

A STUDY ON CRIMINAL REMEDIES FOR ENVIRONMENTAL PROBLEMS

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ABSTRACT:

Traditionally, in India environmental problems used to be addressed through private law doctrines such as trespass, nuisance, strict liability or negligence in India or remedies available under Indian Penal Code or Criminal Procedure Code. Early statutes many of which continue in force, dealt with problems on a sectoral or typological basis. For example, offences written in the Indian Penal Code penalizes certain kinds of air pollution, water pollution etc. Sanitary codes dealt with the quality of water and specific regulations were sometimes drawn up to regulate certain types of industrial establishments. Some of the statutes dealing with specific types of problems were important characteristic of period before 1980s. A new trend has been seen in Indian legal system after the Stockholm conference in 1972. The old laws were interpreted with new zeal for environment protection. The present Chapter deals with the zing of Indian Judiciary in interpretation of the provisions of Criminal Procedure Code and Indian Penal Code for the environment protection. Both these codes contain provisions for public nuisance. The right of a person to pollution free environment is a part of basic jurisprudence of the land. Article 21 of the Constitution of India guarantees a fundamental right to life and personal liberty. The Supreme Court has interpreted the right to life and personal liberty to include the right to wholesome environment. Stockholm Declaration of 1972 was perhaps the first major attempt to conserve and protect the human environment at the international level. As a consequence of this Declaration, the States were required to adopt legislative measures to protect and improve the environment.

Accordingly, Indian Parliament inserted two Articles, i.e., 48A and 51A in the Constitution of India in 1976, Article 48A of the Constitution rightly directs that the State shall endeavour to protect and IMPROVE.

Keywords: Environmental problems, IPC, CRPC, Environmental Protection, indian legal system.

Aim of the Study:

To trace the various kinds of environmental problems, bring out the law relating to environmental problem, analyse the various other remedies.

HYPOTHESIS:

The Indian Judiciary has tried to interpret provisions of sec. 133 of Crpc for speedy remedy.

RESEARCH METHODOLOGY:

This is a doctrinal research and materials collected are secondary data.

Research question: Whether the criminal remedies will lead to reduction of Environmental problems?

INTRODUCTION:

The environmental law as it is known today is an amalgamation of common law and statutory principles. Even before specific laws came into force, there were certain common law remedies against pollution. Common law is the body of customary law of England based upon judicial decisions and is embodied in the reports of decided cases. Common law had been administered by the common law courts of England since the middle ages. The term 'common law' is derived from Latin, *lex communis*. In common law, pollution cases generally fall under four categories. They are Nuisance, Trespass, Negligence and Strict liability. The dominant water law theories and the public trust doctrine also had influence on the use of staple resources of water and land. (Shastri, S.C., Environmental Law, Ed. 3rd, p.71) ([Mathur 1996](#))

NUISANCE

The deepest doctrinal roots of modern environmental law are found in the common law principles of nuisance. A well known writer says that the substantive law for the protection of the citizen's environment is basically that of common law relating to nuisance.

There is much difficulty in employing tortious actions based on nuisance as an [\(Baxi 1980\)](#) Effective remedy against environmental pollution because of the exhaustive and diverse definitions of the term "nuisance". "Nuisance" ordinarily means anything which annoys, hurts or that which is offensive. Nuisance includes any act, omission, injury, damage, annoyance or offence to the sense of sight, smell, hearing or which is or may be dangerous to life or injurious to health or property.' The failure to distinguish between trespass and nuisance is another difficulty. The former is a direct infringement of one's right to property. In the latter, the infringement is the result of an act which is not wrongful in itself; but the consequences which may follow such act infringe the right of other persons. (www.legalservice.india.com) AIM: TO protect environment and safeguard forests and wildlife of the country.

Kinds of Nuisance

In common law, nuisance are of two types namely public and private nuisance. A public nuisance can be defined as an unreasonable interference with a right common to general public. A private nuisance is a substantial and unreasonable interference with the use and enjoyment of land." A public nuisance has been defined in Section 268 of the Indian Penal Code also. ([Ayotte and Smith 2011](#))

V. K. BEENA KUMARI CASE

The importance of the division of nuisance into public and private lies partly in the difference of the remedies and defences applicable to each and partly in the fact that a private individual has no right of action in respect of a public nuisance unless he can show that he has sustained some "special" damage over and above that inflicted on the community at large. In India, public nuisance action can be brought before a court either by a civil or by a criminal action. Section 91 of the Code of Civil Procedure, 1908 ensures the right of action in the case of public nuisance. The procedure for removal of a public nuisance is laid down in Sections 133 to 143 of the Code of Criminal Procedure, 1973. ([Mathur 1996](#)) In England, all civil proceedings brought in respect

of public nuisance other than a private action by an individual who or a public or local authority which, has suffered particular damage or an action brought by a local authority in its own name to protect the inhabitants of its area must be brought with the sanction and in the name of the Attorney General.'A private individual or a public authority may bring a private action on public nuisance in his or its name when and only when he or it can show that he or it has suffered some particular foreseeable and substantial damage over and above that sustained by the public at large or when the interference with the public right involves a violation of some private right of his or its own.[\(Mau 2006\)](#)

Environment Protection and Indian Penal Code , 1860

Though the awareness to the hazards of development came after Bhopal leak case and the need had been felt to frame special laws for Environment Protection Act, 1986 is a step towards that precaution. We cannot say that prior to that there was no law for the purpose. The different laws during British raj were enacted to deal with different problems related to environment. Some the laws are still in existence today. One of these is Indian Penal Code which was enacted in 1860 and it is also applicable today. There are many provisions against pollution in Indian Penal Code, 1860. Chapter IV of Indian Penal Code deals with offences relating to public health, safety, decency, convenience, morals under Sections 268, 269, 270, 279, 280, 287, 288, 290 291, 294. Public Nuisance has been defined in section 268 as, a person is guilty of a public nuisance who does any act or is guilty of illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger, or annoyance to persons who may have occasion to use any public right. The section further explains that a common nuisance is not excused on the ground that it causes some convenience or advantage. The public nuisance covers all types of pollutions i.e. pollution of land, water, air, noise pollution etc. Section 290 of the Indian Penal Code (I.P.C.) provides punishment for public nuisance (which includes pollution cases also) in cases not otherwise provided for. These offences are punishable with fine which may extend to 200 rupees. In *K.Ramakishnan v. State of Kerala* the Kerala High Court held that smoking , in any form, in public place is a public nuisance and cases can be filed under section 290 of the Penal Code as it is violative of Right to life provided under Article 21 of the Constitution. As regards water pollution, Section 277 provides that “whoever voluntarily corrupt

or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with simple or rigorous imprisonment for a term extending to three months or fine of five hundred rupees or with both. Section 269 of I.P.C. also could be invoked against a water polluter. [\(Churchman 1733\)](#) The section provides, “whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.” [\(Connolly 2007\)](#)

Section 278 of the Act, provides that whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to health of the person in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees. The water polluter can also be punished under section 425 of I.P.C. for mischief. If his act causes wrongful loss or damage to public or to any person or if his act causes the water pollution could be brought under section 511 of the Act. Section 440 of the Act deals with mischief caused by killing maiming animals and cattle. Section 286 of the I.P.C. provides punishment for negligent conduct with respect to explosive substance. Similarly Sections 284 and 285 provide punishments for negligent conduct with respect to poisonous substance and negligent conduct with respect to fire or combustible matter respectively. The weak side of these provisions is that the punishment provided for the above mentioned offences are too meager, looking to present day gigantic problem of environment pollution. Through revision, by way of enhancement of the fine and period of imprisonment is very essential and desirable. [\(Erfani 2007\)](#)

Apart from Indian Penal Code in British India numbers of legislations were passed which had a direct bearing with one or other components of environment. Some are offshoots of industrial developments. Some are for protection of forest and some for protection of animals and particularly of wildlife. [\(Author 1993\)](#)

The Criminal Procedure Code, 1973 and the Environment Protection

The provisions of Chapter X of the Criminal Procedure Code of 1973 provide effective, speedy and preventive remedies for public nuisances cases including insanitary conditions, air, water

and noise pollution. It contains provisions for enforcement of various provisions of the substantive law. Section 133 of the Criminal Procedure Code provides that a district magistrate or sub-divisional magistrate or any other executive magistrate specially empowered on this behalf by the State government can make a conditional order to remove such nuisance, and if the nuisance maker objects to do so, the order will be made absolute. Any order duly issued under this provision shall not be called in question in any civil court. The magistrate can act under this provision, either on receipt of a report of a police officer, or on other information, and taking such evidence that he thinks fit. Nuisance is defined in very liberal terms and includes construction of structures, disposal of substances, conduct of trade or occupation. But in case of disobedience of orders, the Court can impose penalties provided under section 188 of Indian Penal Code, 1860. It provides punishment for a maximum period of six months and a fine which may extend to one thousand rupees. Section 144 of the Criminal Procedure Code confers powers on an executive magistrate to deal with emergent situations by imposing restriction on the personal liberties of individuals, whether in a specific locality or in a town itself, where the situation has the potential to cause unrest or danger to peace and tranquility in such an area, due to certain disputes. It confers power to issue an order absolute at once in urgent cases or nuisance or apprehended danger. Specified classes of magistrates may make such orders when in their opinion there is sufficient ground for proceeding under the section and immediate prevention or speedy remedy is desirable. ([Moorhouse et al. 2018](#))

Action under this section is anticipatory. It is utilized to restrict certain actions even before they actually occur. Anticipatory restrictions are imposed generally in cases of emergency, where there is an apprehended danger of some event that has the potential to cause major public nuisance or damage to public tranquility. The gist of action under s.144 is the urgency of the situation' its efficacy is the likelihood of being able to prevent some harmful occurrences. Preservation of the public peace and tranquility is the primary function of the Government and the aforesaid power is conferred on the Executive magistrate enabling him to perform that function effectively during the emergency situations. Besides orders under this section are justifiable only when it is likely to prevent any of the following events from happening:-

1. Annoyance .
2. Injury to human life.
3. Disturbance of public tranquility.

4. Order cannot be made to give advantage to one party.

Thus the provision under section 144 is best suited for avoiding public nuisance and protecting the environment. Different provisions (some of them are indirectly related to environment) under Indian Penal Code, 1860 and Criminal Procedure Code, 1973 have been interpreted wisely by the Indian judiciary for environment protection. (Constitutionalism and Environmental Jurisprudence in India) ([Wainger et al. 2018](#))

Judicial Interpretation of the Scope of Section 133:

Despite the numerous provisions criminalizing instances of pollution which would amount to public nuisance, the efficacy of recourse to them is very limited. This is because of two reasons. Firstly, after a complaint is made to a magistrate under section 190 of the I.P.C., criminal proceeding will have to ensure an adequate evidence of the standard required for criminal proceedings will have to be produced in order to secure a sentence and this may take a long period of time. Secondly, and perhaps more importantly, the maximum punishments (in terms of fine and imprisonment where it is provided for) provided for by the provisions are very low almost negligible making prosecution under these section almost pointless. As opposed to the I.P.C., the Cr. P.C. provides a far better option in preventing environmental damage where it amounts to a public nuisance. Section 133 of the Code gives an executive magistrate vast powers put up a stop to public nuisance. From an environmental perspective the section empowers a magistrate if he considers that a) any unlawful obstruction or nuisance should be removed from any public place or any, way, river or channel which is used by the public or occupation or that b) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, then he may make a conditional order requiring the person causing the nuisance, within a time to be fixed in the order to desist from continuing the nuisance or if he fails to do so, to appear before him on date to be fixed by him and to show cause why the order should not be made absolute. Although the section uses the word 'may', it has been held to be mandatory where the circumstances for its use exist. The remedy under section 133 of Cr. P.C. has several advantages that should lead to its choice in seeking to prevent environmental damage. Any person can simply complain to an executive magistrate to set it in motion keeping in mind the mandatory nature that has been read into section 133. It is also comparatively speedier and when evidence is

taken under section 138 it is to be taken as in summons case which provided for trial in a summary manner. In addition s. 144 of Cr. P.C provides for situations of emergency where orders can be passed ex-parte, without giving notice etc. The magistrate has wide powers under s.133 to stop or remove the nuisance even he can pass orders requiring public bodies to perform their mandate. Actually, the true meaning, scope and usefulness of remedy under the Sections 133-144 have been articulated by the judicial interpretation of these provisions for the benefits of people and to avoid environmental damage. ([Fontes-Dutra et al. 2018](#))The various judgments on the same prove this fact.

Appreciating the provision of Section 133 of Cr.P.C., the Madhya Pradesh High Court in **Shaukant Hussain and Anr. v. Sheodayal Saksaina** observed:Section 133 of the Code of Criminal Procedure provide a speedy and summary remedy in case of urgency where danger to public interest or public health is concerned. In all other cases the party should be referred to the remedy under the ordinary law. Paragraph 3 of Section 133 runs as follows:"That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the, community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated."It will be obvious that the word "community" in this paragraph is deliberately used, and that word has a definite meaning. It means the public at large or the residents of an entire locality. The expression "public nuisance" has been defined in Section 268 of the Indian Penal Code as an act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwells or occupies property in the vicinity.

In **Ramachandra Malohirao Bhonsle v. Rasikbhai Govardhanbhai Raiyani** the Court observe as follows;The matter was related Installation and use of electric motor for lifting water to supply it to other flats in the complex. It caused nuisance to the petitioner who had purchased flat before installation of the motor. The matter was reported to Sub-Divisional magistrate. Sub-Divisional Magistrate directed that the respondent should remove the electric motor installed below the flat to eliminate noise pollution and electric motor pump should be shifted and installed within the premises so that it causes no noise pollution. It was challenged by the respondent on the basis that jurisdiction under sec. 133 of the Criminal Procedure Code can be

exercised by the learned Executive Magistrate only in respect of public nuisance and not in respect of private nuisance. Further, in response to the order of Magistrate if there is denial of existence of public right over the place or creation of nuisance over a public place then the Executive Magistrate is bound to proceed under sec. 137 of the Code of Criminal Procedure. The Executive Magistrate shall enquire into denial of existence of public right or creating nuisance at public place. The High Court Gujarat observed that The Executive Magistrate should have kept in mind that unless the nuisance was created at a public place no direction could be given under section 133. There may be instances where nuisance is created at a public place but, members or persons belonging to the public may not come forward to move an application under sec. 133 of the Code of Criminal Procedure. In such situation, even one person who is aggrieved from such public nuisance at a public place may report the matter to the Executive Magistrate, and upon such information the Executive Magistrate can proceed under sec. 133(1) of the Criminal Procedure Code. Section 133(1) of the Code of Criminal Procedure provides that, "The Executive Magistrate can proceed under this section on receiving the report of Police Officer or other information." The word "other information" includes information given by any person who is aggrieved from public nuisance. So, what is provided under sec. 133 is that nuisance should be created at a public place. Public place is defined in explanation to sub-section (2) of sec. 133. It says that, "A public place includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes." Deciding the question of applicability of section 133 of Cr.P.C. it is clear that it is applicable when there is a violation of public right. Interpreting the public right the Kerala High Court held in *Ganapathy v. State of Kerala* "where the people of the locality were drawing water during drought i.e. the public had a right for using the well for drawing drinking water and thus there was a public right and as such the Sub Divisional Magistrate had jurisdiction to invoke S. 133 Cr.P.C. The judiciary has widely interpreted the meaning of public right. It is clearly seen from the observation of the Kerala High Court in *Augusthy v. Varkey* there it was held: "The distinct expression 'public place' & 'anyway' clearly illustrate, that the section comprehends not only public places, but "any way" which may be lawfully used by the public. Lawful use by the public of "any way" would bring it within the ambit of the section. A private place may be frequented by public and may become a public place for the time it is used. That apart, "public place" for purposes of the section, is not restricted to a place dedicated to public. The expression 'public' or 'public place' has been

understood in a larger sense. If public have access to a place by right, permission or use, it is a public place, even if it is not public property. One test of ascertaining this will be to see whether there is a right vested in a large number of persons as to make them unascertainable and make them a class unascertainable not by vastness of numbers, but by character of class". As decided by High Court of Rajasthan in *Achalachand v. Suraj Raj* when there is a danger to the people in neighbor or a family or passersby, the role of section 133 comes into play. If there is a common wall between two houses and if the constructions on this common wall are dangerous which may result in falling down of wall and injuring the neighbours it is a public nuisance and the section 133 of Cr. P.C. would be applicable. 'Of course, Section 133 does not contemplate action by a Magistrate when the danger is only to the inmates of the house or building which is said to be in a dangerous condition. As soon as danger appears to a neighbour also, the conditions of Section 133 of the Code of Criminal Procedure are fulfilled and such a dangerous structure can even be called a public nuisance.' The proceedings under Part B of Chapter X are of a summary nature and intended to enable the Magistrate to deal with the cases of emergency and are not intended to settle private disputes between the different members of the public. They are not supposed to be used as a substitute for litigations in a civil court in order to settle a private dispute and if a person has any private right, which he wishes to be enforced, he should take recourse to the civil Courts. The obstruction, which is not caused to the public in general but to some individual of a particular villages, does not fall under Section 133 Cr.PC. (*Darwara Singh v. State of Rajasthan* (1991)(1)WLN441.)

The Court has put check on the abuse of power under section 133. The mandate of the Court is very clear. Where in proceedings under Section 133, Cr. P.C., the opposite party denies, the existence of a public right in respect of the land in question, it is the duty of the Magistrate to hold an inquiry under Section 139-A with a view to ascertaining whether there is any reliable evidence in support or the denial on the part of the opposite party, and to record a clear finding on the point before proceeding further. He cannot make his original order absolute under Section 137 without recording any finding under Section 139-A. (Khan, I.A., *Environmental Law*, ed. 2nd, 2002, p.39)

Judicial Approach: Balancing the Right to freedom of Trade and Right to Clean Environment:

Judicial activism in use of provisions on public nuisance in the Criminal Procedure Code was rare in the early cases because the courts adopted several self imposed restrictions. A major element of judicial attitudes which restricted efficacy of the law and which can be deduced from the study of early cases arose whenever the issue of public nuisance conflicted with the carrying on of trade or business of the accused. The trend was akin to the common law traditions of recognizing individual rights in trade, business and property, rather than being aligned to the 'social justice or human rights jurisprudence with its bias towards public interest and safety of the people at large. This attitude continued till 1980s. It is clearly evident from the approach of the Supreme Court in *Ram Autar v. State of Uttar Pradesh* when the occasion came for the Supreme Court to interpret s.133 of Criminal Procedure Code, 1973. The judicial rationale in this case did not show much difference from its earlier attitude. In this case, the three appellants carried on trade of auctioning vegetables. As a consequence, many carts in which vegetables were brought were parked in front of residential houses. This caused obstruction and inconvenience to the users of the road. The Magistrate intervened with an order under Section 133 of Cr. P.C. the high court of Allahabad dismissed the application for revision with opinion that:(Abraham,C.M.; Environmental Jurisprudence in India, 1999. Kluwer Law International.)

When it is clear that the business of auctioning vegetables cannot be carried on without causing obstruction to the passersby, the conduct of the business can be prohibited even though it is carried on in a private place. But the Supreme Court held that this proposition of High Court is too wide, construed the provision narrowly and allowed the appeal. The bench of Justice Das Gupta who delivered the Judgment and Justices J.L.Kapur and Raghubar Dayal stated that:It appears to us that the conduct of the trade of this nature and indeed of other trades in localities of a city where such trades are usually carried on is bound to produce some discomfort though at the same time resulting perhaps in the good of the community in other respects.In making the provisions of section 133 of the Code of Criminal Procedure, the legislature cannot have intended the stoppage of such trades in such part of town, merely because of the discomfort

caused by the noise in carrying on the trade. The comparison of this judgment with the judgment in *Gobind Singh v. Shanti Sarup* clearly indicates the change in the judicial attitude after the Stockholm Conference in 1972. The case of *Gobind Singh* was decided in 1979 by the Supreme Court, a bench consisting of Justice Chandrachud, Justices Sarkaria and Chinnappa Reddy. In this case the Sub divisional Magistrate had made absolute a conditional order under section 133(1) of the Criminal Procedure Code. The order required a baker to demolish chimney of his bakery as it was found that the construction of the bakery and the volume of smoke emitted by it would play havoc with the lives of people living nearby. According to the order, the baker should cease trading at this particular site and should not light the oven again. The baker appealed by special leave to the Supreme Court. The Supreme Court held: We are of the opinion that in a matter of this nature where what is involved is not merely the right of private individuals but health, safety and convenience of the public at large. The safer course would be to accept the view of the learned magistrate who saw for himself the hazard resulting from the working of the bakery. Although the Supreme Court dismissed the appeal and upheld the Magistrate's order, it nonetheless modified the same, holding that: Preventing the appellant from using the oven is certainly within the terms of the conditional order, but not so the order requiring him to desist from carrying on the trade of a baker at the site. (*M. Krishna Panicker v. Appukuttan Nair*)

One can discern a cautious judicial approach here when the issue apparently affects the individual's fundamental rights to trade and occupation guaranteed under Article 19 of the Constitution.

CONCLUSION AND SUGGESTION:

From the above judgments it is very clear that the Indian judiciary has tried to interpret the provision of section 133 to provide speedy and simple remedy for the problems of environmental pollution. Though there are some slips in the interpretation made by the judiciary in situation of conflict of laws. But this has been resolved by later judgments wherein the judiciary has tried to interpret the true nature and scope of the provision under section 133 of Cr. P.C. and the provision under special laws with the objective to secure right to healthy environment to people of India. Section 144 of the Code has to be seen as a significant provision conferring wide powers upon the Magistrate to deal with urgent cases of nuisance or apprehended danger and

tranquillity. This magisterial power has been exercised only for the purpose of preventing public disorder arising out of public unrest or riot situations. The potential of this provision is vast, but it does not appear to have been utilised effectively in cases of environmental harm.

The provisions in the old Indian law, which have a bearing on the environment, have hardly been used in the past. The consciousness to protect the environment was not as strong then, as it is today. Unless there was awareness on the part of the people to approach the authorities neither the government nor the courts would have had the opportunity to make use of the statutory provisions.

The important role played by the judicial activism of the eighties made its impact felt more in the area of the environmental protection than in any other field. *Municipal council, Ratlam v. Vardhichand* 18 is a signpost. The Supreme Court identified the responsibilities of local bodies towards the protection of environment and developed the law of public nuisance in the Code of Criminal procedure as a potent instrument for enforcement of their duties. in *Legal Control of Environmental Pollution*, op. cit., p. 90. 18 AIR 1980 SC 1622.

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