to individuals. The concept of class action is embodied in the code of civil Procedure 1908.

The Court emphasised the rationale of PIL in environmental issues. It is the duty of the 'State to protect the environment-a duty imposed by the Directive principles and Fundamental Duties, introduced by the forty second amendment of the Constitution. Any person who raises an environmental issue, whether individual, group or institution is equally concerned with the problem. Such litigation can never be considered as one of adversarial confrontation with the State.

The range of issues has been very broad. It extends from compassion to animals and privileges of tribal people and fisherman to the eco-system of the Himalayas and forests eco-tourism land use patterns and vindication of an eco-malady of a village. The cause of environment being taken up through PIL was championed by a wide spectrum of people in society. Lawyers, association of lawyers, environmentalists, groups and centers dedicated to environmental protection and forest conservation welfare comms including those for tribunal welfare, societies registered under the Societies Registration Act and consumer research centers have successfully agitated environmental issues before Courts.

Courts have devised ways and means to access the impact of environmental pollution. The powers of the Supreme Court to issue directions under Art 32 and that of High Courts to issue directions under Art 226 have attained great significance in environmental litigation. Courts have made use of these powers to remedy past maladies and to check immediate and future assaults on the environment. There is many a mile stone in the path. For example, in the Doon Valley’s case the Court wanted
information on whether indiscriminate mining continued under a legally valid license, had any adverse impact on the ecology. Several committees, consisting of experts, were appointed to go into the question. On the basis of their reports, certain mining operations were ordered to be closed immediately and others in a phased manner. The judicial technique of appointing committees and commissions is ingenious, as this results in more light being shed on areas of environmental and ecological knowledge. The feedback helps courts substantially to arrive at correct conclusions and to issue appropriate orders. This technique is a welcome development in the field of judicial activism, filling as it does yawning gaps in existing laws.

It is the foresightedness of our nation that before the problem becomes serious, we have some specific enactments in our hands regarding Water and Air Pollution and are waiting for the others like Noise Pollution controlling laws which should be enacted as early as possible and be followed by proper assessment of the laws from time to time to enable us to prevent our environment to be polluted abnormally. Till we are fully equipped with such legislation and even after that the courts should also show their duty consciousness to fill in the required gap by using judicial power which is an important tool to be used to achieve the goals. Its great merit is that it is a power without bias or previous commitment and is a function of balancing interests. And the same task judiciary should perform while delivering judgments in such cases and should bring a harmony between the two the productivity of the nation and the National Environmental Planning.

SUGGESTIONS

The link between the human life and environment is inherently unbreakable and if the attempt is made to delink directly or indirectly it would be fatal not only to human beings but also all living creatures. This fact has been perceived on global level. The modern life is full of complexities and it is difficult to maintain balance between the life and the environment. The country is heading towards enormous industrialization and urbanization and its impact can be seen as on ecological disturbances
and environmental pollution. Under such situation, the constitutional duty of the State and its agencies are not discharged merely by incorporating/enacting statutes for control and preservation of environment. They are bound to bring environmental awareness among citizen. Originally, environmental protection and its related provisions contained in Articles 48-A and 51-A (g) which is one of the Constitutional provisions in the Directive Principles of State policy and Fundamental Duty respectively. Thus these constitutional provisions are not contained in Part III i.e. Fundamental Rights. It is clear that Article 21 of the Constitution, which deals with the protection of life and personal liberty, is one of the fundamental rights. In this context certain suggestions are made here with.

1. It is very much clear from the preamble of the Environment (Protection) Act, 1986 that the objectives of the Act are the protection, preservation and improvement of the environment. It means there are three important aspects related to the environment which must be catered simultaneously. They are the protection of the environment from degradation and pollution by comate the menace of environmental crises; preservation and maintenance of the environment; and improvement of the environmental quality. Present statutory provisions to control environmental pollution are remedial measures to protect environment. All these provisions aim at protecting the environment from pollution and polluting agencies. Other two aspects are more or less lacking in our legal system. Therefore, this is high time to give due emphasis on the preventive measures. Further, industries and other projects should be consented with certain conditions for maintaining and improving the ecosystem. At the same time, strict observance of Environment Impact Assessment for new industries and development projects must be made routine activity.

2. Environmental management and maintenance of environment quality are every man’s concern and responsibility. It has been included in the Fundamental Duties of the citizen of India. It is glaring fact that even a common man treats the environmental as ‘sarkari’; as if sarkar (government) is from out side the country. It shows their colonial attitude
towards the environment in general and resources in particular. Further, it is Herculean task to prevent every one from polluting environment unless he does not perceive the significance and owns the responsibility of preserving the environment. For this purpose efforts in two directions have to be made.

First is to make people aware of intricacy of the environment. To enforce legal control of environmental pollution meaningfully the people are to be educated about causes of pollution, various legal provisions and their rights and duties. Such views have been expressed by the Supreme Court. The Apex Court in M.C. Mehta (2) V. Union of India has held that under Article 51-A (g) it is the duty of the Central Government to introduce compulsory teaching of lesions at least for one hour per week on protection and improvement of natural environment in all the educational institutions of the country. The Apex Court directed the Central Government to get textbook written on that subject and distribute them to the educational institutions free of cost. Thus environmental literacy is prerequisite for awaken the people about the environmental hazards; which ultimately will help in enforcing the environmental laws. Awareness of the problem of environment pollution and need for its protection should also be created through use of mass media in more effective manner.

Secondly, but more important is to ensure public participation in the implementation of environmental legislation. The rise of public interest litigation (PIL) in the eighties and nineties is a good omen in this direction. Participation of the people at grass root may change their attitude towards environment as well as increase their interest in sustainable development. At present, it is the responsibility of the government to preserve, protect and improve the environment. But ‘public partnership’ will reduce this burden of the government considerably. To materialize this concept, more meaningful right to information is required to be extended by the Pollution Boards. Environmental NGOs and educational institutions may take the duty to educate the people by adopting awareness programme in various forms.

Participation of active citizens and public hearings during development of any legislation and implementing regulations are the vital
factors for making government policies and decisions successful. Legal environment surroundings and legal obligations concerning the policies and decisions are required to be sorted out in the initial stages as the demand for evidence in terms of the requirements of burden of proof as well as legal responsibilities of the interested parties before and after the formulation of government policies are significantly important.

3. It is now well recognized that to control environmental pollution there is a vital role of NGOs and the public in the implementation of environmental laws. In states where NGOs have been taken into confidence they have done tremendous job of creating awareness among people. For example, in West Bengal they are actively cooperating administration and local bodies with regards to pollution control. Consequently majority of the populations, both in the rural as well as urban areas are aware of the environmental problems. They are also aware that there are laws to regulate environment pollution and there is West Bengal Pollution Control Board, as implementation agency working in West Bengal. In the rural areas people have not much complain about environment problem in their locality but in the urban areas people have grievances about problem of environment pollution. The Supreme Court in number of cases has categorically stated that there is constitutional guarantee to the public as well as NGOs to assert their right to know or information about official matters including environmental matter. But the court cases indicated that our official agencies are very much reluctant to extent their co-operation in this regard.

So, Government administrative agencies, legislature Judiciary, people and NGOs all have to play greater attention for proper implementation of environmental laws both in substantive and procedural aspects for the benefit of the mankind.

4. There are certain gaps existing in the environmental statutes, which polluters use for defence. For example, the Water (Prevention and Control of Pollution) Act 1974 provides elaborate provisions for the prevention and control of water pollution and maintaining or restoring of wholesome of water. At the same time, Environment (Protection) Act, 1986 says where any Act or omission constitutes an offence punishable under
this Act then the offender found guilty of such offence shall be liable to be punished under the other Act and not under this Act.' Despite the provisions of rights over unpolluted water, there are certain easement rights to pollute water of stream. For example, Section 15 of the Easements Act provides prescriptive rights of use of water of a natural stream also. But explanation IV to section 15 provides 'In the case of an easement to pollute water, the said period of twenty years begins when the pollutions first prejudices perceptibly the servient heritage.' Section 28 (d) of the Easements Act deals with the extent of easements to pollute air or water. Further, there is no infringement of the right if it does not amount to nuisance. It is submitted that these provisions of the Easements Acts should be viewed in the light of the recent technological development and rapidly increasing water pollution. Particular mention should be made of Sections 15 and 28(d) which provide right to pollute water. There should not be a statutory recognition of the right to pollute. Therefore, these sections, it is suggested, be duly amended so as to deny any such right to pollute. It is in the interests of the community that such pollution should not be continued any longer and such acts of pollution should be prevented. It would be desirable to enact specifically that "no right to pollute air or water can be acquired by prescription."

Similarly, the doctrine of 'good faith' has been observed in the cases of environmental Acts also. For example, it is stated in the Section 59 of the Water (Prevention and Control of Pollution) Act 1974 that "No suit or other legal proceeding shall lie against the Government or any officer of Government or any member or officer of a Board in respect of any thing which is in good faith done or intended to be done in pursuance of this Act or the rules made there under." Evidently this section seeks to exempt the Government, officers of the Government, members and officers of the Board from the legal proceedings in respect of anything done or intended to be done in good faith or in pursuance of the Act. Similar provisions have been made in other Acts pertaining to the environmental protection and control of pollution. It slackens the officers and employees. In fact, it is difficult to save the environment unless the responsibility of every has been fixed. New duty jurisprudence in its broader sense may be developed within
environmental laws so that the government agencies and municipalities can be held responsible for breach of duties give to them for implementation of environmental programme as envisaged in the Constitution 74th Amendment Act in Article 243 ZD (3).

5. It is pertinent to mention that till present day there is not an Act on noise pollution, while noise has become a public nuisance from village to metropolitan. Besides industrial machines and automobiles, uncontrolled loud music and loud speakers have created havoc in human life. Though certain States have enacted Acts but they are least effective. For example, the Kolahal Adhiniyam of Madhya Pradesh has exempted from provisions of the Act all those social, cultural and religious occasions which account for major portion of the noise pollution. On pattern of water, air and environment Acts, noise prevention and control of pollution act must be enacted.

6. In context of Water (Prevention and Control of Pollution) Act, 1974, there are certain aspects which require attention. For example, in aforesaid Act agricultural pollution has been ignored, perhaps, due to the reason that it is less visible and more difficult to correct than the pollution from industries. Since the country is predominantly agriculture and agriculture is being chemical-based progressively, it requires special attention regarding agricultural water pollution. It is polluting both water and land; and deterioration of agricultural land is due to excessive use of fertilizers and irrigation is reaching to menace level.

7. It is universal fact that elements of the environment are interrelated and interdependent and interact with each other. As such harm done to one component shall invariably harm other components as well. Under this factual condition, sectoral approach for preservation and control of pollution of one component is partial treatment of the disease. Now time has come to evolve and propagate a *Comprehensive Environment Act*, taking care of all aspects of the environment and resources.

8. The sole responsibility of keeping watch on the environmental issues lies on Central and State Pollution Control Boards. States like Madhya Pradesh, Rajasthan and Maharashtra are so huge that it is almost
impossible to keep vigilance of environmental pollution of the entire state. Therefore, a **chain of institutions should be established up to the district level.** In fact, sectoral approach of administration is responsible, to some extent, for present state of affairs in the country. One element of the environment is looked up on differently by different people; but no one bothers to maintain and improve them. Therefore integrated approach of viewing the environment as a unit, not bundle of different units, has to be adopted

9. The environmental litigation should be dissolved through **administrative adjudication** and public hearing system, as disposal of a case in the ordinary court of law requires lengthy procedure. However, power of judicial review and public interest litigation under Articles 32 and 226 of the Indian Constitution shall be continued and given due importance. As most of the environmental litigations involve economic development so there should be a time limit within which litigations should be disposed of for which simple and effective procedure be developed by suitable amendment of existing substantive laws as well as new procedural rules and regulations. Within the administrative agency constituted under the various environmental laws more and more administrative adjudications may be adopted to avoid unnecessary delay in court proceedings.

10. As there is lack of certainty of conviction for violation of environmental laws, so the prescribed punishment should be more deterrent and fine should prescribe minimum punishment and not the maximum limit as provided in the major environmental laws. There should not be any fixed amount of fine as punishment.

**REFERENCES**


13. AIR 1991 SC 420


15. ibid

16. AIR 1991 SC 420

17. ibid