CHAPTER – V

1 INTRODUCTION

One of the major factors that has disturbed the world during the decades is breathlessness. Breathlessness is due to the pollution of insulating blanket which surrounds earth. This insulating blanket is nothing else but invisible atmosphere. It is the atmosphere which makes sound possible, and which makes Radio, T.V. and other communication of long distance possible. It is the atmosphere which serves as vital protective mechanism as it absorbs rays which can be said to be cosmic rays emanating from space.

This chapter deals with the legislations and judicial trends for combating air pollution and ameliorating atmosphere. The judgments of the Hon’ble High Court of Gujarat in Special Civil Application (SCA) No. 8061 of 1992 / SCA 770 of 1995 and SCA 9988 of 1995 are cases which have tried to curb air pollution. The air around Ahmedabad and the major cities is highly polluted.

This chapter also deals with Air pollution monitoring, control and combating of air, vehicular and noise pollution by statutory and judicial strategies. Air pollution causes damage to bio-diversity, ecology and ancient monuments. The ancient texts which dealt with atmosphere and its defilement are discussed. The prior legislations under the earlier State Act and the various legislations controlling atmospheric degradation are analysed.

Before dealing with the concept of pollution of air, it is necessary to be aware of what is atmosphere because the term ‘atmosphere’ is not defined in the legislation concerning air pollution.
2 CONCEPT OF ATMOSPHERE

2(A) Meaning of Air / Atmosphere :-

The new international Webster's Pocket Thesaurus\(^1\) of English Language terms Air as “atmosphere; breeze; tune; manner; ventilate and announce”. The Webster's Pocket Dictionary\(^2\) defines atmosphere as an envelope of gases that surrounds the earth or any body in space which would include particular climate condition of any place or region regarded as dependent on the Air, any surrounding or pervasive element or influence.

The earth's atmosphere is about 100 miles in height which thickens in volume so that all the chemicals can get diluted. 95% of this air mass is within 12 miles of the earth's surface. This 12 miles depth contains air we breath and pollutants which we emit. This layer is called the Troposphere where we have weather and air pollution problems.\(^3\)

The definition of air given in The Concise Oxford Dictionary is “invisible gaseous substance enveloping earth, mixture mainly of oxygen and nitrogen, breathed by all land animals and plants; the earth's atmosphere; free or unconfined space in atmosphere”.\(^4\)

The Supreme Combined Dictionary defines Air as (1) mixture of gases breathed by land animals; (2) atmosphere; (3) breeze; and word ‘airless' means without air which causes suffocation. Definition of ‘atmosphere' means mixture of gases surrounding the earth, the air in particular place.\(^5\)
One of the properties of atmosphere can be said to be its mass (the weight of atmosphere). The divisions of the atmosphere are the Homosphere, Troposphere, Stratosphere, Mesosphere and Heterosphere. Heterosphere is divided again into five parts namely: (1) Thermosphere; (2) Molecular Nitrogen (N$_2$) layer; (3) Atomic Oxygen (O) layer; (4) Helium (He) layer; (5) Hydrogen (H$_2$) layer.

The science of planetary atmosphere is termed as aeronomy. In addition to dealing with the chemical composition and reactions of atmosphere, it involves their movement and thermal balance.

2 (B) Pollution of Air:-

Meaning:

The terms air and atmosphere have not been defined in the Air Act, and therefore, the definition by various dictionaries has been referred to, the definition of air pollution and air pollutant means under the Section 2(a) & (b) of the Air Act means under the Section 2(a) & (b) of The Air Act means:-

The term ‘air pollution’ means the presence in the atmosphere of any pollutant and ‘air pollutant’ means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment. Thus air pollutants would include smoke, soot, heat, fly ash, suspended particulate matter (SPM), noise radioactive substances, vibrations. The above definition lay emphasis on two aspects, (a) high toxic concentration of different substances; (b) that this concentration is injurious or likely to injure. The Supreme Court and the
Orissa High Court have considered noise as a pollutant because it contaminates the environment caused by nuisance and affects the health of people\textsuperscript{12, 13}.

*The Halsbury’s Laws of England, 4th Edition*\textsuperscript{14} defines pollution in relation to air to mean "doing of something which changes the natural qualities of air, including its temperature." As per R.G. Chaturvedi, the definition would by necessary implication take within its sweep the change in temperature of air if it caused physical, chemical or biological change in the properties of air\textsuperscript{15}.

3 DIFFERENT FACTORS CONCERNING CHANGE IN ATMOSPHERE.

The factors responsible for climate change are (A) Warming World; (B) Global Warming; (C) Green House Effects; (D) Acid Rain and its Effects and (E) Depletion of Ozone Layer. \textit{16\textsuperscript{th} September has been declared as an international day for preservation of Ozone layer.} In a recent report published by Ministry of Environment and Forest, Government of India, Gujarat nowhere figures in biosphere reserves of India.

4. REVERENCE FOR AIR / ATMOSPHERE IN ANCIENT TIMES

The \textit{Smrities, Vedas} and \textit{Upanishad} as well as the \textit{Bhagvad Gita} have shown that for Indians air or atmosphere has its own value. In Prashanopanishad air is considered to be ‘\textit{Sarvayush}’ or longetivity of one and all.\textsuperscript{16}
It was considered that damage to any part of the environment was insult to God himself. Upanishads also described wind as fuel of the fire. Forest (Van) is also a source of natural energy. It provides life support and is held to be Goddess (Van- Devi). If we exclude air from the concept of environment our planet would become non-existent as proclaimed by Lord Mahavira. `The Taittiriyopanishad considers that "life is manifest air, and the air manifest in life is breath’. The air is God Almighty. It is cosmic truth and cosmic harmony.” Breath is considered to be the origin of all life. For all excretive functions even for giving birth to off spring air or breath as it is known are essential.

5. AIR POLLUTION, KINDS OF AIR POLLUTION AND ITS SOURCES

5(A) Concept of Air Pollution :-

Having considered the importance of all pervading atmosphere the analysis shows that if air is not available, living beings would perish. It may appear strange but it is true that smoke, which is coming out from domestic fire, also leads to contamination of the atmosphere. The term pollution means defilement of air.

West's Legal Thesaurus, defines atmosphere as Stratosphere, Oxygen. Wind and Atmosphere. The word polluted means to poison. Poison in turn means any substance which has characteristics and is dangerous to life. Venom, in any form would contaminate air and the atmosphere which means atmospheric pollution. A general definition of air pollution would be: air pollution includes any toxic substances which have the quality to poison and which contaminates atmosphere. Thus air pollution is nothing
else but as condition whereby humans or plants are subjected to injury (health wise).

5 (B) Kinds of Air Pollutants:

The pollutants of air can be classified into two major heads: (a) Natural and (b) man made pollutants.

Natural contaminants or natural pollutants consist of Pollen Grains, Natural Viable Pollutants. The man made pollutants consist of (a) Primary pollutants; (b) Secondary pollutants; (c) Industrial pollutants and (d) Minor pollutants. Transboundary pollutants of air are reported to spread pollution between two countries.

It is reported in the magazine 'Paryavaran Mitra', June - 2003 issued by the Centre for Social Justice that Ahmedabad, hub and major city of Gujarat has RPM, Carbon Monoxide, Nitrogen Oxide which are high toxic pollutants at concentrations that are an alarming and higher than permissible.

5(C) Sources of Pollution :-

The Hon'ble High Court of Gujarat in Taruben S. Gamit vs. Central Pulp Mills Ltd. reported in 1997 (2) GLH 1007, observed that:

".... Before few years smoking is dangerous was not known but now statutory notice is to be printed on a packet of cigarettes. Not only that but before few years that was not prohibited while traveling by air or train, but now the same is prohibited. Air pollution
The suspended particulates are a major source of air pollution.

Pollution and its sources can be broadly categorised as (a) domestic pollution; (b) industrial pollution; (c) vehicular pollution; (d) noise pollution and (e) radio active pollution.\(^{23}\)

Sources of outdoor air pollution are industries, automobiles exhaust which consist of various kinds of oxides of carbon and nitrogen. Petrochemical solvents through vapour phase also cause lot of pollution. Air pollution due to automobiles is a source of pollution which has caused severe pollution hazard. Pollution is caused due to use of mixture of petrol, use of bad diesel, and use of bad machinery. The possibilities of running vehicles on alternative fuel has been advised by the Supreme Court in *M.C. Mehta vs. Union of India* reported in AIR 1998 SC 617.\(^{24}\)

5(D) Noise Pollution :-

Noise pollution has its sources like industrial and non-industrial sources. Industrial source means conversion of energy, which causes noise. Big machineries working in industries at a high speed generate high levels of noise. Noise pollution means, pollution of sound. Noise is unwanted sound without agreeable pleasant quality. To a layman sound and noise would mean same but there is difference between the two. Sound may be pleasant or unpleasant, noise connotes its unpleasant character.
5 (E) Non-Industrial Sources :-

Non-industrial sources according to Priya Ranjan Trivedi can be divided into following categories:

5 (E) (a) Loudspeakers; 5 (E) (b) Automobiles; 5 (E) (c) Trains; 5 (E) (d) Aircrafts; 5 (E) (e) Construction Work; 5 (E) (f) Projection of Satellites in Space; 5 (E) (g) Radios, Microphones.

One of the common factors creating noise pollution is indiscriminate use of loudspeakers. In India no function or ceremony is complete without a loudspeaker which creates nuisance. The Supreme Court has directed the use of loudspeakers in a specific manner. The Gujarat High Court has directed the State Authorities to issue notification specifying time for use of loudspeakers during Navratri festival.

6. EFFECTS OF AIR POLLUTION AND FACTORS INFLUENCING ATMOSPHERIC DETERIORATION :-

6(A) Effects of Air Pollution on Humans:

The concept of atmosphere and the reverence for air cannot be understood if the world does not visualise the ill effects of pollution of the air. The Oxides of Nitrogen consisting of Nitric oxide and Nitrogen dioxide cause health hazards. Hydrogen Sulphide is a foul smelling gas; Fluorides; Lead; Hydrocarbon Vapours; are Carcinogenic Agents. World Health Organisation estimates that 70% of the global urban population breaths air that is unhealthy at least some of the time, while other 10% breaths air that is Marginal.
6 (A) (a)  **Effects of Noise Pollution:**

It is now judicially pronounced and observed that noise is a pollutant of air. It has psychological effect on living organisms. It would speed up pulse rate and can impair hearing permanently or temporarily. Noise is reported to cause various aches. Empirical research shows that there are behavioural effects and even animals are affected by noise.

6(B)  **Effects of Air Pollution on Art Treasures or on Heritage Property:**

The Supreme Court is concerned about the ill effects of the atmospheric pollution on the Taj Mahal, a historic monument. It faces grave danger due to pollution emitted by power house, railway yards and other industrial units like Mathura Oil Refinery. Various newspapers and journals have shown concern about the state of affairs of the great monument. The directions of the Supreme Court known as Taj Trapezium Case are being monitored since 1984 in the case of *M.C. Mehta vs. Union of India*. The Supreme Court is constantly trying to check and stop the ill effects of air pollution and the deterioration of the Taj Mahal. There are brown patches disfiguring the Taj Mahal. There is formation of gypsum. Scaling and flaking effects are seen as sulphurdioxide mixes with the atmospheric moisture and gets converted into sulphuric acid which settles down on the exterior of the Taj Mahal, causing corrosion and discolouration of the monument.
Effects of Air Pollution on Animals and Forest:

6(C) (a) Wild Animals:

Animals get affected due to various kinds of pollutants present in atmosphere. It is reported that the wild life is affected to the greatest extent by air pollutants.

6(C) (b) Domestic Animals:

The domestic or farm animals which are used for farming get diseased due to the presence of contamination in the vegetation. The air borne contaminants present in the body of the animals cause health hazards.

6(D) Effects of Air Pollutants on Plants

Air pollutants cause severe damage to plants. These effects are narrated as under:

(a) Interveinal chlorotic bleaching of leaves
(b) Necrosis in interveinal areas and skeletonized leaves
(c) Flecks on upper surfaces, Premature aging and suppressed growth.
(d) Collapse of leaf necrosis and bleaching
(e) Necrosis at leaf tip
(f) Suppressed growth, leaf bleaching
(g) Epinasty leaf abscission
(i) Bronzing of lower leaf surface (upper surface normal), suppressed growth, Young leaves more susceptible.
6 (D) (a) Kinds of Injury to Plants:

The effects which air pollutants cause to the plants are acute injury; chronic injury, growth or yield retardation of plants.

6 (E) Economic Effect of Air Pollution

Economic effect of the pollutants is writ large on the world. This problem is not thought of seriously but there is lot of damage to valuable economic wealth due to air pollution. The properties get damaged which adversely affect the economy of the world.

6 (F) Effect on Climate

Air pollution causes effect on the climate. It also causes damage to the material, by abrasion. Solid particles of sufficient size travelling in the air can accelerate solid and liquid particles present in the air. The Air pollutants would have direct chemical effect and would cause corrosion of metals present in the air and can change climate.

The Kyoto Protocol and the Convention for Climate Change, are some of the conventions meant for addressing climate change problems.

7. AIR POLLUTION CONTROL, MONITORING AND ABATEMENT OF POLLUTION.

7 (A) Controlling Pollution: Methods and Strategies

The most important aspect to control pollution and to see that the ill effects of pollution are felt less is by legislation. It is important that air pollution is
brought under control, for bringing pollution under control several new mechanisms are employed. However, legislation and monitoring by courts alone would not help in controlling air pollution.

Air pollution is a serious threat, today, and is at the forefront of all environmental concerns, as observed in P.J. Patel's judgment, reported in 1995 (2) GLR 1210. It is important to understand the policy of controlling or preventing, as it is known that it is always better to prevent than to cure. It would be better to control the situation from further deterioration. Prevention may not be possible unless new industries come up with controlled technologies. Controlling is of two kinds (a) by enforcement of legal sanctions (2) voluntary control by the industries responsible for emitting the pollutants into the atmosphere.

The question which arises is what are the methods which are available for controlling air pollution? As observed in P.J. Patel's judgment, is shutting down of the industry a solution? Shutting down the industry will be counter productive to the economy of the country. It would disrupt the entire growth of the nation. In the judgment of P.J. Patel and the decisions rendered, thereafter, atmospheric pollutants causing environmental hazards were directed to be removed. Industries were directed to conform to emission standards set out in various enactments and judicial pronouncements.

The Hon'ble High Court of Gujarat gave several directions in Lok Adhikar Sangh vs. Home Secretary; SCA No. 8061 of 1992 so as to control and prevent hazard of air pollution. In bulletin 'Paryavaran Mitra' published in January, 2004 a study carried out by Kaushik Raval has pointed out that
the level of air pollution in Ahmedabad is highest, despite there being so many authoritative pronouncements of the Supreme Court and Gujarat High Court. The Hon'ble High Court of Gujarat in S.C.A. No. 9988 of 1995; *Suo Motu vs. Home Secretary*\(^\text{30}\) constituted various committees to check air pollution.

**7 (B) Pollution Monitoring**

There are two kinds of pollutions: (1) Indoor Pollution and (2) Outdoor Pollution. The monitoring of Indoor and Outdoor Pollutants require certain scientific and appropriate steps. Primary pollutants will have to be segregated and the preservation of air quality requires constant monitoring. The Supreme Court in the Taj Trapezium case, the Hon'ble High Court of Gujarat in SCA no. 770/95 and SCA no. 9988/95 i.e. P.J. Patel’s case and in the matter taken *suo motu* for curbing air pollution and health hazards in the State of Gujarat. The monitoring by courts have tried to shake off the slackness of the nodal agencies.

The above aspects of control and monitoring would result into abating pollution or at least decreasing pollution. It has now to be a combined effort of cure and prevention which is the need of the day. The modern monitoring and sampling techniques are required to be utilised optimally, so as to calculate the amount of air pollution with accuracy.\(^\text{31}\)

**8. THE CODIFICATION (LEGISLATION) FOR PROTECTION AND CONTROL OF AIR POLLUTION.**

Till 1981, the protection from pollution of air was controlled, monitored, abated as per the common laws and/or as per the ancient prudence. The
Stockholm Declaration brought about a change in the international scenario. India had to legislate for curbing Air Pollution. But what was necessary was both controlling and preventing air pollution. We had to strengthen itself in the realm of all the problems which arose due to industrialisation and urbanisation. The detrimental effect of air pollutants had to be studied. The Union Government was under obligation to legislate on air, being a party to the Stockholm Declaration. It could not now depend on the Indian Penal Code or Criminal Procedure Code or the Boiler's Act or to the Municipal Laws to curb Air Pollution. It had to legislate under article 253 of the Constitution of India.

Unlike Water Act, air was a subject which could be dealt directly by the Union Government under Article 253 of the Constitution read with Schedule 7 in entry 12,13 and 14 of list 1. These empowered the Union Government to legislate so as to prevent and control pollution of air. However, nearly nine years elapsed before the Union of India fulfilled its obligation embodied under Article 48-A of the Constitution. The comprehensive Act titled "(The) Air (Prevention and Control of Pollution) Act, 1981" was legislated. The Act had to be amended in 1987 after the Bhopal tragedy. The rules were framed by way of notification issued on 18th November, 1982.

8 (A) **Statement of Objects and Reasons for Legislating the Air Act 1981 and for Amending Act:-**

With the increasing industrialisation and the tendency of the majority of industries to congregate in an area which is already heavily industrialised, the problem of air pollution begun to be felt in the country. The problem is more acute in those heavily industrialised areas which are also densely
populated. Short-term studies conducted by the National Environmental Engineering Research Institute, Nagpur, (NEERI) have confirmed that the cities of Calcutta, Bombay, Delhi, etc., are facing the impact of air pollution on a steadily increasing level.

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

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

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

8 (B) Scheme of the Act

The Act is based on the model of the Water Act. How the same could be modelled on the Water Act is not clear, pollutants of air and water are quite different. Their control and monitoring would demand different expertise. The Board constituted for the Water Act was meant to deal with the problems, which would occur under the Air Act also.

8 (C) The Aim and Application of the Act

The Act would apply to the whole of India after it came into force on 16th May, 1981. It is legislated under Article 253 of The Constitution of India, wherein the parliament has exercised its power of framing law for entire country or for some territory of India. The main aim of the Act is to establish Boards at the Central and State levels, to empower them to prevent, control and to abate the cause of air pollution by way of Criminal Sanctions and other remedies like seeking directions from Courts. One of the objects is to specify standards so that the quality of air is maintained. This in gist is the preamble with which the Act begins.

8 (D) Definitions

The important definitions given are for the terms air pollutant / air pollution; approved fuel and approved appliance. Automobile is defined, chimney
and control equipment are also defined. What would constitute industrial plant and occupier are also defined. The definition clause extends from Section 2 (a) to 2 (o) and word occupier was inserted in the year 1987 by the Amendment Act of 1987. Some of the definitions are as under:

- **"air pollutant"** means any solid, liquid or gaseous substance (including noise) present in the atmosphere in such concentration as may be or tend to be injurious to human beings or other living creatures or plants or property or environment;

- **"air pollution"** means the presence in the atmosphere of any air pollutant;

- **"approved appliance"** means any equipment or gadget used for the burning of any combustible material or for generating or consuming any fume, gas or particulate matter and approved by the State Board for the purposes of this Act;

- **"approved fuel"** means any fuel approved by the State Board for the purposes of this Act;

- **"automobile"** means any vehicle powered either by internal combustion engine or by any method of generating power to drive such vehicle by burning fuel;

- **"chimney"** includes any structure with an opening or outlet from or through which any air pollutant may be emitted;
• "emission" means solid or liquid or gaseous substance coming out of any chimney, duct or flue or any other outlet;

• "industrial plant" means any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere;

• "occupier" in relation to any factory or premises, means the person who has control over the affairs of the factory or the premises, and includes, in relation to any substance, the person in possession of the substance.

The term occupier has been a controversial one in various matters. The decision in Dwarka Cement Works and Rushabh Industries were rendered by His Lordship Justice K.J. Vaidya in the year 1992. The above decisions are not overruled by the Supreme Court in recent decision in Tarun Thakor vs State. The argument of the petitioner seem to have been vindicated that only because a person is owner, he is not liable unless it is proved that he had knowledge of the offence being committed.

8 (E) Relevant Provisions

Chapter - II deals with the Constitution of Central and State Boards for the prevention and control of air pollution. Section 3 and 4 are discussed together because the Central and State Boards under the Water Act are conferred the power to act as boards for Air Pollution under the Air Act. Only in those State's where Water Act is not made applicable the State will have to constitute separate board. The Chairman may or may not be whole-time Chairman. A number of officials have to be nominated by the State Government. Section - 6 empowers the Central Board to exercise
powers and perform the functions of the State Board in Union Territories. Section 7 deals with the terms and conditions of the services of the members of the Boards. The Member Secretary holds the post for a term of three years after it is notified in the Official Gazette. The terms of the office of the members of a State Board shall cease, when they cease to be in office under the State Act. Members have the right to resign. The other terms and conditions of Chairman and other members shall be as prescribed by the State Government. The disqualification criteria has been highlighted in Section - 8 wherein a insolvent, a person declared by Court to be unsound mind a person convicted under Water Act, a person interested in business, sale or manufacture or having any interest in any company carrying on manufacture and meant for improving quality of air shall be disqualified. A member can be removed after giving reasonable opportunity of showing cause. Section - 9 deals with vacation of seats where any person incurs disqualification as contained in Section 8. The board hold shall meeting, once in every three months, but to transact urgent matter, the Chairman may call a meeting on urgent basis. A committee shall be constituted under Section 11.

There is a saving clause as far as vacancy is concerned and no act of the board shall be invalid, only because of the defect in the Constitution of Board or Committee. Section 14 legislates as under:

"14. Member-secretary and officers and other employees of State Boards.-

(1) The terms and conditions of service of the member-secretary of a State Board constituted under this Act shall be such as may be prescribed."
(2) The member-secretary of a State Board, whether constituted under this Act or not, shall exercise such powers and perform such duties as may be prescribed, or as may, from time to time, be delegated to him by the State Board or its Chairman.

(3) Subject to such rules as may be made by the State Government in this behalf, a State Board, whether constituted under this Act or not, may appoint such officers and other employees as it considers necessary for the efficient performance of its functions under this Act.

(4) The method of appointment, the conditions of service and the scales of pay of the officers (other than the member-secretary) and other employees of a State Board appointed under sub-section (3) shall be such as may be determined by regulations made by the State Board under this Act.

(5) Subject to such conditions as may be prescribed, a State Board constituted under this Act may from time to time appoint any qualified person to be a consultant to the Board and pay him such salary and allowances or fees, as it thinks fit."

**Delegation of Powers:**

Section - 15 deals with delegation of powers. As seen in chapter - IV, there are decisions of the Hon'ble High Court of Gujarat, which show that the High Court has taken a practical view in holding that the Board, if it delegates power to the Chairman, the Chairman would have power to redelegate. In my view, when the Chairman may nominate officer
concerned as per the provisions of Section 15 to lodge complaint. Having constituted the Board, it is necessary to give powers to carry out functions, entrusted. In Chapter - III. Section 16 deals with the functions of the Central Board.

Section - 17 deals with the functions of the State Board.

"17. Functions of State Boards.- (1) Subject to the provisions of this Act, and without prejudice to the performance of its functions, if any, under the Water (Prevention and Control of Pollution) Act, 1974, the functions of a State Board shall be -

(a) to plan a comprehensive programme for the prevention, control or abatement of air pollution and to secure the execution thereof;
(b) to advise the State Government on any matter concerning the prevention, control or abatement of air pollution;
(c) to collect and disseminate information relating to air pollution;
(d) to collaborate with the Central Board in organising the training of persons engaged or to be engaged in programmes relating to prevention, control or abatement of air pollution and to organise mass-education programmes relating therto;
(e) to inspect, at all reasonable times any control equipment, industrial plant or manufacturing process and to give, by order, such directions to such persons as it may consider necessary to take steps for the prevention, control or abatement of air pollution;
(f) to inspect air pollution control areas at such intervals as it may think necessary, assess the quality of air therein and take steps for the prevention, control or abatement of air pollution in such areas;
(g) to lay down, in consultation with the Central Board and having regard to the standards for the quality of air laid down by the Central Board, standards for emission of air pollutants into the atmosphere from industrial plants and automobiles or for the discharge of any air pollutant into the atmosphere from any other source whatsoever not being a ship or an aircraft;

Provided that different standards for emission may be laid down under this clause for different industrial plants, having regard to the quality and composition of emission of air pollutants into the atmosphere from such industrial plants:

(h) to advise the State Government with respect to the suitability of any premises or location for carrying on any industry which is likely to cause air pollution;

(i) to perform such other functions as may be prescribed or as may, from time to time, be entrusted to it by the Central Board or the State Government;

(j) to do such other things and to perform such other acts as it may think necessary for the proper discharge of its functions and generally for the purpose of carrying effect the purposes of this Act.

(2) A State Board may establish or recognise a laboratory or laboratories to enable the State Board to perform its functions under this section efficiently.
Section - 18 deals with the powers of the State Government to give directions to the Board.

Chapter - IV deals with prevention and control of air pollution and is spread over Sections - 19 to 31 and Section - 19 is the important Section of this chapter. The above provisions are interpreted by the Supreme Court in the case of *Orissa State Prevention and Control of Air Pollution Board vs. Orient Paper Mills* reported in 2003 (10) SCC 421 read with section - 54 which empowers the State Government to frame rules for declaration of area to be air pollution control area. Section - 20 of the Act deals with power to issue instructions for ensuring standards for emission from automobiles. Sections 22 and 22 (A) are important and are therefore reproduced verbatim:

"22. Person carrying on industry, etc., not to allow emission of air pollutants in excess of the standards laid down by State Board.- No person [ x x x] operating any industrial plant in any air pollution control area shall discharge or cause or permit to be discharged the emission of any air pollutant in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of section 17.

"22A. Power of Board to make application to court for restraining persons from causing air pollution.- (1) Where it is apprehended by a Board that emission of any air pollutant, in excess of the standards laid down by the State Board under clause (g) of sub-section (1) of Section 17, is likely to occur by reason to any person operating an industrial plant or otherwise in any air pollution control area, the Board may make an application to a court, not inferior to that of a Metropolitan Magistrate or
Judicial Magistrate of the first class for restraining such person from emitting such air pollutant.

(2) On receipt of the application under sub-section (1), the Court may make such order as it deems fit.

(3) Where under sub-section (2), the Court makes an order restraining any person from discharging or causing or permitting to be discharged the emission of any air pollutant, it may, in that order, -

(a) direct such person to desist from taking such action as is likely to cause emission;

(b) authorise the Board, if the direction under clause (a) is not complied with by the person to whom such direction is issued, to implement the direction in such manner as may be specified by the Court.

(4) All expenses incurred by the Board in implementing the directions of the court under clause (b) of sub-section (3) shall be recoverable from the person concerned as arrears of land revenue or of public demand.

Section 23 deals with furnishing of information to the State Board and other agencies where there is an occurrence of accident. Intimation of any unforeseen act or even by the person in charge of such industry to the concerned Board.

Chapter 5 relates to fund, account and audit, and contain four sections. This has been a controversial one. Shri S.C. Muds el Senior Adviser of the Ministry, quoted in Halarnkar, Leaking Plugs in India Today, 9 June, 1997.
Pg. 69[4] has mentioned that lack of funding and staff cripples the administration. Section 32 deals with the contribution from Central Government. Section 33 deals with the funds of the Board, Section 33 is added in 1987 giving borrowing powers to the Board. Section 34 deals with the budget of the State or Central Board. Section 35 speaks about laying of the annual reports within a period of 4 months of the last date of the previous financial year, and each board has to lay its report before the State legislature. Section 36 speaks about accounts and audit of every board.

Chapter - VI lays down Criminal Sanctions in Sections 37 to 46. These are enumerated below:-

37. Failure to comply with the provisions of section 21 or section 22 or with the directions issued under section 31 A.
38. Penalties for certain acts.
40. Offences by companies.
41. Offences by Government Departments.
42. Protection of action taken in good faith.
43. Cognizance of offences.
44. Members, officers and employees of Board to be public servants.
45. Reports and returns.
46. Bar of jurisdiction.

These sections deal with penalties and procedure. Chapter VII deals with the power of the State Government to supersede State Board, Dissolution of State Boards constituted under the Act and the power to amend the schedule. Maintenance of the register is enacted in Section - 51.
Section 52:-
"52. Effect of other laws:- Save as otherwise provided by or under the Atomic Energy Act, 1962, in relation to radioactive air pollution the provisions of this Act shall have effect notwithstanding anything inconsistent there contained in any enactment other than this Act.

Rule Making Powers:

Section 53 and 54 lays down powers to Central Government and State Government to make rules. Gujarat has its own rules framed and entitled as "Gujarat Air Pollution and Control Rules". The Act like the water Act, it would be seen that though the Act has very laudable object it has inbuilt limitations and the Air weakness. The basic theme of the Air Act is on the same pattern as that of the Water Act. The Air Act is more of regulatory nature and techno-economic solution is less. Integrated approach to deal with the air pollution is absolutely lacking. The Act nowhere speaks about the improving quality of environment. It no doubt speaks about prevention and control which would have indirect effect of improving quality of air.

8 (F) The Air Prevention and Control Rules

The rules under the Air Act are to be framed by the Central Government as well as the State Government. The Central Government framed rules in 1982, the rules are divided into 7 chapters and most of the provisions are related to the internal working of the board. The rules were promulgated on 18th November, 1982 in exercise of the powers conferred by Section 53 of the Air Act. There are 17 rules, forms and schedules are also attached. The
State of Gujarat framed rules in the year 1983. These rules are relevant as Gujarat Gaseous Emission Standards for various industrial plants are specified under the said rules and the notification which was issued on 29th January, 1988 is annexed as 'Annexure-V-A'. The rules provide for appeals to be preferred under Section 31 of the Air Act. The procedure to be followed by the appellate authority for disposal of the appeals is also specified. The manner of declaration of air pollution control area is also specified in Rule 8. Application form for consent under Section 21 sub-Section 2 is specified. The rules specify regarding procedure in cases of exigencies and the appellate authority which may be approached under Rules 12.

The legal frame work on air pollution is discussed umbrella legislation i.e. Environmental Protection Act, 1986 had to be hurriedly legislated because Bhopal Gas Disaster accrued in 1984. The Noise Pollution (Regulation and Control Rules) are now on Book. Ozone Depleting Substances Rules of 2000 were enacted in pursuance to the Montreal. The Kyoto protocol was ratified by India in the year 2002.

9. AIR POLLUTION: GUJARAT SCENARIO

By late eighties Ahmedabad, the prime city of Gujarat, had attained a very high notoriety for its "killer smog". The city used to pride itself as Manchester of India because of its textile industry. For decades together, more than 100 textile-mills coal burning chimneys of emitted huge volumes of noxious smoke in Ahmedabad. Smoke and Fog combined with each other produce "smog". Eventually, the textile mill industry collapsed in the early nineties only to be replaced by unchecked, uncontrolled, unregulated growth
of other industries, which also burnt coal. Earlier the evil of smog remained confined to Ahmedabad but now smog has assumed formidable proportion in other cities of the state as well.

Ambient Air Quality Monitoring Programme is undertaken and some funds are now being utilized and the parameters with chart would show the grim scenario, even after the monitoring started.

On 5th of June, 2004 in a Symposium held by the Forest and Environment Department, Government of Gujarat and Gujarat Pollution Control Board, Gandhinagar at Ahmedabad, an action plan for air pollution control in the city of Ahmedabad has been placed on record.

The noise level during Dipawali Festival is 80.8 unit average in Ahmedabad, which is very high some steps will have to be taken by G.P.C.B. and Municipal Authorities, the High Court has already passed orders for checking of noise level during Navratri and Dipawali Festivals. The State authorities pursuant to directions of the Hon’ble High Court have issued notification prohibiting bursting of crackers and use of loudspeakers on road. Annexed are the notifications ‘Annexure V-B’ and ‘Annexure V-C’

10. ALTERNATIVE LEGISLATIONS AND JUDICIAL APPROACH ANALYSIS OF DECISIONS OF SUPREME COURT AND HIGH COURTS

There were certain controlling and monitoring legislations available before the Air Act was legislated. Some of the legislations, which were enacted operate even today successfully. The curbing of pollution even after a
century is with help of these enactments i.e. Indian Penal Code, Code of Criminal Procedure, Tort Law.

The Indian Penal Code, the Code of Criminal Procedure, Factories Act, Motor Vehicles Act, Boiler's Act, Bombay Smoke Nuisance Act, Gujarat Smoke Nuisance Act, Atomic Energy Act, Bombay Provincial Municipalities Act, Bombay Smoke Nuisance Act, Beedi and Cigar Workers (Conditions of Employment) Act, 1966 are legislations which indirectly deal with air pollution control and monitoring of air pollution. The Constitutional mandates are very important for the purpose of this discussion. The decisions by the Gujarat High Court and the Supreme Court are analysed. As early as 1992, the Hon'ble High Court of Gujarat entertained a writ petition being S.C.A. 8061 of 1992 preferred by Lok Adhikar Sangh vs. State of Gujarat challenging traffic hazards in Gujarat. This writ petition is still being monitored continuously by the Hon'ble High Court.

Concern for Health of Workers:

10(A) Health Condition of the workers working in Beedi Industry

The Beedi and Cigar Workers (Conditions of Employment) Act came to be challenged, in the case of Gujarat Beedi Karkhana Owners Association vs. Union of India reported in 1971 (12) GLR 690. The Division Bench through Justice J.B. Mehta decided the writ petition under Article 226 of the Constitution of India praying, for issuance of writ declaring the Act known as Beedi and Cigar Workers (Conditions of Employment) Act and rules framed there under as ultra vires of Article 19 (1) (f) and (g), 254 and 301.
The Beedi and Cigar Workers (Condition of Employment) Act is legislated for the safety of Beedi workers. On overall analysis of the judgment, observed to be a judgment based on decision of the Supreme Court. It has been decided keep in mind the principles of interpretation of legislative intent. It has been held that there was no constitutional infringement while legislating in favour of workers. The Hon’ble High Court has held that:

"Beedi and Cigar Workers (Conditions of Employment) Act (XXXII of 1966)-Secs. 3, 4, 8, 9, 77, 12, 14, 17, 18, 19, 20, 21, 22, 23, 26, 27, 28, 31, 37, 39, 40 & 44-Constitution of India, 1950-Art. 19(1)(g)-Enactment securing minimum decent conditions of working-Such restrictions are merely regulatory-They do not restrict freedom of trade-Device of employment by contractors for evading provisions of labour Acts-Act therefore giving artificial concept of employment Act does not impose unreasonable restriction-Act guaranteeing minimum benefit to home workers-Such provision regarding home workers also not unreasonable-Concept of vicarious liability as principle of social justice-Penal sanction really meant to enforce civil rights-Ultimate employer being the real master of business he can be properly held liable even vicariously so that he can exercise greater care in respect of his agents and contractors-Such provisions cannot be said to be unreasonable-Act, therefore not vocative of Art. 19(1)(g)."

Thus minimum decent conditions for workers had to be judged. The Court has held that the restrictions were regulatory and not mandatory. The interest of general public was at the heart of Their Lordships and only bare minimum benefits have been granted which would not cause any burden on the employer. The question of reasonable restriction clause was applied by Justice J.B. Mehta in 1971 holding that the entire scheme of the Act imposed reasonable restriction keeping in mind the minimum benefits which could be secured for the workers. The Hon’ble High Court of Gujarat undertook the task and referred to about 23 binding precedents before concluding that there were no grounds which would justify the filing of the writ petition. The
historic background and scheme of the Act had been considered. The High Court took in to consideration the report of the Royal Commission of Labour in India. The Commission had undertaken detailed investigation regarding the conditions prevailing in various industries. The Hon’ble High Court, upholding the legislative intent way back in the year 1971 has safeguarded the working conditions of these Beedi workers aptly.

10 (B) Bombay Police Act: Interpretation vis-à-vis Article 19(1)(a) of Constitution:

*Indulal Yagnik vs. State and Others* Reported in 1963 GLR 209

The question of freedom so as to propagate one’s views by and through any means including use of loudspeakers came up before the Division Bench of the Hon’ble High Court of Gujarat before four decades. Special Criminal Appeal No. 160 of 1961 challenging the order of Commissioner of Police, Ahmedabad dated 08-03-1961 was filed. This related to a person’s right to propagate his view through loudspeaker. (This issue has now acquired prominence and Supreme Court in the year 2000 in the judgment in case of *Church of God (Full Gospel) In India vs. K.K.R. Majestic Colony Welfare Association* has issued directions for regulating use of loudspeakers.) The provisions of Bombay Police Act and the Constitutional Mandate under Article 19 came for scrutiny before the High Court of Gujarat as far as a person’s fundamental right of expression is concerned. The question was regarding taking permission or license before use of loudspeaker under the rules was ban on the right of speech and expression under Article 19 (1) (a) of the Constitution. The High Court held that issuing of license being pre-requisite for use of loudspeaker, justifies the stand of State of Gujarat for prohibiting use where no licence or permit was issued. The loudspeaker could be used only after obtaining licence as it was under public order. The
High Court has aptly considered the issue from the point of view of general public and held that

"The power which has been conferred by the Legislature in the impugned clause is not an arbitrary or untrammeled power. The conditions of license which have been imposed by the rules are reasonable and have been designed with a view to preserve public peace and to prevent public disorder". [Emphasis Supplied]

On analysis of the decision it would emerge that these powers relate to public order within the meaning of clause (2) of Article 19 of the Constitution. These powers constitute reasonable restrictions on fundamental rights. The restrictions are reasonable so far as the prohibition of use of loudspeakers is concerned. These powers can be exercised only for the prevention, obstruction, annoyance, risk, danger or damage to the residents in the vicinity. Not only the power of prohibition on the user of the loudspeakers, but the other two powers of licensing and controlling are also necessary in the interest of public peace and order.

Interpretation of Statutes : - It is held by the Hon’ble High Court:-

"A section has got to be construed on the basis of the language used therein and the scope of the section cannot be cut down, simply because the scope goes beyond the scope of the preamble."

After referring to about 18 decisions, the High Court has held that seizure of the microphone does not violate the provision contained in Article 31 of the Constitution. The microphone was seized and not confiscated. This decision requires to be frequently referred. By State authorities. Under these circumstances, the decision of the Supreme Court in *Church of God (Full*
Gospel) In India vs. K.K.R. Majestic Colony Welfare Association reported in 2001 (1 GLH (SC) 293\textsuperscript{39}) requires to be appreciated where the Supreme Court has held that the person does not have freedom of using loudspeaker. The right to use loudspeaker cannot be said to be a fundamental right under the Constitution. The Bombay Police Act and the Rules framed hereunder were alive to the issue of public order, which would show that environment and the well being of the people was dear to the hearts of the earlier legislatory.

10 (C) Bombay Cinema Regulation Act and Gujarat Cinema Rules

The Bombay Cinema Regulation Act, 1953 also speaks of sanitation in the theaters. It is for the welfare of the general public who visit the theaters, so that no hazards may be caused. The authority granting license has to satisfy itself about the sanitation problem. The Bombay Cinema Rules in Chapter – VI specifies that before grant of permission for building of Cinema theater an application has to be made to the Licensing Authority Rule 104 empowers the Licensing Authority to refuse license. Rule – 119 reads as follows :-

"119. Smoking Prohibited :-

No person shall smoke and no holder of the Cinema License or its nominated manager or managers shall permit smoking in the auditorium during the performance :-

"Such prohibition shall not apply to person sitting in their cars in the premises of ‘Drive-in-Cinema’. In view of this provision the Hon’ble High Court of Gujarat had to decided the petition. The reported decision in
While considering Rules 126, which lays down that the cinema hall has to be used for the purpose of exhibition of cinematograph and for no other purpose. In the writ petition filed in the year 1982 and decided after 18 years in the case of *Dinubhai Motiram Vyas & Anr. vs. District Collector, Ahmedabad; 2000 (3) GLR 2256* who challenged the validity of Rule – 126 on the ground of violation of fundamental right under Article 14 and 19 (1) (g). Pan Beedi galla to carry on business of in theater premises as he was not permitted in the vicinity to carry on such business. The `Ajanta Ellora’ theater is now no longer in existence and a multi-storied building has been built there. The Hon’ble High Court of Gujarat while appreciating the prohibition on the ground of public health has held that the place would include open space also. The decision the Hon’ble High Court has held that the regulatory measures, being in the interest of the general public, cannot be said to be arbitrary. As early as 1954 the State of Bombay and the State of Gujarat had provisions for clean air unfortunately even after enactment of 2003 Act, prohibiting smoking in public place, there is no amendment restricting smoking in `Drive-in-theater’. Rule – 119 requires to be amended. The Bombay Cinema Regulation Act is a piece of regulation, which should be implemented strictly by the authorities for curbing the pollution of air.

10 (D) Criminal Procedure Code:
Case of Nuisance to Neighbours:
(a) *M.K. Davada vs. State of Gujarat; 1991 (1) GLR 57*

The alleged wrong doer against concurrent orders of the Sub-Divisional Magistrate and the Additional Sessions Judge approached the High Court of
Gujarat. The complainant came with complaint regarding running industry in residential house by the neighbour, who was sharing a common wall. The industry in the residential area was carried on with the help of 12 workmen. The decision taken by the Sub-Divisional Magistrate came to be quashed by the High Court on technical ground.

**Note:** The provision of Section 133 of Criminal Procedure Code nowhere prohibits the Magistrate to conduct a survey. Hon’ble High Court could have appreciated one more aspect i.e. that the Sub-Divisional Magistrate had ordered for inquiry. The Police authority had filed reports. While going through the entire record of this petition, it can be seen that the High Court committed an error in remanding it back because while allowing the petition, the man would continue his business, causing all kinds of pollution hazards to the neighbours. The Hon’ble High Court could have considered the magnitude of the pollution caused by the working of an industry in vicinity of residential premises. The Sub-Divisional Magistrate’s view was very clear that industry had to be shut down. Thus on overall analysis of various decisions under Section 133 of Criminal Procedure Code the decision shows that view taken is on technical aspect and not in context of hazard of pollution.

The decision is based on facts without appreciating environmental aspects because it was an admitted position that Maneklal Davda, the petitioner was manufacturing Kankoo and according to the complainant, Kankoo fell in the residence of the complainant. The edible articles were contaminated as Kankoo was manufactured using acid and when it mixes with air it burns the eyes of the children. It was harmful, and therefore, such activity was prohibited. The evidence was so ample with the Sub Divisional Magistrate
that he decided to issue injunction. The Hon’ble High Court on the contrary, should have appreciated that Sub Divisional Magistrate who had taken precaution of not only going by letters and paper work, but went personally. If he could depute an officer, there was no harm in his personal visit to the place. Section 133 no where prohibits that the authority concerned cannot take fresh look in the facts and circumstances before prohibiting the continuance of the nuisance. The High Court has allowed Shri Davda to continue manufacturing during the interregnum period. The High Court could have taken stringent measures during the period.

(b) **Shantilal N. Shah vs. Vora R.J.; 1984 GLH 1096**

In 1984, a similar situation arose in Criminal Application challenging the order of the Sessions Judge, Surendranagar. In the said decision, High Court did not entertain the complaint, which was complaining of running 'Ghani' which was causing vibration and noise pollution and continuous nuisance to the member of the family and endangered the health of persons in the neighbourhood.

The Court dismissed the Criminal Application by observing that the person could have approached the Civil Court for an appropriate relief. No body from the vicinity was disturbed, and therefore, though there was some discomfort to the petitioner, it was not in a form of public nuisance. Except the petitioner no other person had complained. The word public would include class or community of the persons but the right of the owner is in a nature of private right, and therefore, this section has no application to redress private wrong. The grievance could be redressed by way of injunction or compensation but clause (b) of the Section 133 of the Criminal Procedure Code could not be invoked. Thus, the High Court has rightly not
exercised its jurisdiction while interpreting Section 133 of the Criminal Procedure Code.

(c) Supreme Court’s view under Sections 133 read with 138 of Criminal Procedure Code.

The question of public nuisance by air pollution came up before the Supreme Court in 1979 in *Gobind Singh vs. Shanti Sarup* reported in AIR 1979 SC 143.

The Supreme Court while dealing with the provisions of the Section 133 read with Section 138 held that if the final order were passed beyond the scope of the conditional order, the higher Court would have to interfere. The decision upheld the right of the Sub Divisional Magistrate to pass order under Section 133 and 138 of the Criminal Procedure Code. The Supreme Court held that the chimney constructed by the appellant was injurious to the health of the people living or working in the proximity of the appellant’s bakery and the appellant had no justification in discharging the smoke from the chimney on the road. When the Magistrate’s order was passed on sound reasoning that it was playing with the health of the people, when the chimney was constructed leading to graver consequence which would cause conflagration by flowing of strong wind. The decision of High Court of Gujarat in Maneklal Davad’s case is per in curium being decided on the technical ground of legal inspection of the Magistrate. However, the Supreme Court also held that the Magistrate had gone beyond the scope of Section 133. The Supreme Court rightly held that the trade of the bakery should not be disturbed. The Supreme Court also directed to demolish the oven and the chimney but directed that the baker could continue the business. It can be seen that the Supreme Court has considered that the
baking business was not causing nuisance. It was chimney and oven and their emissions, which was causing pollution. The trade of the bakery was not considered to be having any nuisance value. Thus, provision of Section 133 read with 138 has been useful for combating with nuisance of air and water, but however, provisions are inadequate, if it is a private nuisance as held by Hon’ble High Court of Gujarat.

10 (E) Gujarat Factory Rules, 1963:

The health and safety of people serving in factories has been taken care of by Gujarat Factory Rules. Rules 17(A) framed under the factories Act deals with clean and free compound. The Central legislation has various provisional for the health of the people as in the Beedi Act and access to uncontaminated air is a right.

10 (F) Writs: Directions Under Writ Jurisdiction

The High Court of Gujarat has laid stressed under article 226. One of the land mark judgments can be said to be in Shankarbhai H. Patel vs. Union of India\(^{44}\) in SCA No. 4005 of 1999, challenging direction of Railway Authorities imposing ban on sale of beedi/cigarettes in trains and railway platforms. According to the decision taken by the Central Authority and the principle enunciated while looking at the care and welfare of the general public at large and for observing Environmental Day. A communication was issued on 06/05/1999 by the Divisional Railway Manager, which imposed ban. A copy of the communication is annexed as 'Annexure – V-D'.

---

\(^{44}\) Shankarbhai H. Patel vs. Union of India 44 in SCA No. 4005 of 1999, challenging direction of Railway Authorities imposing ban on sale of beedi/cigarettes in trains and railway platforms.
The notification-imposing ban was challenged on the ground that there is an agreement, which permits the sale of fruits, sweetmeat, tea and other articles within the railway premises by vendors, and therefore, imposition of ban was contrary to the terms of the contract. The petitioners approached the Court because according to them, there was violation of the terms of agreement and large number of people engaged in the sale of Beedi and Cigarettes would be affected, It was prayed that petitioners should have been given opportunity of being heard before issuing the notification.

The decision of the Hon'ble Gujarat High Court was in consonance with the view that the health of the general public at large was to be protected. Smoking in public premises is now even banned by legislation of 2003. The decision of authorities is one, which is taken in public interest. It is for achieving the objects, keeping in view the health hazards, which are caused to the public at large. The petition was dismissed being without merit.

Non Issuance of Writ when petitioners knowingly went to stay in G.I.D.C. Area:

*New G.I.D.C. Housing Association vs. State of Gujarat & Ors*45; 1997 (2) GLH 221.

The complaint was regarding the noise pollution treating the application was treated as PIL by way of writ petition being SCA No. 2633 of 1997. The decision has observed that industrial units were situated in the Gujarat Industrial Development Area, which was not part of habitat. The persons coming from the cities to modern industrial colonies can't claim directions that industry be directed to stop its activities. While analyzing the
notification issued by the GPCB published in Part – II of the Government of Gujarat Gazette:

"3.1.1. The comparative study of Tables 1 and 2 emphasizes the fact that while planning a new township care has to be taken to see that the various zones are conveniently located from points of view of noise and pollution. The High Court has rightly held that the control of the industrial noise is very necessary but persons residing in the vicinity meant of industrial zone that cannot complain that their life and liberty are being disturbed. However, certain guidelines were given to GPCB so that the industry may reduce its noise. The High Court was alive to the problem of pollution more particularly noise pollution. After comparative study of Tables under Schedule – III of the Environment Protection Rules, which specify ambient standards in respect to noise. The Court came to the decision that the petitions required to be dismissed as being without merit.

**Taruben Sukhlal Gamit vs. Central Pulp Mills Ltd.; 1997 (2) GLH 1007:**

In SCA No. 8418 of 1996 filed immediately after the decision in 770 of 1995, the petitioner brought grievance before the Hon’ble High Court. However, his grievance was taken up as Suo Motu petition because the petitioner made a complaint regarding breach of pollution laws committed by Central Pulp Paper Mills and the Thermal Power Station and Ukai. Production started in the year 1993. The GPCB placed on record the analysis of the sample for the year 1993, 1994 and 1995. The arguments for the polluter, even after huge profits were made was that Water Act or the Air Act did not impose fine or pollution damages, and therefore, the order to pay damages can be only for tortuous liability; when no such pleadings are there a person cannot be directed to be paid under any head. After referring to
various decisions of the Supreme Court and referring to the decision of P.J. Patel and Deepak Nitrite Nitrate the Hon’ble High Court decided against the polluters. The polluters were made to pay, as they did not meet with the parameters of the Water Act or the EPA Act. This decision is important from the point of view of Air pollution. Under the Air Act, the company could not have started manufacturing unless there was efficacious treatment facility when the Primary Treatment Plant was stabilized in the year 1995 and the Secondary Treatment Plant was started in October 1996. The plant should not have started manufacturing before that. The treatment plant was such that it did not bring pollution under control; According to the Hon’ble High Court, it found the unit responsible for polluting air and violation of the norms. The breach was a gross violating of the environmental norms and therefore, they were asked to pay under the principle of polluter pays.

The decisions rendered by the High Court shows that the Hon’ble High Court was alive to the problem caused by Air Pollution. It came heavily on the polluters but at the same time, did not interfere with the pollution where it was not so grave and persons came to reside in industrial zone. The said decisions have shown judicial activism in realm of environment jurisprudence. Thus, these judgments would show the trend of the Hon’ble High Court regarding noise pollution related to air and the Supreme Court’s decision in the Church of God (Full Gospel) in India (Supra) are welcome decisions where it is held that microphones and loudspeakers have nothing to do with religious belief of people. The Supreme Court has held that Articles 25 and 26 do not permit pollution by noise. Similar view has been taken by the Hon’ble High Court of Gujarat banning use of Loudspeakers after midnight, during the period of Navratri where use of loudspeaker is restricted to certain time period by His Lordship Justice S.D. Shah (as he
then was confirmed by a Division Bench in the year 1998. This welcome decision is now being given teeth by the administrative authorities by issuing administrative directions and which are being scrupulously implemented in the State of Gujarat.

_S.M. Vora vs. Union of India; 2001 (3) GLR 2191._

One Satish Maganbhai Vora claiming that he was a qualified Chemical Engineer and by mixing Hydrocarbon liquid, he had invented a producer brand named Patrex, which was a gasoline substitute fuel, filed a very interesting Writ Petition. The Petroleum Conservation Research Association (PCRA) had subjected this product to test on Maruti, 800 Car. It was the case of the petitioner that this item Patrex was not covered under Essential Commodities Act and Motor Spirit and High Speed Diesel (Regulation of Supply and Distribution and Prevention of Malpractice) Order; 1988. The restriction on sale of solvent without license was upheld and Patrex was considered to be a petroleum product as per the definition of the word `Petroleum’ as it contained liquid hydrocarbons. The petitioner was even unsuccessful before the Division Bench wherein he unsuccessfully challenged the judgment of the single judge in _S.M. Vora vs. Union of India; 2001 (3) GLR 2191_. It goes to show that Hon’ble High Court of Gujarat has been alive to the problem of use of petroleum products without license. The decision under challenge can be said to be a live to the present day issue of pollution. The State of Maharashtra before independence had enacted the Bombay Smokes Act, 1912 wherein license had to be obtained before use of such product.
In *State of Maharashtra vs. Madhukar Shivram; 1979 CrLR (Guj) 220* it was seen the Corporation and State were alive to the pollution problem and the factory had to remain within the limits and the emission standards were fixed. The factory was directed to stop causing pollution failing, which it would have to be closed down. This shows that the High Court was alive in implementing the legislative intent in its true spirit.

10 (G) **Vehicular Pollution Cases and the Directions of the High Court:**

The High Court of Gujarat faced a very grim situation when a petition was preferred by Public Spirited Lok Adhikar Sangh way back in the year 1992 in S.C.A. No. 8016 of 1992 showing that the Ahmedabad hub of Gujarat and the major cities of Gujarat were on the brink of choking due to air pollution. In the year 1995, certain directions were given SCA 9988 of 1995 was taken up *suo motu* by the High Court of Gujarat. Monitoring of the said decision has continued for more than a decade. Committees were appointed. As seen in Ahmedabad and other parts of the State, Traffic Police at cross road junctions with Traffic Signals are performing duties as per the mandate of the Hon’ble High Court. The State and Municipal Authorities have failed to properly implement the directions of the Hon’ble High Court. A High Power Committee made its recommendations. The latest compliance report dated 29/08/2002 was taken on record of the High Court. It shows that directions given by the High Court are helping traffic of the city of Ahmedabad and to bring down air pollution in Ahmedabad to a certain extent.

10 (H) **Criminal Sanctions Under Air Act.**

It would be worthwhile to discuss matters, which come up before the High Court under Criminal jurisdiction:
Dwarka Cement Works vs. State of Gujarat XXXIII (1) GLR 422. The Pollution Control Board launched prosecution, against Dwarka Cement Works, which was a Limited company. Criminal proceedings were also launched against the Chairman, Directors and General Manager. The High Court was approached for quashing the proceeding in the year 1991 against the complaint lodged in the year 1989. The petitioner raised, the following main issues (a) that the process deserves to be quashed in absence of specific averments in the complaint regarding involvement of petitioner nos. 2 to 6 who were said to be in-charge of the respondent company. The High Court rejected all the contentions. It would be necessary to appreciate the scheme of the Air Act and the High Court’s finding holding that the Directors of the company had a duty to disclose the identity of the manager. The view of the Hon’ble High Court of Gujarat while dismissing the petition weighed on the common sense principle to repeal the condition regarding duty to disclose the identity of the responsible manager. The High Court failed to appreciate the decision in the case of N.A. Palkhiwala vs. M.P. Pradusan Nivaran Board, which was cited before it to show that prosecution could not continue in light of the absence of facts, which showed that the Directors were not involved in the day-to-day activities of the company. This argument has found favour with the Supreme Court in a recent decision in the case of Nalin Thakor and others vs. State of Gujarat and Ors in Criminal Appeal No. 163 of 2001 where the submission made by the petitioner’s counsel regarding not being guilty is upheld and the process quashed. The Hon’ble High Court held that power under Section 482 of the Criminal Procedure Code should not be lightly exercised in matters relating to pollution of the environment. The argument that the powers could
not be delegated has rightly not been accepted. Issue no. 3 was not appreciated due to enthusiasm of the High Court for rejecting the petition.

A similar view by the same bench of the Gujarat High Court has been taken in Gujarat Pollution Control Board vs. Rushabh Industries reported in XXXVI (2) GLR 1082. This decision, though reasoning is different from the decision analysed (supra), is a very welcome one. The Court succinctly held that the Magistrate should not have discharged the accused on the ground that copies of the Gazette notification and daily newspapers were not produced. The High Court rightly observed as follows:

"The learned Magistrate has ordered discharge of the respondents mainly on two grounds, viz., that during the inquiry before framing of the charge when the complainant came to be examined on oath, he failed to produce on record firstly, the copy of notification in question dated 6th August, 1984 declaring Ahmedabad as a pollution controlled area, published in Government Gazette and secondly, two local daily newspapers publishing the said notification.

On going through the impugned judgment, it appears that prior to the framing of charge, the complainant had given evidence before the Court deposing to the effect that the Government of Gujarat had declared Ahmedabad as a pollution controlled area by a notification dated 06/08/1984 which was duly published in Gazette, as required under the Act and the rules made thereunder. Not only that but according to the complainant, the said notification was also further duly published in two local daily newspapers."

The High Court did not even feel it necessary to issue notice to the accused. At least the accused ought to have been given opportunity of being heard. It was rightly held could that discharge by trial Court was based on no ground, which could be urged in Section 245 of the Criminal Procedure Code. However, both these judgments like the judgments under the Water Act met their waterloo when in a subsequent judgment in the year 1995 the Gujarat:
High Court upheld the acquittal of polluters in *D.K. Solanki vs. N.J. Industries; 1995 (1) GLR 768*, where a highly polluting industry in Ahmedabad on the ground that the Gazette notification declaring Ahmedabad as a pollution control area was not produced. The judgment reported in 1995 (2) GLR 1082 analysed *(supra)* is distinguished on the ground that said judgment was against the order of discharge. [Emphasis Supplied] The High Court could have remained alive to the problem of pollution. The acquittal should have been set aside because even while referring to the judgment in 1995 (2) GLR 1082, it could be observed that notifications were issued: Acquittal after full trial raises several questions such as should the Court not take a pragmatic view when the notification was on record through two news papers? This would show that Ahmedabad was declared as a pollution controlled area and the Court could have reversed the trial Courts acquittal based on this technical interpretation.

There were quite a few decisions of the Supreme Court regarding criminal sanctions, namely Rural Litigation and Entitlement Kendra. The decision could have been appreciated by the Hon’ble High Court and could have remanded the matter for retrial if the acquittal was only on the basis of the non-production of the notification, which was highly technical in nature.

In *Orissa State Prevention and Control of Pollution Board vs. M/s. Orient Paper Mills; 2003 Cr.LJ 1702*, the Supreme Court set aside the decision of the High Court which had discharged the accused only for the non-declaration of the area as Air Pollution Control Area and held that charges should be framed against the accused under Section 37 of the Air Act as the area could be deemed to be notified as notified area.
10 (I) Constitutional Mandate of the Courts (Supreme Court and Hon’ble High Court)

The quality of air in Delhi gave rise to the Motor Vehicle case in the year 1991. It is reported that now Delhi breaths some clean air due to directions issued by Hon’ble Supreme Court. The decision in\textit{MC. Mehta vs. Union of India; AIR 1997 SC 734} in Taj Trapezium case goes to show the zeal of the Supreme Court to protect ancient monuments from degradation due to air pollution. As early as 1987, the Supreme Court saw the ill effects flowing out of employment and directed that insurance of such officers and workmen at the cost of employer must be taken. This view is taken in \textit{M.K. Sharma vs. Bharat Electronics Ltd.; AIR 1987 SC 1792}. In \textit{M.C. Mehta vs. Union of India reported in 2002 (4) SCC 356} the Supreme Court directed the Union of India to give priority to transport sector including private vehicles for allocation of CNG and invoked the provisions of Section 16, 17 and 18 of the Air Act, coupled with invoking the principle of polluter pays and precautionary principle.

A Writ Petition was before the Hon’ble High Court of Delhi in 2000 wherein His Lordship Arijit Pasayat (as he then was) held that noise pollution if it extends beyond reasonable limits, than it would affect the health of a person, thereby violating Article 21 of the Constitution. Directions to Air Port Authority to plan flights of Air Port were issued. Noise Code regulating all aspects of noise pollution is required to be enacted, this view is taken in \textit{Free Legal Aid Cell Shri Suganchand Agarwal vs. Govt. of NCT of Delhi; AIR 2001 Delhi 455}. 


The Supreme Court in *M.C. Mehta vs. State of Tamil Nadu in writ petition no. 465 of 1986 reported in XXXVIII GLR 2306* gave directions for the welfare of the children and for the abolition of child labour and for regulating the same.

The Supreme Court has recently issued directions concerning noise pollution in *Noise Pollution (I), IN RE vs. Union of India; (2005) 5 SCC 727* has interpreted right to freedom from noise pollution vis-à-vis freedom of speech and expression. While interpreting Article 21 of the Constitution, it has given a broad meaning to the word 'life' and has held that freedom from noise pollution is part of right to life under Article 21.

**10 (J) Pollution during Festivals:**

Festival pollution includes use of loudspeaker and crackers. The High Court of Gujarat as early as in 1996 through Justice S.D. Shah came heavily on Navratri programme. Due to the decision, the people of Gujarat though very fond of Navratri, are able to maintain the right and dignity of other people. Police Authority issued ordinance and notification as per the said decision regulating the time frame during which the use of loudspeakers is permitted. The Supreme Court recently in the decision of *Church of God (Full Gospel) In India vs. K.K.R. Majestic Colony Welfare Association (Supra); 2001 (1) GLH (SC) 293 gave directions for regulating noise and use of loud speakers during religious ceremonies*. It would be important to consider the decision in this chapter as this judgment, though not under the Air Act, but under the environment regulations would be important to note that freedom of religion is considered to be subject to public order, morality as well as health of others in the vicinity. It is a welcome decision, however, scantily
implemented in the State of Gujarat. Use of amplifiers during festival or for religious purpose is required to regulated.

10 (K) Contempt Proceedings:

The Hon’ble High Court of Gujarat as well as the Supreme Court has come heavily on the persons who have tried to flout the orders passed under the Air Act or environment legislation. The Hon’ble Supreme Court has in a recent decision reported in *M.C. Mehta, v. Union of India; AIR 2003 SC 3469* shows that the Supreme Court though considering magnitude of the act of respondent in flouting the orders of the Courts more particularly the Supreme Court has let off with one week of simple imprisonment though he was an able bodied person of age 53 just by using “Supreme Court wants to give strong signal by imposing exemplary punishment. The cost of Rs. 1 lac for such contempt was also in view of the settled legal principles less. The Court could have applied the polluter pays principle of 1% in this case. The contemnor should not have been let off with such a minimum punishment.

The petitioner had already earned out of proceeds during the period when he continued the operation of the factory without observing the norms. In a similar situation, Hon’ble High Court of Gujarat in 1997 taking a matter *Suo Motu vs. Bhavna Textiles Pvt. Ltd.; 1997 (2) GLH 760* In the contempt though the affidavits were filed by industrialist, the committee formed by the Hon’ble High Court found that there was interconnected water pipe line between units. The Hon’ble High Court, under pollution law had taken *suo motu* action and passed stringent order for depositing at least Rs. 5 lacs and 2 months simple imprisonment. This decision is discussed in detail in Chapter IV. The Hon’ble High Court of Gujarat has applied the principle of 1% of
polluter pays, which the Supreme Court could have applied in M.C.Mehta Case (Supra).

11. CONCLUSION:

The judicial trend, the legislative trend and the strategies, which have been adopted for air pollution and analyzing quantity air and atmosphere was not very simple. The growth of economic power has brought with it unplanned industrial development to meet with both of them, the Hon’ble High Courts with the aid of legislations have tried to curb the pollution of air.

The decision of P.J.Patel’s case and the other cases which are analyzed go to show that right to air and health is considered as a fundamental right and the courts with the help of constitution have tried to protect human beings from the danger of air pollution.

Air pollution has brought with it health hazards for human beings and to the environment.

International conventions are also made applicable by way of enactment of legislation. The Case Law Study would show that right to life and health is considered to be fundamental right under Article 21 of the Constitution of India.

The old Laws were applied and were implemented so as to carry out constitutional mandate by the Hon’ble High Court and Hon’ble Supreme Court. The Supreme Court has tried to safeguard the ancient monument of Taj Mahal by the help of M.C.Mehta. The Supreme Court and High Courts
have tried to minimize air pollution by taking recourse to available legislative remedies.

The High Court has taken recourse to Section 133 of the Criminal Procedure Code so as to minimize problems of air pollution. It has under its writ jurisdiction stopped the operation of industries, which were found to be causing detriment to the environment by invoking its writ jurisdiction. It has tried to minimize vehicle pollution in Gujarat by giving appropriate directions. The Supreme Court also monitors and is monitoring Motor Vehicles Cases instituted by Shri M.C.Mehta since last two decades.

By judicial pronouncement the Hon’ble High Court and Supreme Court have banned the use of loud speakers after certain period of time. The administrative machinery has been directed to take action against people who fire crackers on the road.

The Hon’ble High Court of Gujarat has given a discordant note while dealing with the residence of G.I.D.C. Housing Association. The High Court could to have directed the Pollution Control Board to measure ambient noise levels. Armin Rosencranz criticizes this judgment in his book.

There are certain shortcomings of the Air legislation. The Higher Courts have taken recourse to constitutional mandate to fulfill their obligation to give healthy living to its citizens.

Legislation and judicial mandates have supplemented each other for ameliorating environment.
References :-

9. Ajeet Mehta (Smt) vs. State of Rajasthan; 1990 Cri.LJ 1956
11. Shobana Ramasubramanyam vs. Member Secretary, CMDA, AIR 2002 Mad 125.
22 Taruben S. Gamit vs. Central Pulp Mills Ltd. reported in 1997 (2) GLH 1007.
24 M.C. Mehta vs. Union of India reported in AIR 1998 SC 617.
28 Lok Adhikar Sangh vs. Home Secretary; SCA No. 8061 of 1992.
30 S.C.A. No. 9988 of 1995; Suo Motu vs. Home Secretary.
33 Orissa State Prevention and Control of Air Pollution Board vs. Orient Paper Mills reported in 2003 (10) SCC 421.
34 S.C. Mudgel, Senior Adviser of the Ministry, quoted in Halarnkar, Leaking Plugs in India Today, 9 June, 1997, Pg. 69.
37 Gujarat Beedi Karkhana Owners Association vs. Union of India reported in 1971 (12) GLR 690.
38 Indulal Yagnik vs. State and Others Reported in 1963 GLR 209.
39 Church of God (Full Gospel) In India vs. K.K.R. Majestic Colony Welfare Association reported in 2001 (1) GLH (SC) 293.
40 Danubhai M. Vyas vs. District Collector, Ahmedabad; 2000 (3) GLR 2256.
43 Gobind Singh vs. Shanti Sarup reported in AIR 1979 SC 143.
44 Shankarbhai H. Patel vs. Union of India; 2000 (1) GLR 308.
45 New G.I.D.C. Housing Asso. vs. State of Gujarat; 1997(2) GLH 221.
46 S.M. Vora vs. Union of India; 2001 (3) GLR 2191.
47 State of Maharashtra vs. Madhukar Shivram; 1979 CrLR (Guj) 220.
48 Dwarka Cement Works vs. State of Gujarat XXXIII (1) GLR 422.
50  *Gujarat Pollution Control Board vs. Rushabh Industries* 1995 (2) GLR 1082.
52  Orissa State Prevention and Control of Pollution Board vs. M/s. Orient Paper Mills; 2003 Cr.LJ 1702
53  *MC. Mehta vs. Union of India*; AIR 1997 SC 734.
55  *M.C. Mehta vs. Union of India* reported in 2002 (4) SCC 356.
56  *Free Legal Aid Cell vs. Govt. of NCT of Delhi*; AIR 2001 Delhi 455
57  *M.C. Mehta vs. State of Tamil Nadu*; XXXVIII GLR 2306.
58  *Noise Pollution (I), IN RE vs. Union of India*; (2005) 5 SCC 727.
59  *M.C. Mehta vs. Union of India*; AIR 2003 SC 3469.
60  *Suo Motu vs. Bhavna Textiles Pvt. Ltd.*; 1997 (2) GLH 760.