

Explaining and Critiquing the Air (Prevention and Control of Pollution) Act, 1981

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Abstract:

The Air (Prevention and Control of Pollution) Act, 1981 was enacted in an effort to put into effect decisions concluded at the United Nations Conference on Human Environment held in Stockholm in 1972. The preamble of the act explicitly states the objective of the Act as- “to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith”. The act sets up state and central pollution boards for the purpose of meeting the prescribed ends. The paper deals with various sections in the act, explores them in depth, and at the same time, analyses it critically; it evaluates the act after explaining it in detail. The paper picks up important individual sections of the act and explains the dimensions of each of those, often through diagrams and tables as well. The paper critiques the act from various perspectives and argues that the Act is in severe need of amendment in some key areas, such as that of recruitment

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of personnel. It evaluates key sections of the act and seeks to dissect and examine them in isolation of each other, as well as seeing them together in a whole picture. The bare act was of central importance to the author as she attempts to evaluate the kind of legislative effort and foresight that went, and should have gone, into the making of this particular act.

Keywords: Air Act (1981), Critique, Explanation, Bare Act, Need for Amendment.

1. Introduction:

The Air (Prevention and Control of Pollution) Act, 1981 was enacted under Art-253 of the Constitution to put into effect decisions concluded at the United Nations Conference on Human Environment held in Stockholm in June, 1972 to exercise right measures for controlling air pollution and preserving the quality of air. The Air (Prevention and Control of Pollution) Act 1981 of the government of India came into force from 16 May 1981. The objective of the Act is, “to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connecting therewith.”²

² Preamble of the Air (Prevention and Control of Pollution) Act, 1981.

Table 1- Important Definitions

Term	Definition
Air pollution	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. ³
Air pollution	The presence in the atmosphere of any air pollutant ⁴
Approved appliances	Any equipment or gadget used for the bringing of any combustible material or for generating or consuming any fume, gas or any particulate matter and approved by the State Board. ⁵
Approved fuel	Any fuel approved by the State Board for the purpose of the Act. ⁶
Central Board	Central Board for the Prevention and Control of Water Pollution ⁷

³ Section 2 (a) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴ Section 2 (b) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵ Section 2 (c) of the Air (Prevention and Control of Pollution) Act, 1981.

⁶ Section 2 (d) of the Air (Prevention and Control of Pollution) Act, 1981.

⁷ Section 2 (g) of the Air (Prevention and Control of Pollution) Act, 1981.

Chimney	Includes any structure with an opening or outlet from or through which any air pollutant may be emitted. ⁸
Industrial Plant	Any plant used for any industrial or trade purposes and emitting any air pollutant into the atmosphere. ⁹
Occupier	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. ¹⁰
State Board	State Board Pollution Control Board. ¹¹

2. Authorities under the Act:

The Central Board and State Boards for the Prevention and Control of Water Pollution constituted under Section-3 and 4 of the Water (Prevention and Control of Pollution) Act, 1974 respectively are supposed to perform the functions of the Central Board and State Boards for the Prevention and Control of

⁸ Section 2 (h) of the Air (Prevention and Control of Pollution) Act, 1981.

⁹ Section 2 (i) of the Air (Prevention and Control of Pollution) Act, 1981.

¹⁰ Section 2 (j) of the Air (Prevention and Control of Pollution) Act, 1981.

¹¹ Section 2 (o) of the Air (Prevention and Control of Pollution) Act, 1981.

Air Pollution under this Act.¹² In case of a State where the Water (PCP), 1974 has not been enacted or the Act has been enforced but the State government has not formed a constitutional body under that Act, the State Government shall issue a notification about the appointment of a State Board for the Prevention and Control of Air Pollution through an official gazette, with effect from such date as it may be.¹³ A State Board constituted under this Act shall be a body corporate with the name specified by the State Government in the official gazette.¹⁴

The Act explains the constitution of State Board in Section 5(2). As stated, it shall comprise of a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State Government; 5 officials nominated by the State Government to represent that government, as the government may think fit; 5 members to be nominated by the State government from local authorities, as the government may think fit; 3 non-officials to be nominated by the State government, as the government may think fit to represent the interests of agriculture, fishery or industry or trade or labor or any other interest and 2 person to be nominated by the government to represent any companies managed by the government.

¹² Sections 3 and 4 of the Air (Prevention and Control of Pollution) Act, 1981.

¹³ Section 5 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

¹⁴ Section 5 (3) of the Air (Prevention and Control of Pollution) Act, 1981.

As observed, the appointment of composition of the State Board is solely in the hands of the State government. There is no concrete mention of any basic level of qualification or experience required relating to the appointment of the official. There is also no mention to the selection of the official on basis of merit through an examination. This highlights that the selection process is potentially political in practical terms. This situation can be solved through a procedure of amendment whereby concrete qualifications are specified.

3. Functions of the Authorities under the Act:

3.1. Central Pollution Control Board

The main function of the Central Board under the provisions of this Act is to improve the quality of air and to prevent, control or abate air pollution in the country¹⁵. Other functions consist of advising the Central Government on any matters related to prevention, control or abatement of air pollution, executing a nation-wide program, organizing training of persons engaged in such programs, providing technical assistance and guidance to State Boards, supporting research and investigations in the field, co-ordinate the activities of the State and resolve disputes among them, collecting and disseminating technical and statistical information related to air pollution, organize a comprehensive program regarding prevention, control or abatement of air pollution and establishing standards for

¹⁵ Section 16 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

quality of air.¹⁶ The Central Board may establish laboratories to enable it to perform functions under this Section efficiently.¹⁷

3.2. State Pollution Control Board

A State Board is responsible for advising the State Government on any concerns related to prevention, control or abatement of air pollution. Some of its other functions comprise executing a comprehensive program for prevention of air pollution, working in association with the Central Board for organizing training for people involved in such programs, compiling and distributing information related to air pollution, to lay down standards for emission of air pollutants in consultation with the Central Board and inspecting industrial plants and manufacturing facilities.¹⁸ The State Boards may set up laboratories that may allow them to perform their functions effectively.¹⁹ The Central Board shall exercise the powers and perform the functions of a State Board in Union Territories as no State Board shall be constituted for a Union Territory under the provisions of this Act.²⁰

¹⁶ Section 16 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

¹⁷ Section 16 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

¹⁸ Section 17 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

¹⁹ Section 17 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

²⁰ Section 6 of the Air (Prevention and Control of Pollution) Act, 1981.

4. Powers and Functions of Boards:

The powers and functions of the Board stipulated the Act are vague as they don't specify any guidelines or time period for the Boards to follow relating to the enforcement of any of the provisions mentioned under the Sections. As a result, such provisions are hard to implement and cannot be applied in any particular situation. For example, the Act states that "The Central Board may plan and cause to be executed a nation-wide program for the prevention, control and abatement of air pollution"²¹.

As noticed, no time limit has been given to enact this provision nor have there been given any directions on how to proceed with the enactment. The terms of the power and function seem idealistic in the sense that they seem to have no concrete action in place and imposes a wide and thoroughly idealistic stance as no step by step procedure has been prescribed for anything. In the presence of a more concrete plan of action for the board members, they may be able to work more efficiently and some amount of work will also be ensured as non performance of specific duties and lead to accountability.

²¹ Section 16 (2) (b) of the Air (Prevention and Control of Pollution) Act, 1981.

4.1. Power to Give Directions

The Air Act gives power to Central Government and State Governments to give directions.²² The Central Government has power to give directions to Central Board²³ and the State Government or Central government has power to give direction State Board²⁴, in case they find there are issues related to public health or boards not performing their duties as laid down in the Act.

There can be various advantages as well as disadvantages to this provision. The former being that in cases of non performance by the control board, the government can exercise its discretion and direct it to carry out the functions it is duty bound to.

However, a glaring disadvantage is that in the face of such unchecked authority, this power can be misused and there can be political pressure to comply with demands of the big corporations and this can lead to a trickling down effect of corruption.

4.2. Power to Declare Air Pollution Control Areas

The State Government may announce by notification in the official gazette, upon consultation with the State Board, any areas within the State as air

²² Section-18 of the Air (Prevention and Control of Pollution) Act, 1981.

²³ Section-18 (a) of the Air (Prevention and Control of Pollution) Act, 1981.

²⁴ Section-18 (b) of the Air (Prevention and Control of Pollution) Act, 1981.

pollution control areas for the purposes of this Act.²⁵ The State Government may alter any air pollution control area by means of extension or reduction and may declare a new air pollution control area, after consultation with the State Board, by notification in the official gazette. If the State Government, after consultation with the State Board, is of opinion that the use of any fuel or appliance other than an approved fuel or appliance in any air pollution control area may cause or is likely cause air pollution, it may, by notification in the official gazette, prohibit the use of such fuel in such area. The State Government, may similarly, notify in the official gazette, about the burning of any material, not being fuel in an air pollution control area that may cause or is likely to cause air pollution in an official gazette and prohibit the burning of such material in such area.

Sections 16, 17, 18 and 19 elaborate the clear lack of autonomy of the Boards as their roles seem limited to advising the governments, who then take decisions on their own. There is a clear indication in Section 19 of the Air Act of the governments holding the actual power and being the decision making bodies.

Because of the lack of minimum prescribed criteria, the state government is declaring their entire jurisdiction to be a pollution control area and this can lead to a potential diversion of resources since whatever resources the state has, are being diffused over the entire state instead of being concentrated on the actual

²⁵ Section-19 of the Air (Prevention and Control of Pollution) Act, 1981.

problematic areas. This problem can be solved by the provision of a basic minimum criterion that an area must fulfill, in order to be able to qualify as a pollution control area.

4.3. Power to Give Instruction for Ensuring Standards for Emission from Automobiles

The Act empowers the State Board to lay down emission standards for automobiles in consultation with the Central Board²⁶. Although the automobile emission standards are laid down by the State Board, it is State Government which has the power to ensure compliance with such standards. To ensure compliance with the automobile emission standards, the State Government in consultation with the State Board give such instruction as may be deemed necessary to the concerned authority in charge of registration of motor vehicles under the Motor Vehicles Act. The authority which receives the instruction of the State Government shall be bound to comply with such instructions.

4.4. Power to Grant Consent

The Act permits a person to establish or operate any industrial plant in an air pollution control area only after obtaining the consent of the State Board.²⁷ This permit system was introduced in 1987 by an amendment in the Air Act. If a

²⁶ Section 20 of the Air (Prevention and Control of Pollution) Act, 1981.

²⁷ Section 21 of the Air (Prevention and Control of Pollution) Act, 1981.

person is operating any industrial plant in an air pollution control area before the introduction of the permit system, he may continue to do so for a period of the three months from the date of commencement of the permit system.²⁸ The application for the grant of consent shall be accompanied by the prescribed fees and shall be made in the prescribed form and shall contain the particulars of the industrial plant.²⁹ The State Board may make an inquiry, as it deems necessary, relating to the application of consent and shall follow such procedure as may be prescribed.³⁰ The State Board shall grant or refuse the consent applied for the subject, by order in writing, within four months after the receipt of the application for consent.³¹ In case of non-compliance of the conditions mentioned in the order, the State Board has the power to cancel the consent before the expiry of the specified period. However, before cancelling or refusing to grant further consent, the Board shall give a hearing to the person concerned. In case, board fails to make any order within the stipulated statutory period of 4 months, the consent will be deemed to have given to the applicant unconditionally.³²

Following are mandatory consent conditions under section 21

- Lay down the standards
- Specification of control equipments

²⁸ Section 21 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

²⁹ Section 21 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

³⁰ Section 21 (3) of the Air (Prevention and Control of Pollution) Act, 1981.

³¹ Section 21 (4) of the Air (Prevention and Control of Pollution) Act, 1981.

³² Supra.

- Chimney heights
- Ensure operations of control equipments in good running conditions
- technological improvements in control equipments
- Monitoring protocol
- Introduction of LDAR to control fugitive emissions
- Validity period of the consent
- Introduction of Environment Audit
- Restriction of Fuels³³

Following are consent conditions as guidelines

- Energy audit to reduce fuel consumption
- Adaptation of ISO:14001
- Reporting air emissions monitoring results to SPCBs
- Green belt around the industries

Figure 1- Procedure of Consent

³³ Section 21 (5) of the Air (Prevention and Control of Pollution) Act, 1981.

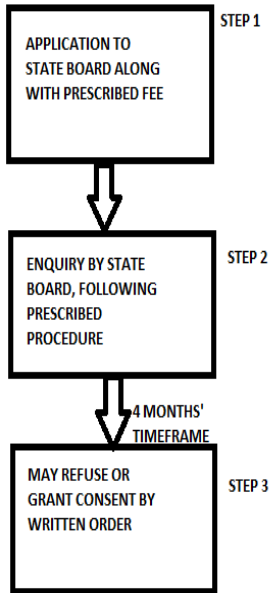
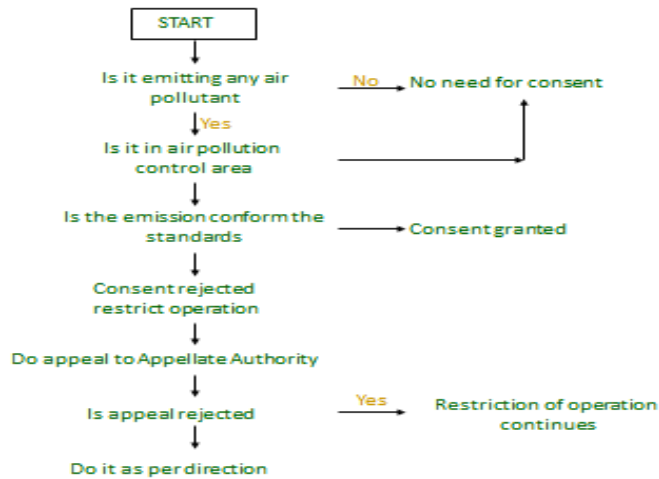


Figure 2- Who Needs Consent Under Air Act

WHO NEEDS CONSENT UNDER AIR ACT



³⁴ Sri Dinabandhu Gouda, SEE Central Pollution Control Board, Delhi.- “Environmental Management in Indian Pharmaceutical Sector- Current Scenario and Challenges”. Available at:

If the State Board is of the opinion that such conditions require variation, as it may feel so due to technological advances, the State Board shall, after giving the person to whom the consent has been granted an opportunity to be heard, vary all or any of such conditions and the person to whom the consent has been granted shall be bound to comply with the varied conditions.³⁵ In cases where the person to whom the consent has been given by the State Board transfers his interest to any other person, such consent shall be deemed to have been granted to such other person, and he shall be bound to comply with the all conditions.³⁶

4.5. Power of Board to Make Application to Court for Restraining Persons from Causing Air Pollution

The Act disallows any person operating an industrial plant, in any air pollution control area to discharge or cause or permit to be discharged the emission of any air pollutant exceeding standards defined by the State Board under Clause (g) of Sub-section (1) of Section-17 of this Act.³⁷

The Board has the power for restraining people from causing air pollution by making an application to a court, not inferior to that or a Metropolitan Magistrate or Judicial Magistrate of first class. The Board may proceed in such

http://www.cuts-cier.org/BRCC/pdf/Environmental_Management_in_Pharmaceutical_Sector-Current_Scenario_and_Main_Challenges-Dinadandhu_Gouda.pdf Retrieved on: 18- 12- 13.

³⁵ Section 21(6) of the Air (Prevention and Control of Pollution) Act, 1981.

³⁶ Section 21(7) of the Air (Prevention and Control of Pollution) Act, 1981.

³⁷ Section 22 of the Air (Prevention and Control of Pollution) Act, 1981.

manner in cases where it apprehends that emission of any air pollutant, in excess of standards laid down by the State Board is likely to occur due to any person operating an industrial plant or otherwise in any air pollution control area.³⁸ The court may make an order as it deems fit upon receipt of the application to restrain any person from discharging or causing or permitting to be discharged the emission of any air pollutant.³⁹ The court, in that order, may direct the person to desist from taking such action as is likely to cause emission and authorize the Board to implement direction if the person to whom such direction is issued does not comply with the direction.⁴⁰ All expenses incurred by the Board in implementing directions of the court shall be recoverable from the person concerned.⁴¹

In light of the fact that in India the litigation procedures can be extremely lengthy and time consuming, it may be a good idea to consider giving the power to the board to grant interim restraining orders and then to proceed to file an application to the court.

³⁸ Section 22A (1) of the Air (Prevention and Control of Pollution) Act, 1981.

³⁹ Section 22A (2) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴⁰ Section 22A (3) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴¹ Section 22A (4) of the Air (Prevention and Control of Pollution) Act, 1981.

4.6. Furnishing of Information to State Board and Other Agencies

Act also lists obligations of industries dealing with furnishing of information to State Board and other agencies in certain cases.⁴² It provides that the person-in-charge of the premises or industry to give information of the emission of any air pollutant into the atmosphere in excess of the standard lay down by the board in consent granted or the ambient air quality standards, due to accident or other unforeseen factors or otherwise, shall forthwith intimate the fact to the State Board.⁴³ The State Board and the authorities or agencies shall, as early as possible, take remedial measure necessary to mitigate the emission of such pollutants, on receipt of the information.⁴⁴ Any expenses incurred by the State Board, authority, or agency with respect to the remedial measures together with interest from the date when a demand for the expenses is made until it is paid may be recovered by that Board, authority or agency from the person concerned.⁴⁵

Again, the lack of a specific time frame makes the act not as useful as it might have been, in the presence of one. The terms used “as early as possible” are rather ambiguous. The provision of a specific time frame may speed up the pace of the work.

⁴² Section 23 of the Air (Prevention and Control of Pollution) Act, 1981.

⁴³ Section 23 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴⁴ Section 23 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴⁵ Section 23 (3) of the Air (Prevention and Control of Pollution) Act, 1981.

4.7. Power of Entry and Inspection

The Act gives power of entry and inspection of the officers of the board. The State Board has the power to authorize any person to enter any industrial unit and inspect any control equipment, industrial plant, record etc. to ensure the compliance with the Act. Such person also has the power to conduct a search of any place in which he has reason to believe that an offence under the Act or rules made thereunder has been or is about to be committed. He may seize any such control equipment, industrial plant, record, register, document or other material object if he has reasons to believe that it may furnish evidence of the commission of an offence punishable under this Act.⁴⁶ Every person operating any control equipment or any industrial plant in an air pollution control area shall be bound to render all assistance to the person so empowered by the State Board. In case of failure of a person to render such assistance, he shall be guilty of an offence under this Act.⁴⁷

4.8. Power to Obtain Information

The State Board has the capacity to obtain information such as type of air pollutants being emitted into atmosphere and level of emission of such air pollutants from the occupier or any other person responsible for any industry or

⁴⁶ Section 24 (1) (c) of the Air (Prevention and Control of Pollution) Act, 1981.

⁴⁷ Section 24 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

operating any control equipment or industrial plant. The State Board or such officer empowered by it shall also have the right to inspect the premises where such control equipment or industrial plant is being operated.⁴⁸

4.9. Power to establish laboratory

The State Government shall by notification in the official gazette establish recognized State Air laboratories where analysis of samples can be carried out. It may also appoint persons, as it thinks would be suitable and having prescribed qualifications to be government analysts for the purpose of analysis of samples of air or emission, as mentioned in Section 29.⁴⁹

Here, one can notice the lack of any real eligibility criteria for the process of selection of candidates.

4.10. Power to Take Samples, and Procedures to Be Adopted For the Same

The Act elaborates the power of State Board or any officer empowered by it to take for purpose of analysis, any samples of air or emission particles from any chimney or duct.⁵⁰ The result of analysis of such sample shall not be admissible in evidence in any legal proceedings unless the other provisions in the

⁴⁸ Section 25 of the Air (Prevention and Control of Pollution) Act, 1981.

⁴⁹ Section 28 of the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁰ Section 26 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

Section are followed.⁵¹ The person taking the sample shall serve on the occupier of the industrial plant or his agent, a notice, then and there, in the form prescribed of his intention to have it so analyzed. The person shall collect the sample in the presence of the occupier or his agent and cause the sample to be placed in a container or containers, which shall be marked and sealed and shall be signed both by the person taking the sample and the occupier or his agent. The person shall then send the container, without delay, to the laboratory recognized or established by the State Board.⁵²

In case the occupier or his agent willfully absents himself, the person in charge of taking the sample shall collect the sample of emission for analysis, place it in container or containers that shall then be marked and sealed and shall be signed by the person taking the sample. In a case, where the occupier or his agent are present at the time of taking the sample but refuse to sign and mark and seal the container or containers of the sample of emission, the marked and sealed container or containers shall be signed by the person taking the sample, and the container or containers shall be sent without delay by the person taking the sample for analysis to the laboratory established or recognized by the State

⁵¹ Section 26 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵² Section 26 (3) of the Air (Prevention and Control of Pollution) Act, 1981.

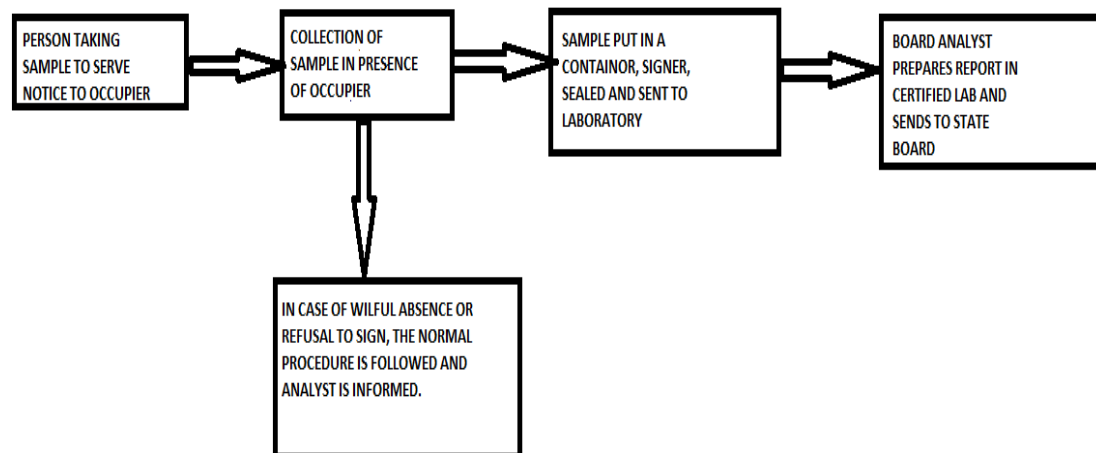
government and duly inform the Government analyst appointed about the willful absence of the occupier or his agent, or his refusal to sign the container.⁵³

Reports of analysis of emission samples taken under Section 26 shall be prepared by the Board Analyst, as appointment by the State Board in Section 29⁵⁴. The samples shall be first analyzed by the Board Analyst at a laboratory recognized or established by the State Government and the reports be sent in the prescribed form in triplicate to the State Board. On receipt of the report, one copy of the report shall be sent by the State government to the occupier or his agent and another copy shall be preserved for production before the court in case any legal proceedings are taken against him by the State Board. Any cost incurred in getting any sample analyzed at the request of the occupier or his agent or when he willfully absents himself or refuses to sign the marked and sealed container or containers of sample of emission shall be payable by the occupier or his agent. Any report signed by a Government Analyst or by a State Board analyst may be used as evidence o facts stated in any legal proceeding under this Act, as described in Section-30.

⁵³ Section 26 (4) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁴ Section 27 of the Air (Prevention and Control of Pollution) Act, 1981.

Figure 3- Procedure for Collecting Sample



Any person distressed by an order made by the State Board under this Act, may within thirty days from the date on which the order is communicated to him, appeal to an authority as the State may find suitable to constitute.⁵⁵ Such an Appellate Authority shall consist of a single person or three persons as the State govt. may find fit, appointed by the State Board.⁵⁶ The manner in which the appeal is made, the fee payable for such appeal and procedure to be followed by the Appellate Authority shall be as prescribed.⁵⁷ The Appellate Authority, on the

⁵⁵ Section 31 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁶ Section 31 (2) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁷ Section 31 (3) of the Air (Prevention and Control of Pollution) Act, 1981.

receipt of the appeal shall give the appellant authority and the State Board an opportunity of being heard and dispose of the appeal immediately.⁵⁸

4.11. Penalties and Procedures

There are penalties for certain contraventions of this Act. They may be applied in cases where any person destroys or injures any pillar, post or stake put up or fixed in the ground by or under authority of the Board, stops any person pursuing action under the orders of the Board, damages any property belonging to the Board, fails to furnish to the Board any information required by the Board for the purpose of this Act, etc. Such a person shall be subject to imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.⁵⁹

Whoever contravenes any of the provisions of this Act, for which no penalty has been elsewhere provided in this Act, shall be punishable with imprisonment for a period that may extend to three months or with fine which may extend to ten thousand rupees or with both. Any additional fine which may extend to five thousand rupees for every day shall be imposed in case the contravention continues.⁶⁰

⁵⁸ Section 31 (1) of the Air (Prevention and Control of Pollution) Act, 1981.

⁵⁹ Section 38 of the Air (Prevention and Control of Pollution) Act, 1981.

⁶⁰ Section 38 of the Air (Prevention and Control of Pollution) Act, 1981.

The fact that contraventions of the act are treated as criminal offences is advantageous for the purpose of furthering the cause of the environment, since it is widely agreed that it is criminal sanctions which can effectively create a deterring effect in society and through that, may actually prevent future harm, rather than empty monetary compensation which any large corporation can pay, and get away with its gross misconduct.

Table 2- Offences and Penalties Corresponding

Offence	Penalty
Failure to comply with the provisions of section 21 or section 22 or with the directions issued under the section 31A	Imprisonment for a term which shall not be less than one year and six months but which may extend to six years and with fine. In case the failure continues, with an additional which may extend to five thousand rupees for every day during which such failure continues after the conviction for the first such failure (Section 37)
Penalties for destroying, pulling down, removing or any matter under the authority of the board,	Imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an

obstruct any person acting under the orders or directions of the Board, damage any work or property of board, false statement, fail to furnish information required by board, etc	additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure (Section 38)
Whoever contravenes any of the provisions of this Act or fails to comply with any order or direction given under this Act, for which no penalty has been elsewhere provided in this Act	Imprisonment which may extend to three months or with fine which may extend to ten thousand rupees or with both and in the case of a continuing contravention or failure, with an additional fine which may extend to five thousand rupees for every day during which such contravention or failure continues after conviction for the first such contravention or failure (Section 38)

In cases where an offence under this Act has been committed by a company, every person, who at the time the offence was committed, was directly in charge of and was responsible to the company for the conduct of the business

of the company, as well as the company, shall be guilty of the offence. However, a person shall not be liable if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.⁶¹

In case of the commission of an offence under the Act by the Government Department, the Head of the Department shall be liable. However, such Head of the Department shall escape the liability if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence⁶²

The Act does not specify who can be held liable in such a case. No legal proceeding shall be taken against the Board or any employee of the Board with regards to anything that was done in good faith in pursuance of this Act. A court shall take cognizance of any offence committed under this Act provided the complaint is made by the Board or an officer authorized on behalf of the Board. A court shall also take jurisdiction in case of a person who has given notice of not less than sixty days of the alleged offence and has intention to make a complaint to the Board. The notification shall be made in the prescribed form.

⁶¹ Section 40 of the Air (Prevention and Control of Pollution) Act, 1981.

⁶² Section 41 of the Air (Prevention and Control of Pollution) Act, 1981.

5. Critical Review:

The Air Act of 1981 was the very first legislation in the country that focused on Air Pollution in its entirety. A bird's eye-view seems to reveal the broadness and the vagueness in the minds of the policy makers in enumerating the powers of CPCB and the SPCBs in India.

These Acts do not clearly lay down any guidelines for the board to follow, nor do they give any time limit within which the boards should implement the provisions of the Act. Also, the provisions in the laws are so vague that they cannot be applied to any particular situation as a consequence of which they are difficult to implement. Let's take for an example, section 16 (2) (b) of the Air Act which stipulates the functions of the Central Board. It states that "The Central Board may plan and cause to be executed a nation wide program for the prevention, control and abatement of air pollution". Nowhere in the Act is there a further substantiation of this provision. No time limit has been provided to specifically enforce this provision nor has any further specification been given. It is clear that such an ambiguously worded function is difficult to perform.

Further problems associated with the Act can be seen below-

1. Section 5(2) of the Act elaborates upon the constitution of state boards according to which, it shall comprise of a Chairman, being a person having special knowledge or practical experience in respect of matters relating to environmental protection, to be nominated by the State

Government; 5 officials nominated by the State Government to represent that government, 5 members to be nominated from the local authorities as the state government may think fit. 3 non-officials shall be nominated to represent the interests of agriculture, fishery or industry or trade or labor or any other interest, which, in the opinion of that government, ought to be represented. In the present 14 section the composition of the SPCB is based completely on the discretion of the state government and the appointment of the members is based on the nomination of the government of a person who would not only work for but also represent the government. No stress is given on the technical qualification and expertise of the official. No open examination or competition for the same is based on the merits of the candidate. The very nature of appointment makes the entire competent task of regulating the environmental legislations a political venture. There has been a section (Section-8) that enumerates the features that would disqualify a person from being a member of the Board but does not mention any point of qualification that would lead to his membership in the board.

2. Sections 16, 17 and 18 of the Air Act deal with the powers of the boards for the prevention, control and abatement of air pollution. Read along with section 19, the provisions of the law bring forth, a glaring lack in the autonomy of the boards. Their powers seem to be limited to advising the

governments, who then take all the decisions on their own. Indeed a perusal through Section 19 is enough to show that all the actual power that has been vested under the act has been given to the central and state governments. Even the declaration of any area as an air pollution control area has been left to the state government to decide.

3. Sections 22, 23 & 24 deals with matters relating to industrial pollution and the implementing powers of the SPCBs relating to the same. They can enter and inspect the premises, obtain information about the same and anybody obstructing the personnel of board shall be held guilty of an offence under the same. However, a passing and a general reference is made about vehicular pollution and emission standards with regards to it under sections 20 and 22A wherein power to make rules have been vested with the Government.
4. Sections 47, 53 and 54 are other provisions that give overriding powers to the governments and further reduce the powers of the boards. This shows that the Act did not intend to give any powers to the boards. The law should have looked into the specific causes of air pollution and given area specific solutions. Instead the law shows a clear lack in political will to make concerted efforts to improve the environment. In such a state of affairs with the existing Pollution mechanism and policy in the country the thought of its implementation is incomprehensible. Otherwise the law as a

reflection of the policy would have been more effective and would have taken a proper direction. For a developing country like India it is all the more imperative that a clear policy is adopted to balance environmental considerations with economic and social ones. A clear and precise law is one of the most effective means at the disposal of the legislature to achieve this.

5. Instead of limiting the powers of the Boards to merely research and data collection, the Act should have given the Boards powers to make and implement policies based on these reports. This would have many advantages. Firstly, it would insure that politics is left aside and as a direct consequence there is more effective implementation of the law. Secondly, it would insure that the reports that are made by expert committees are acted upon. This follows the same logic as our constitution does in overlapping the Legislature and the Executive branches of our government. The government's duty should be limited to regulating the functioning of the Boards.
6. There are also problems in the procedural aspects of the law. As has been stated by N.K.Chakrabarti "too much arrogant attitude to implement the environment laws disregarding the practical problems of sustainable development may cause much hardship." The Air Act comes under the residuary legislative powers of the central government whereas water and

water supplies is a state subject. Therefore although the enforcement of the Air Act requires the same board as the Water Act there is a difference procedurally in the implementation of the two Acts.

7. There are other problems with the law too. Chapter four of the Air Act talks about the “prevention and control of air pollution”. The Act seems to focus on pollution from industrial emissions. This failure to recognize other sources of air pollution will mean that those problems are left unanswered by the law. Thus the law is not comprehensive in its approach to dealing with air pollution.
8. Other more specific problems with the law are for instance with section 21. This section provides for the state governments to locate air pollution control areas. Polluters that are located outside this area cannot be prosecuted by the state board. However all industries inside this area must obtain a permit from the board. Stringent rules under the Act have been made only for these “areas”. The defining of this “area” is therefore relevant to the Act. This power has also been given to the State Governments. In short, hardly any power has been conferred on the boards to carry out the objectives of the Acts.
9. “The best protection of the environment is not to generate pollutants in the first place...The most effective pollution control mechanisms are integral parts of the factory and not afterthoughts.” The measures in the laws have

failed to take this into consideration. If in 1981 itself the law had provided for an integrated licensing, reviewing and environmental impact assessment process that would stop all new industries from coming up unless they were in conformity with emission norms then air quality would have shown signs of improvement by now. Unfortunately the law as does the policy lacks such prospective provisions. After independence in 1947 the government started issuing licenses to a large number of industries. As a consequence of which hazardous industries were opened in densely populated areas. This shows that pollution control was not amongst the priorities of the government.

6. Conclusion:

The Act, as can be seen, has some severe pitfalls and it tends to overlook some very important aspects of the working of the commissions set up by virtue of the act. Such issues cannot be ignored without compromising on the efficacy of the system. Amendment to some critical sections would be very welcome in this regard. The legislative initiative has been revolutionary but that doesn't resolve the more pragmatic issues. For the purpose of amendments, inspiration may be sought from abroad, with special focus on the legislation of similar purport from the U.S. This particular legislation is known for the level of public participation it necessitates and its effectiveness.