CHAPTER VI

FINDING AND ANALYSIS
OF CASE STUDIES
6.1 INTRODUCTIONS

The Constitution of India guarantees right to Equality to all citizens and this right encompasses all citizens personality. The concept of the right to equality, though universally accepted as the backbone of democracy has its genesis in ancient Raman law. “Be, however, high you are law is above you”. The American Declaration of Independence of 1776, has declared that all men are born equal but in practice forget to concede any right to the Negro sweetness of quality.\(^1\)\(^4\)

In India after half a century of intense education and agitation, a person is slowly becoming conscious about his right to equality. It must be admitted by the slogans, promises and rhetoric, especially on the uplifting of the poor and downtrodden, the politicians have created a would of illusion and fantasy. The fallacy is so widespread that sincerity appears to be incapacity of candidate and corruption is virtue.\(^5\) In short in India “The Political system becomes hostage to the racketeers” as Madhu Limaye has said.

6.2 GENERAL VIEW

The plague of corruption threatened to demolish the pillars of polity on which faith, future and fraternity of the people of India rested.\(^1\)\(^4\)\(^5\) The days following the fractured mandate of 1991, were the golden days, for all the politicians to make money being encouraged by the absence of the watchful eyes of an able leader. The phenomenon of a hung parliament breeds corruption of Himalayan proportion. A scum each day has kept a party in power.

In order to safe guard the rule of law, on the foundation of which the superstructure of democratic rule rests, judicial intervention becomes the need of the hour.\(^2\)\(^3\) It is to be admitted that the beginning of independence
attempts were being made to curb corruption by ordering judicial enquiries which failed to yield any tangible result. The High Court and the Supreme Court which are to interpret and enforce the laws made by legislative exercise their jurisdiction. They have restricted themselves with in the framework of law.

The Supreme Court under the article 142(1) of the constitution and the High Court by virtue of its inherent power are able to do complete justice in respect of matters pending before them. The Supreme Court has power in the large interest of justice to send a case back to the High Court for re-decision or to examine the evidence itself and dispose of the appeal finally without further prolonging the proceedings against the appellant for the cause of justice.

In Malikarjuna Rao V. State of Andhra Pradesh, the Supreme Court clarifies time limitation of judicial review. In this case it has been laid down that the scope of judicial review is very limited because of the court cannot exceed its periphery. Unless any application is made before the Supreme Court or High Court, the Court cannot suo moto take action against any inaction of the executive. But at the same time Judicial activism should not deprive the poor people from their basic rights.

6.3 CRITICISM ON ENVIRONMENTAL POLICY

A policy is said to be effective if it solves the problem it was supposed to. Thus, the motion of effectiveness is closer to what would be the most likely focus of environmental activists and environmentally concerned citizens. Effective policies are those that clean the air, restore lakes and save
species from extinction. The question of effectiveness does not refer to the costs such policies may imply; neither does it take into account any other social problems which may arise as a result of their implementation. In contrast, economists are concerned with the idea of efficiency attempting to take into account both costs and effects of a given policy or action. This implies that effects are made commensurate with costs by evaluating the former in the same terms as the latter. Monetary evaluation is the most obvious method to employ, but other-less typical-measurement units are possible too, for example, energy units.

A policy is said to be efficient, if its costs are justified in terms of its effects or, to put it more precisely, if it maximises the net effects of the costs. As in the case of effectiveness, the idea of efficiency leaves aside the question of fairness, that is, who will pay the costs and who will benefit from the effects. Unlike effectiveness, however, efficiency addresses the question of whether a policy is worthwhile. Thus, in efficient air quality policy forces the raising of emission abatement requirements as long as incremental benefits resulting from the cleaner is exceed the costs of the cheapest alternative to meet such requirements.

Efficiency is a difficult concept to apply, as environmental benefits are often difficult to evaluate in economic terms. This is why a somewhat less stringent concept of cost effectiveness has been in common i.e. A cost-effective policy achieves any given effect at the least possible cost. Thus if the objective is to clean up a lake, of all effective policies the cost-effective one will be the one which restores the lake to life at minimum cost. It should be stressed here that neither effectiveness nor cost-effectiveness per se provides a criterion to judge whether a policy worthwhile to pursue, that is, in the example
above, whether the lake Mild be restored or the economy’s scarce resources spent on something ie. Efficiency provides a theoretical criterion, but of course there are additional aspects that environmental policy has to take into account. Fairness has been another important issue raised about environmental policies ever since such policies were formulated and implemented.

There is on universally accepted definition of fairness, and economists prefer to talk about *equity* whenever they discuss the distribution of costs and benefits among the parties concerned. Making a policy equitable means to balance costs and benefits across all parties concerned by appropriately distributing benefits and/or letting beneficiaries pay an adequate share of costs. For instance, a policy aimed at preservation of biodiversity will be judged inequitable if the costs affect the local populations in areas adjacent to protected habitats, for example, by constraining development opportunities, without offering them a fair share of the benefits from conservation.

As shown in the brief overview above, environmental policies can be viewed from several different perspectives. Traditional environmental activists would perhaps assess policies from the point of view of their effectiveness. More sophisticated activists would ask whether they are cost-effective, as the same effect can be achieved at various costs. Economists, in turn, tend to raises efficiency questions Although difficult to answer, these questions are extremely important because of two reasons. First, it is not sufficient to design a set of cost effective policies to address environmental problems such as specific levels of acid rain abatement, eutrophication control, causing foul smell solid waste disposal and so on. Although each of these problems can be individually solved in the cheapest way, there is no reason to believe that the collective outcome will be what people would prefer to have, if
one considers the costs to be home. It might turn out, for instance, that the eutrophication control has become too strict vis-a-vis the waste disposal measures. It might have been better to relax the eutrophication control a bit, and switch the resources saved in this way to substantially improve the waste disposal situation. Secondly, the resources spent on the environment altogether because of a series of cost-effective sectoral policies might turn out to be too few or too many in comparison with what was spent on meeting other needs. In the 1980s, long debates over alternative approaches to environmental policies led to the emergence of the sustainable development concept.

Although there is no universal understanding of sustainability, most definitions embrace the idea as expressed in the Brundtland report (WCED, 1987) that is, to meet the needs of the present without compromising the ability of future generations to meet their own needs. Sustainability thus implies not only short-term equity (meeting the needs of the present), but also a much deeper concept of intergenerational equity. A sustainable policy has to address environmental problems in a way that maintains both the physical and social bases for further development. The idea of sustainability goes far beyond the scope of conventional environmental economics. It is difficult to operational is, because much uncertainty exists as to whether the present use of natural and man-made resources is compatible with their future use.

Regarded by many, the idea of sustainability nevertheless serves as a guide for policy-makers to balance their quest for economic efficiency with equity considerations, and to adopt a long-term perspective. It also helps to assess what is certainly not sustainable. In particular, with respect to the environment and the natural use of resources, the sustainability concept directs the attention to the physical volume of inputs and outputs flowing through the
world economy. This flow conveniently called throughput, has been largely ignored by economic analysts, who focus on the monetary value of some of its components rather than on its physical scale. However, because many important components are not captured by commercial transactions, monetary analyses often fail to recognised the important information derived from studies of the global throughput which, for obvious reasons, can not grow indefinitely.

6.4 Failure of Air Pollution Strategy

Law has direct role to play in the realization of the goals. Because it is the only acceptable way to equate human actions for which the society permits coercion on those who violate the law. Legal provisions provide an effective way to put a policy into operation. However, review of situation in Pune and Kolhapur from the overall studies on noise and air pollution and experienced real life situation reveal that that the law has not been able to achieve sufficient success in terms of imposing criminal sanctions against those who have been polluting the environment. The inventory in the form of data collected and data generated. Total number of prosecutions launched under Air Act does not give a very encouraging impression. This means that the criminal prosecution strategy has virtually failed in combating or preventing air pollution. The principal reasons for this failure may be stated as follows.

1. Prosecutorial strategy of environment management has no sound basis. The theory is based on the rule of ‘policing the society’ which is not consistent with the democratically accepted principles of government.

2. The penal measures have also failed to have any deterrent effect on the polluters because the economic benefits arising out from violation of anti-pollution measures are always more that the amount of fine
imposed. It has been seen that in actual practice the amount of fine imposed is very small when compared to the economic benefit arising out the violation of anti-pollution measures.28

3. It has also been found that the penal measures have proved counter productive. The emphasis practically shifts to manage the authority instead to be managed by it.

4. Litigation complaint case is not only time consuming but is also a very costly, technical and cumbersome affair.

5. Litigation affair inconvenient for the prosecution agency.

6. Involve a lot of scientific and technical details.

7. Regular law courts are already burdened with the increasing number of day-to-day litigation delays total process of

8. The offenders who can spend amount are in a position to engage the best lawyer defending their case in court. Boards have no sufficient financial resources.

9. Criminal prosecution though punished the guilty but doe not compensate the victim.

6.5 CRITICAL APPRAISAL OF PUBLIC INTEREST LITIGATION IN INDIA

The concept of public Interest litigation, an innovation of the activist judiciary of this country during the late 70's has indeed proved to be a providing them with easy access to justice.12 People who are forced to submit to the interrogation of the police, are captured and kept in the prison cells. People who find no place to hide there ill-rodden wealth and have links with the under-world elements are exposed and they are up in arms against the judiciary. They believe that judicial activism is nothing but judicial dictatorship which
requires the strict restriction to the earliest opportunity. This revolutionary opening in the legal field will pale into insignificance if the powers that muster enough strength to get the Anti-corruption Act or FERA or any other Act under which they are sought to be booked get amended to serve them. If the power of the Apex Court and the High Court are contracted and delegations of their power are given to the committees of legislature chosen by them. There will be absolute criminalization of politics. This dangerous trend if unchecked will make the judicial activism an exercise in futility. The people will lose faith in it. The recently reported move of the government to bring forth the legislation imposing monetary restrictions on the citizens having constitutionally recognised right to public interest litigation calls for a serious introspection. This aspect of the matter is to be seriously examined in the light of socio-economic conditions prevalent in the country as well as the constitutional promise to do social and economic justice to the people. To move is to make any person or group of persons approaching the Supreme Court or the High Court by way of Public interest litigation, to deposit rupees one Lakh or rupees 50,000/- respectively, which will be refunded if the outcome went in the favour of the petitioner and confiscated if the petition was not allowed. This is patently unfair and unconditional. This will azar the door of the court for the downtrodden poor class and needy people. This provisions will rather make it a richman’s Court.

Public interest litigation has recently developed in wider respective there are several reasons for it. The prime reason is that there has been certain measures to rise in the awareness of the common man for the redressal of this right through Court. It has also heightened the confidence in the judicial process and new approach of the court. Public interest litigations is
a democratic obligation which has been accepted in various Expert Committee Report and Recommendation. Public interest litigation shows that the Court act as a guardian and protector of the constitution. In short, it can be concluded regarding its use on the following points:

1. The Public interest litigation had widened the concept of locus standi.
2. The Public interest litigation had encouraged the poor to rise their voice before the court for their protection of fundamental and legal rights.
3. The Public interest litigation had made the individuals to make collective action for effective remedy.
4. The Public interest litigation had made aware the ignorant of their right.
5. The Public interest litigation shows the court of their role as guardian and protector of the constitution.
6. The Public interest litigation had led to the abolition of several legislations which prove to be big threat to public interest.
7. The Public interest litigation had proved to be democratic obligation.

For the poor, illiterate, socially and economically backward in practical field not in theoretical field justice appears to be the distant dream. Doubts and fears have been expressed against the abuse of the Public Interest Litigation stating that, there may encourage unwanted, undesirable litigations, with mala fide or ulterior motives and uses it for personal gains or private profit or political motivations or other oblique considerations. Fears have also been voiced that this will add burden to the arrears of cases in the Supreme Court and the High Courts. One is at a loss to understand as to how the process of Public Interest Litigation can be abused. It can be abused in the following ways:

1. That the persons approaching the court has not come with clean hands, clean heart and clean objective.
2. That the cantankerous litigant has tendency to make Public Interest Litigation without substantial purpose.

3. That the unnecessary litigations may open the floodgate of litigation.

4. That the person has filed Public Interest Litigation even if there is an alternative path for redressal.

Public Interest Litigation is generally emerged for the downtrodden and poor section but if they are deprived from such right, then it has no utility. Hence, the doors of court through PIL needs to be kept open with just a little restrictions with prime face authenticity of the information.

6.6 ENVIRONMENTAL PROTECTION AND AIR POLLUTION

Without water and air no life can survive. Still pollution free water and clear air, which are necessary for healthy life seems to be a rare commodity today, especially in our big cities and towns. For the control of water and air pollution there are three main enactments.


b. The Air (Prevention and Control of Pollution), Act, 1981.

c. The Environmental (Protection) Act, 1986,

These Acts create Central and State Boards and vest them with powers and functions with a view to preventing and controlling pollution. Both laws are more or less on the same lines.

6.7 DEFECTS IN CONSTITUTION OF POLLUTION BOARDS

Under the scheme of the Water Act the State Board is the agency to take up appropriate measures for controlling pollution of water within a State. The same agency looks after the duties and functions of the Board.
under the Air Act. In order to be an effective instrument of achieving the objectives of the Act, the Board should be an independent, compact, efficient and expert body. On close scrutiny the statutory provisions reveal a different picture. The Board may consist of fifteen members in addition to the Chairman and the Member-Secretary. These members can be persons having no experience or knowledge whatsoever with any activity connected with pollution control. The select committee on Air (Prevention and Control of Pollution) Bill, 1978 recommended that at least two among the official members be experts. But this was not accepted. Under Section 4 of the Water Act only the Chairman and the Member-Secretary are to be persons with some experience or knowledge in use and conservation of water resources and in public health engineering respectively. It is said that this makes the boards weak appendages of the respective Public Health Engineering Department-in the States. In such a set up one cannot claim that the Board consists of persons with expertise in the required field. Ostensibly, this affects adversely the efficiency of the Board as an effective instrument of pollution control. Interest representation seems to be an apparent defect in the constitution and structure. of the Board. The very undertakings against which the Board has to take action—(industries in the private sector, State Government companies, corporations, etc.) may be represented in the Board. This leads to an unwelcome situation. Much of Board's impartiality and efficiency will be lost; its decisions will be conditioned not by expertise and experience but by the weight of the interests exerting influence. An examination of the provisions reveals another flaw, namely, overdose of governmental control. All nominations are to be made by the government. Under the Act there is no criteria on qualifications or experience of the would be nominees. The result is that the government is free to nominate anybody. More often than not official or non-official members who
are burdened with other assignments and who do not have any interest in pollution control are nominated. All these render the Board far from being independent, efficient and impartial.

6.8 CONSENT ADMINISTRATION OF POLLUTION BOARDS

Consent of the Board is necessary for a new or altered outlet or for new discharge of sewage or trade effluent to a stream or well (or sewer or on land as added by the 1978 amendment). The Board grants consent with conditions. The Water Act provides that consent shall be deemed to have been given—unconditionally on the expiry of a period of four months of the making of an application unless the consent is given or refused early. Suppose that the Board by any reason does not dispose of all the consent applications in a proper manner within the statutory period. The effect is unconditional consent. The consent doesn't deal with air pollution. This should be made effective for controlling air pollution.

6.9 NECESSITY OF MORE POWERS TO THE POLLUTION BOARDS

No pollution control scheme will be effective unless the control agency is independent and has decision-making and enforcement powers. Unfortunately the powers granted to the Board under the Act are insufficient and are likely to be exercised under the shadow of influence by the Government, and other interests, ... Most of the functions as detailed in Section 17-of the Water Act are of an advisory, deliberative, investigatory and research-oriented character. It is true that whether to grant or refuse consent and whether or not to withdraw consent are the most important powers in the hands of the Board. However, the Board by itself has no powers to take coercive measures against the delinquent. A person violating the conditions of consent or
causing pollution is criminally liable. The Board has no power to impose a punishment; it has to initiate prosecution before a Court of appropriate jurisdiction\textsuperscript{44}. The position of the Board as a mere prosecuting, and not as a coercive, agency determinately affects its functioning as an authority for prevention and control of water pollution. Prosecution becomes an ineffective remedy against industrial giants: It is also a time consuming process robbing the Board much of its time and efficiency. The trend of modern legislation is to confer penal powers on the administrative agencies so as to render them effective instruments of control. The Board has the power to take immediate action under Section 32 of the Act if by accident or other unforeseen act any poisonous or polluting matter is present in a stream or well\textsuperscript{45}. The Board can take action to remove that matter from the stream or well, to remedy or mitigate the pollution caused and to issue orders prohibiting the person concerned from discharging such materials into the stream. But under Section 33, the Board does not have this power if such a pollution is apprehended. It has to move the Courts for an order restraining the person from polluting the water and authorising the Board to remove the polluting matter in case the direction of the Court is not complied with by the person. This puts the Board into an awkward position. On getting information of an apprehended danger of pollution the Board becomes helpless since it has to wait for the orders of the Court to take up positive measures\textsuperscript{46}.

The legislation applies with equal force on the concepts of both prevention and control. One may wonder why preventive aspects are not given due weight in an instance of apprehended pollution. Timely preventive measures are more effective than belated remedial action. Instead of waiting on a Court for an order the Board itself should have the power to issue/restraint
order to any person in case of apprehended pollution and to impose heavy penalty and such other appropriate action if the order is not complied with.

The Board should also have the authority to order for closing the industrial activity from which pollution is apprehended. Similar powers should be exercised in case a condition under which consent granted is violated. The air act need to provide powers to the board, in order to overcome these defects.

6.10 AIR POLLUTION AND LOCAL BODIES LEGISLATION

Local bodies legislation laws relating to Municipal Corporations, Municipalities and Panchayats is a typical example. Amidst various other responsibilities, it makes a feeble attempt at maintaining a clean environment by imposing duties and conferring powers on the local bodies. But these provisions remain ineffective instruments of pollution control. The reason is obvious. Local bodies legislation is not the result of a proper policy towards environmental protection obviously because environmental consciousness is a later development. It has been pointed out that domestic pollution accounts for 80 per cent of the total environmental pollution in India. Yet we are making an attempt to combat domestic pollution within the ambit of the local bodies legislation. Ratlam represents the judicial responsiveness to this attempt. Perhaps Ratlam has been too ambitious. Local bodies operate with limited resources. They function within narrow limits of jurisdiction. They do not have the necessary infrastructure for acting as effective agency of pollution control. There is no centralised agency for co-ordinating pollution control activities of the various local bodies. No wonder that the municipal corporations, municipalities and panchayats remain helpless and impotent in combating domestic pollution. In this context creation of an agency with sufficient
resources and infrastructure and with wider jurisdiction and effective coordination of activities is the need of the day.

6.11 CRITICISM ON NOISE, AIR POLLUTION AND TORT

Noise Pollution and Tort: In tort, in order to constitute nuisance there must be unreasonable interference with a person's use of enjoyment of land. Every air contaminant or noise does not amount to nuisance. A balance has to be maintained between the right of the occupier to do what he likes to do with his own and the right of his neighbours not to be interfered with. Since domestic burning of fuel and resultant emissions of air pollutants as the unavoidable incidence for daily life cannot be attainable. It is also interference that amounts to nuisance if it results in substantial damage to the comfort and right of enjoy to life, that has to be considered nuisance. Similarly, disturbances thorough noise is not as such considered to be actionable, it is only in case substantial damage to the comfort and convenience that has been considered nuisance. Thus where the defendant kept a large number of horses in the sable to run tram-ways and the noise and smell there from was complained by the neighbours, the interference amounted to nuisance and the same was stopped by the issue of injunction.

In Mohammed Vs. Health Officer, the noise caused by the hammering and cutting of the sheets was not considered to be so substantial and unreasonable as to permit an action in the case. In brief, tortuous liabilities have uncertainty in their application in controlling noise and air pollution.

6.12 JUDICIAL ATTITUDE VIS-À-VIS INDUSTRIAL POLLUTION

Industrial pollution is the basic problem having adverse effect on the health and safety of not only the industrial workers rather on all the
residents of that city. This problem is more acute in big cities and the industrial towns. In few cases it has been observed that the occurrence of industrial accidents endanger the life of the persons living in the nearby vicinity of such industrial establishments. The above said observation is fully strengthened by the occurrence of the industrial accident due to leakage of the gas in MIDC plant of the Union Carbide in Bhopal which claimed the life of thousands of residents. The liability for the occurrence of this causality can be imposed not only on the employer rather the State Government, Town Planning Committee, Industrial-Licensing Authority and the other local authorities are equally responsible for permitting the hazardous industrial establishment viz., MIC plant of Union Carbide to carry out their manufacturing process in the thickly populated area located in the heart of the city which not only created the environmental pollution rather it claimed life of many people due to leakage of poisonous gas. Another industrial accident, resulting in environmental pollution and endangering the life of the residents of the area occurred in December 1985 due to leakage of oleum gas from the factory of the Shriram Food and Fertilizers Limited located at Najafgarh Road area of New Delhi. In this case a five Judge Bench of Supreme Court observed that the rule of strict liability to pay compensation, without any exceptions particularly for those enterprises engaged in any hazardous or inherently dangerous industry, would be part of the social cost for carrying on the hazardous or inherently dangerous activity. The law relating to hazardous or inherently dangerous establishments permits these enterprises to carry on their business for profit with the condition that such establishment would absorb the cost of any accident as an appropriate item of its overheads. The Supreme Court in this case held that the residents around and the workers employed in since establishments would be entitled to get compensation for any 'harm' caused to them by such hazardous
establishments. Such compensation would be payable irrespective of the fault of the enterprise of aforesaid category and it should not be considered as valid defence in favour of such establishment that it had taken all reasonable care the harm occurred without any negligence on its part. This rule would be applicable in case of all such establishments which endanger the health and safety of either the persons working in the factory or those residing in the surrounding areas. The niantam of the compensation payable to the injured persons or to their survivors in case of their death would also be elated to the prosperity of such enterprise. The judicial attitude of Supreme Court in the aforesaid case by providing a rule of absolute or strict liability in case of hazardous establishments would result in prevention of environmental pollution as well as the occurrence of industrial accidents. The owners or occupiers of such-hazardous establishments would adopt suitable safety devices with the sole object to avoid their absolute and unconditional liability of paying compensation. Consequently, it would be possible to prevent environmental pollution by the hazardous establishments and to protect health and safety of the workers working in such establishments as well as the residents living in the nearby vicinity of such establishments.

6.13 FEATURES OF THE AIR (PREVENTION AND CONTROL OF POLLUTION) ACT. 1981

This Act provides for the prevention, control and abatement of air pollution and for the establishment of boards and for carrying out the aforesaid purpose.

Chapter I of the Act deals with the definitions. Chapter II deals with the composition of the boards to be established by the Central and State Governments. Chapter III specifies function and powers of the boards. Chapter
IV provides measures for the prevention and control of air pollution. The paragraph in this chapter deals with the power to give instructions for ensuring standards for emission for automobiles; restriction on use of certain industrial plants, prevention of emission of air pollution in excess to standards laid down by the boards; calling of information regarding the emission of pollutants from different agencies; power of the board to take samples of air or of emission; setting up of ‘State Air Laboratory’ reports of the results of the analysis of the samples and the actions. Chapter V deals with budget provisions for the board. Penalties for the contravention of the provisions of the Act, offences by the companies, offences by Government Department, act of damage etc. are dealt with in chapter VI. Special provisions for the smooth implementation of the spirit behind the Act are given in final chapter VII.

Under this Act, the concerned State Government have to declare the air pollution control areas with the consultation of the boards. The scheduled industries which are in the appendix of the Act and other industries in the air pollution control areas will have to comply with the emission standards prescribed by the boards. Standards are also laid down by the boards for the emission of the air pollution from automobiles. The state government is empowered, in consultation with the state board to give necessary instruction to the concerned authority for registration of motor vehicles.

Sec. 22 of chapter IV states that no person carrying on every industry specified in the schedule or operating any industrial plant, in any air pollution control area shall discharge or cause or permit to be discharge the emission of any air pollutant in excess of the standards laid down by the state board under clause (9) of subsection (1) of section 17.
Sec. 37 of chapter IV provides for penalties as (1) whoever fails to comply with provisions of sub. Sec. (5) of sec.21 or sec. 22 or with any order or direction given under this Act shall in respect of each such failure. Be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in case the failure continues, with additional fine which may extend to one hundred rupees on every day during which such failure continues after the conviction for the first such failure. (2) If failure referred to in sub-section (1) continues beyond a period of one year after the date of conviction the offenders shall be punishable with imprisonment for a term which may extend to six months.

Sec.38 provides for penalties for certain acts. For certain acts the offender shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to five hundred rupees or with both. Sec. 39 provides penalty for contravention of certain provisions of this act, for which no penalty has been elsewhere provided in this Act, shall be punishable with fine which may extend to one hundred rupees for every day during which such contravention continuous after conviction for the first such contraventions.

In exercise of the power conferred by Sec.53 of the Air (Prevention and Control of Pollution ) Act,1981, the Central Government in consultation with the Central Board of Prevention and Control of water pollution makes the rules in the form of Air(Prevention and Control of Pollution) Rules, 1982.

The implementing agencies have experienced some administrative and practical difficulties in effectively implementing the
provisions of this Act and have brought these to the notice of the Government and the Government decided to make necessary amendments to the Act. The Act was accordingly amended in 1987 and is called as the Air (Prevention and Control of Pollution) Amendment Act, 1987).

Sec. 37 of the principal Act providing for penalties in amended as

1) "Whoever fails to comply with the provisions of section 21 or Sec. 22 or directions issued under Sec. 31A, shall in respect of each such failure, be punishable with imprisonment for a term which shall not be less than year and six months but which may extend to six years and fine which may extend to five thousand rupees for every day during which such failure continuous after the conviction for the first such offence.

2) If the failure referred to in sub sec. (1) continues beyond a period of one year after the date conviction, the offender shall be punishable with imprisonment for a term which shall not be less than two years but which may extend to seven years and with fine.

In Sec. 38 of the principal Act, for the words ‘five hundred rupees’ the words ‘Ten Thousand rupees’ are substituted. Sec.39 penalty for contravention of certain provisions is amended as – Whoever contravenes any of the provisions of this Act or any order or direction issued there under, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both, and in the case of continuing contravention with an additional fine which may extend to five thousand rupees for every day during which such contravention continues after conviction for the first such contravention.
6.14 CRITICAL ANALYSIS OF THE ACT

The problem of air pollution was not given much weightage before passing of the Air (Prevention and Control of Pollution) Act, 1981 as there are only indirect legislation to deal with the problem of air pollution at national levels and at the same time by enacting it, our country has fulfilled its commitment to the UN declaration on the Human Environment, 1972. The Act provides primarily for the preservation of air quality and control of air pollution. The Act incorporate a plan to set up the Air Pollution Control Board both at the Union as well as State levels with meaningful powers such as to issue and revoke the licenses of polluting industries, to declare air pollution control areas, to enforce emission standard stamping etc. The Act is mainly directed to certain specified polluting industries indicated in the schedule attached to the Act, such as textiles, coal, power plants, iron, steel, cement, engineering, chemicals, fertilizers etc. Further more, the Act also provides for different sources of pollution such as industries, transport, railways, automobile etc. 48

Restrictions 49 can be imposed in the 'air pollution control areas' so that these heavily polluted zones could be saved from further pollution, keeping in view the public health. Similarly the use of appliances can be prohibited in the premises situation in such control areas. 50 The 'consent' of the State Board is mandatory for operating any industrial plant; for issuing the 'consent' it can also impose conditions which are to be compiled with by the applicants. Failure to comply with these conditions is punishable with fine and imprisonment under the Act.

But, even after passing of the Act, there is a continuous increase in the air pollution in the country. The reasons which can be attributed to this
are, lack of financial resources, least public participation, inadequate panel provisions in the environmental legislations, costly devices for treating the effluents at source and failure to enforce the provisions of the Acts strictly against the offenders. In any case, in order to make the Act more realistic and practicable following measures\textsuperscript{50} may be useful:

a) The definition of 'Air Pollution' in section 2 of the Air (Prevention and Control of Pollution) Act 1881 may not be confined to solid, liquid or gaseous pollutants but also cover radiations and vibrations.

b) More autonomy may be given to the Pollution Boards is exercising their powers without much interference from the government so that these are out of the reach of politician who may misuse them for giving under concessions to industrialist at the cost of pollution.\textsuperscript{52} Presently, these appears to the excessive control of Government on the Board and when the Board is required to take an implement certain decisions, against the Governmental interest; than the Board might not function properly and independently.\textsuperscript{53} The over control of Government on the Board can be visualised from the following factors:

1. The member of the board are nominated by the Government;
2. They could be removed from the office by the Government;
3. They could be disqualified by Government;
4. The Board itself could be superseded by the government;

\textbf{c)} The scope of Section 21(1)\textsuperscript{54} of the Act may be enlarged to cover not only the scheduled industries but also any industry which is emitting the effluents.

\textbf{d)} A new schedules may annexed with the Act which must prescribe for the height of chimneys permissible limits of grit, dust and fumes emitted
from furnaces of each type of industry. The concerned should take steps under section 28 to 30 of the Act only in accordance with these standards. It is obligatory on the Boards to inspect; collect the samples, analyse the sample and also award penalties etc. this is a combination of executive and judicial functions. It appears that the Board is overburdened. Therefore it should exercise executive functions only. Judicial functions may be performed by special court. In the court, Board's role may be restricted to an evidentiary forum for presenting scientific and socio-economic issues.

e) Section 43 of the Act lays down that no court shall take the cognizance of any offence under this Act except on the complaint made by or with the previous sanction in writing of the State Board and further no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence under the Act are made cognizable under criminal law. The right to lodge the complain should also be extended to individuals under public interest litigation. Individuals complaint, in addition to include the ecological consciousness, would also help in the public participation mobilizing for nature conservation.

f) It appears that the nuclear and the hydro-electric energy would also be a source of cheapest and pollution free energy. Therefore the boards must be associated in the process of energy production.

But the laws themselves could not succeed in solving the problems unless these are backed by strong public opinion and public participation. The informed and responsible person can play a pivotal role in promoting the environmental pollution programmes. Pollution problem is basically a social problem as every body is directly affected by the problem.
Therefore the public at large should be educated in the field of environment to arouse civic consciousness. Further more the curriculum at the school level at least should be arranged to include the elementary environmental education.\textsuperscript{55} Last but not the least to say that 'misuse is no excuse' and Air pollution is severe that water pollution cannot be controlled.

\textbf{6.15 MAJOR LIMITATIONS OF THE AIR ACT}

A few of the limitations of the Air (Prevention and Control of Pollution) Act, 1981 may here be mentioned:

1. The Act has narrow scope as it does not include in its gamut "pollution through the medium of air." Hence, noxious odours as are emitted by some industries (e.g. Breweries and leather industries) and 'light pollution' caused by high intensity signboards, neon advertisements and their jamming light effects.\textsuperscript{56} Even some cases of pollution of air, particularly, emissions from ships and aircrafts and radio-active air pollution are excluded, from the operation of the Act.\textsuperscript{57}

2. The Act grants: discretion to each state government to designate particular areas as "air pollution control areas" within which the provision relating to regulations of pollutants discharges through permit systems are to be applicable. It seems that polluters located outside such air' pollution, control areas cannot be subjected to regulations of pollution or be prosecuted for violations of standards laid by the state boards.

3. The Act does not provide for concrete policy guidance in its provisions but simply' emphasis ..upon the purposes, constitution, and functions, etc. of the boards. In pursuance of the purposes under the Act the standards for the quality of air and emissions standards have been laid
down by the Central Board. Much of the emphasis has been on the control perspectives in the form of laying down of emission standards. Even in such areas, some hazardous pollutants such as lead are left but.

4. Even the constitution of Boards is not free from drawbacks. Under the Air Act, the prevention and control of air pollution has been given as an additional or secondary duty of the (water) pollution Boards. This underrates the importance of control of air pollution as there remains a tendency to attach greater importance and devotion to primary function. It would have been better had the control and prevention of air pollution entrusted to some integrated agency. The problem of air pollution cannot be effectively tackled and controlled in isolation and in disregard of the other elements of the environment, hence integrated approach to check pollution is indispensable. The Air Act like the Water Act docs not provided for such an approach as the local and municipal bodies which are adequately armed with statutory powers for ensuring environmental purity, have not been integrated into the national and state level enforcement machinery and their existing infrastructure has not been fully harnessed for effective prevention and control of pollution of aerial environment. Through cooperative efforts, sharing and shedding of responsibilities by boards and local bodies, fruitful results in maintaining the purity of the air and whole some ness of the environment in general can be achieved. As a sequence of an integrated approach, the Boards, on the other hand be authorised to consult other competent bodies entrusted to regulate, build, finance or aid various projects and programmes, such as highways, airports, power plants, housing,
agriculture and water resource improvement and other activities involving pollution and environment protection.

5. Provisions relating to taking of samples of emissions or air under the Air Act vests wide ranging powers on bureaucracy which afford ample scope for differential treatment and discrimination through unilateral executive decisions of subjective satisfaction and therefore does not admit of any better safeguards to the industry against any default or high handedness of the Board. Thus, the provisions require alteration by simplification of procedure for taking standardised samples;

6. The Air Act after its amendment in 1987 has adopted a new stand with regard to the question of locus stand so that now even citizens has the right to launch prosecution against the polluters which hitherto could only be undertaken by a Board or any officer authorised in this behalf by it. Even with the Incorporation of citizen’s suit provision, with little appreciation of pollution dangers by the ordinary citizens, much success in the avowed objective of prevention of pollution is not expected. Further, the citizens, suit provision is rendered ineffective by requirement of sixty days notice which gives a long enough lime to escape liability under the Act. Also, as the board authorities have been given authority to collect sample of air or emissions, the aggrieved citizen or private agency will apparently have no means of proving that an offence has been committed by the alleged offender.

7. The Air Act, after its amendment in 1987, now contains enhanced penalties for the offences and the violations under the provisions of the Act. The penalties, however, when compared to the damage that can be caused or perpetuated by tile commission of offences defined or omission of duties imposed under the Act, are inadequate. The sections
providing for offences are imprecisely worded with several provisos providing in-built Defence with the result the possibility of prosecution under the Act becomes a difficult task. Another shortcoming of the Act would seem to be that it does not provide additionally for damages to the affected parties. It would have been better if the act had provided simultaneously for payment of damages for injury suffered by persons by violations of the provisions of the Act. Such a provision could enable the injured persons to recover damages instead of proceeding under the law of torts where under the liability of governmental departments and government corporations remains restricted.

Nevertheless, apart from some of the shortcomings the Air Act is a good piece of legislation and has shown the right path to be pursued in the direction of prevention and control of air pollution.

6.16 LEGISLATIVE CONTROLS OF NOISE POLLUTION

The pivotal problem is to what extent noise can be said to violate the golden rule of silence? There is no categorical answer to this question. It would depend on person to person, place to place, time to time, society to society, function to function and from source to source. In India, there is no law exclusively dealing with the problems of noise, whereas developing countries of the world have enacted specific laws to control the noise menace. In England, there is Noise Abatement Act, 1960. Section 2 of the Act provides that loudspeakers shall not be operated:

a) Between the hours of nine in the evening and eight in the following morning for any purposes;

b) At any other time for purpose of advertising any entertainment, trade or business. There are some exceptions provided like use of loudspeakers
by the police, fire-brigade, etc. In United States of America also, there is Noise Pollution and Abatement Act, 1970 for controlling noise pollution and noise is ranked second to time.

Keeping in view the constitutional as well as international obligations, the Parliament of India has recently enacted a few legislations to control air and water pollution. But likewise no law has been enacted by the Parliament of India or any State Legislative Assembly exclusively to control noise pollution. However, there are some Central and State Statutes which contain provisions, directly or indirectly dealing with the control of noise pollutions. These include

Indian penal code\textsuperscript{28} Section 268, Section 133 Cr.P.C, Motor Vehicle Act, 1939: Sections 20, 21(j), 41 68(l), 70, 90, 111-A, Railway Act, 1890, The Aircrafts Act, 1934, Factories Act, 1948\textsuperscript{22,23}, The Bihar Control of the Use and Play of Loudspeakers Act, 1955.

6.17 INADEQUACY OF AIR ACT TO CONTROL AIR POLLUTION

The Air Act is almost replica of the Water Act with some additional modified provisions, considering its applicability. The Act gives wide scope to adopt a “Clean Available technology” and imposes many restrictions on the air polluting technology\textsuperscript{43}. But the best implementation of this Act for good results need a greater cooperation between the polluters and the law implementing authorities to achieve the goal for prevention and control of Air Pollution.

Despite of different provisions made for controlling the Air pollution under this act\textsuperscript{47}, the problem of air pollution has remained a major
environmental threat due to many loopholes in the act itself and lack of strict implementation of its provisions. Some of the easily striking lacuna, loopholes and inadequacy in the Act are as follows—

1. The definition of “Air Pollutant” has included solid, liquid or gaseous substances including noise but not the thermal energy or radiant energy.

2. The board constituted for the prevention and control of air pollution under this Act is not autonomous. It is under the grip of politicians in the name of Government. The Government has power to supersede the Board (Section 47 & 48). This is an obstacle in free and fair functioning of boards. Because, the politicians many times are the tools in the hands of owners of the industries.

3. The State Government is empowered to give instructions for ensuring the emission standards from automobiles under the Motor Vehicle Act, 1939. But the concerned authorities are not trained in respect of air pollution control from automobiles. Secondly, the mischief’s are committed by them while issuing the PUC certificates. They need to be brought under the punishment provisions, to ensure the strict implementation of automobile air pollution control provisions.

4. The consent conditions are overlooked. The consent by the State Board to establish, or operate any industrial unit or plant should prescribe the specifications like height of chimneys, minimum units to be installed for arresting the air pollutants etc.

5. A common man can not afford to go to the court and spent money unless he is seriously affected by air pollution. The procedure for taking cognizance by the court is tedious due to the need of written sanction of the State Board. The matters of air pollution should be made cognizable by the all courts under criminal laws. The right of filing complaint
should be reconstituted to make the Air Act more effective. This right may be extended to a common individual or a social action groups like NGO.

6. The pollution level measured by authorities is considered as the real level and never cross checking or verification by a field expert or a common man in authentic. The air pollution measuring personnel are mostly managed. They show the results far from the reality. Therefore the cross-checking by the field experts should be made acceptable in court matter. The provision should be made to challenge the report on the basis of scientific methodology too.

7. Air pollution by ships and aircrafts is not covered under the provisions of this Act. Either it must be covered or the air clean up tax must be charged against these air polluters.

8. The procedure to insure the air pollution offence is tedious and lengthy. The air polluter gets sufficient time to hide and manage proof of pollution and avoid the offence in the eyes of court.

9. No proper inventory is verified to insure the clean air and check the air pollution. Air polluting industries like pesticide industry release the air pollutants in midnight during the silent hours. The experienced people leave behind no proof except the complaint.

10. No any office of the State Board or Central Board is keen to verify the air emissions other than the paper work unless the written complaints are filed.
REFERENCE

1. Judicial Activism, by V.V.Upadhyaya, in AIR 1997 Journal Section 140 (September issue).


5. Report of the legal aid implementation committee, government of India, 1980.)

6. Inserted by the Constitution (Forty-second Amendment) Act, 1976 (Sec. 10) which came into force from 3-1-1977.

7. Inserted by the Constitution (Forty-second Amendment), Act, 1976, (Sec. 11) which came into force from 3-1-1977.


9. The Statement of objects and Reasons reads : “Deforestation causes ecological imbalance and’ leads to environmental deterioration. Deforestation has been taking place on a large scale in the country and it had caused widespread concern.” It is with a view to checking further deforestation the Act was passed.

10. See A.I.R. Manual.(4th Edition), Vol. 19, p. 670. This was recommended in order to ensure effective implementation of the legislation. Gazette of India Extraordinary Part II, Section 2 May 18, 1979, p. 616/5-

17. AIR 1989, SC 1922.
23. Factories Act, 1897.
27. Indian Forest Act, 1927.
29. Indian Ports Act, 1908.
33. Serias Act 1867.
34. Shore Nuisance (Bombay and Kolaba) Act 1853.


48. Supra n.4 p.322

49. See The Air Act, 1981, Section’s 19(1) & (3).

50. Id., Section 19(4).

51. Supra n.4 pp.340-342


54. Section 21 (1) of the Act provide that no person shall, without the previous consent of the State Board, operate any industrial plant specified in the schedule in an air pollution control area.

55. Supra n.4 p.330. In Haryana, Delhi and Punjab, the steps have been taken by the respective state Government to include the Environmental Education in School Curriculum.


57. See, Air Act, 1981, Sections 17(1)(g) and 52.