

Judicial Interpretation of Law of Public Nuisance for Environment Protection: A Critique

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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 paper 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.

Index Terms – Environment Pollution, Public Nuisance

I INTRODUCTION

The Concept of Public Nuisance

Public Nuisance has been defined in section 268¹ 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.

II THE CRIMINAL PROCEDURE CODE, 1973 AND THE ENVIRONMENT PROTECTION

The provisions of Chapter X² 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.³

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.⁴ 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.⁵

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. So action under this section is anticipatory. It is utilized to restrict certain actions even before they occur. 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

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.

III JUDICIAL INTERPRETATION OF LAW OF PUBLIC NUISANCE FOR ENVIRONMENT PROTECTION

The Indian Judiciary started showing concern about environmental problems much before the Rio Treaty and long before it started reaching out to international treaties to provide a jurisprudential basis for its decisions. One such innovative interpretation of the Apex Court is extending criminal sanctions to the environmental problems. The judicial craftsmanship has contributed in developing new panorama of remedy for public nuisance as provided in Criminal Procedure Code, 1973 for the environment protection.

*Ratlam case*⁶ is a significant milestone in development of environmental jurisprudence in India. The movement of environment protection took a new turn and got momentum with the judgment in this case.

In this case 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.⁷ The case relates to public nuisance, but the remedy claimed was that the Municipal, Council, a statutory body, be directed to carry out its duty to the community by constructing sanitation facilities on time bound basis. Ward No. 12, New Road, Ratlam Municipality was being used by the poor inhabitants as latrine which has resulted in accumulation of filth and spread of stink making the area inhabitable for the residents. The misery of the inhabitants was further enhanced due to discharge from alcohol plant of malodorous fluids into the public street. The fluid so collected became a breeding place for mosquitoes. To get rid of this nuisance, a complaint was filed before the Magistrate of Ratlam under section 133 Cr. P.C. by the residents of New Road. After appreciating evidence produced by the complainants, the Magistrate ordered for the removal of nuisance and gave certain directions to the Municipal Council for the prevention of the nuisance. The municipal Council went in appeal to the High Court. The High Court upheld the orders of the Magistrate and then the appeal was made to the Supreme Court. The Supreme Court also turned down the appeal and directed that the orders given by the Magistrate and confirmed by the High Court must be complied with. The court approved a scheme of Rs. 6 lakhs for construction of drainage and also gave one year's time for completion of the same. The court directed the magistrate to inspect the progress of the work at every three months to be satisfied that the order is implemented bonafide. The Court also made it clear that breaches of this order will be visited with the penalty of S.188 of Indian Penal Code 1860.

In the opinion of the Court public nuisance, because of pollutants being discharged by big factories to the detriment of the poorer sections is a challenge to the social justice component of the rule of law. Likewise, the grievous failure to local authorities to provide the basic amenity of public conveniences drives the miserable slum-dwellers to ease in the streets, on the sly for a time, and openly thereafter, because under nature's pressure, bashfulness becomes a luxury and dignity a difficult art. A responsible municipal council constituted for the precise purpose of preserving public health and providing better finances cannot run away from its principal duty by pleading financial inability. Decency and dignity are non-negotiable facets of human rights and are a first change on local self-governing bodies.

The Court gave directions to the municipal authority and the State Government to carry out following tasks:

1. The Ratlam Municipal Council (R1) to take immediate action, within its statutory powers, to stop the effluents from the Alcohol Plant flowing into the street. The State Government also shall take action to stop the pollution. The Sub-Divisional Magistrate will also use his power under s.133, I.P.C., to abate the nuisance so caused. Industries cannot make profit at the expense of public health.
2. The Municipal Council shall, within six months from today, construct a sufficient number of public latrines for use by men and women separately, provide water supply and scavenging service morning and evening so as to ensure sanitation. The health Officer of the Municipality will furnish a report, at the end of the six-monthly term, that the work has been completed. We need hardly say that the

local will be trained in using and keeping these toilets in clean condition. Conscious co-operation of the consumers is too important to be neglected by representative bodies.

3. The State Government will give special instructions to the Malaria Eradication Wing to stop mosquito breeding in Ward No.12. The Sub-Divisional Magistrate will issue directions to the officer concerned to file a report before him to the effect that the work has been done in reasonable time.

4. The municipality will not merely construct the drains but also fill up cess-pools and other pits of filth and use its sanitary staff to keep the place free from accumulation of filth. After all, what it lays out on prophylactic sanitation is a gain on its hospital budget.

5. We have no hesitation in holding that if these directions are not complied with the Sub-divisional magistrate will prosecute the officers responsible. Indeed, this court will also consider action to punish for contempt in case of report by the Sub-Divisional magistrate of willful breach by any officer.

The Court expected that the State Government would provide sufficient financial aid to the Ratlam Municipality to enable it to fulfill its obligation under the order of the court and the Municipality would also slim its budget on slow priority items and elitist projects to use the savings on sanitation and public health.

The Court hoped that the State would realize that Article 47 makes it a paramount principle of governance that steps are taken 'for the improvement of public health as amongst its primary duties.'

The further Court observed⁸

"The pressure of the judicial process, expensive and dilatory is neither necessary nor desirable if responsible bodies are responsive to duties."

The true nature and scope of Section 133 of Cr. P.C. is articulated in the case by the Court.

The Court observed:

"Although these two Codes are of ancient vintage, the new social justice orientation imparted to them by the Constitution of India makes it a remedial weapon of versatile use. Social justice is due to the people and therefore, the people must be able to trigger-off the jurisdiction vested for their benefit in any public functionary like a Magistrate under S. 133 Cr. P.C. In the exercise of such power, the judiciary must be informed by the broader principle of access of justice necessitated by the conditions of developing countries and obligated by Article 38 of the Constitution."⁹

The Court also articulated that the Directive principles relating to improvement of public health and environment should not remain on paper only. A note of caution was sounded at that juncture. The Court was not ready to accept the plea of financial incapacity of municipality in providing basic sanitary requirements of people.

The judgment in the Ratlam Case has showed the way that the provision under section 133 of Cr. P.C. can be used as potent weapon to compel the local bodies to maintain clean and healthy environment. It probably served to offset the insufficiency of the legal mechanism and enforcement not only in the local bodies' laws but also in other environmental legislations such as Water Act, Air Act or the Environment Act.¹⁰ The influence of the Ratlam in later judicial history is remarkable.¹¹ The case shows the wider concept of *locus standi* that allowed public participation in the judicial Process against malfeasance of the municipality.¹² Justice Krishna Iyer said¹³:

The case is remarkable in history of environmental law as for the first time it was recognized that the people could approach the court against violations of their collective rights and that the judicial process could be invoked for the enforcement of the positive obligations that such public bodies have under the law.¹⁴

The impact of the judgment of Ratlam case is clearly seen in the later judgments of the High Courts and Supreme Court. Various High Courts in the country tried to strengthen the law of public nuisance by expanding the jurisdiction under s.133 of the Cr. P.C.

In *Krishna Gopal Verma v. State of M.P.*¹⁵, the main issue raised was where one person has come forward to complain about nuisance can it be said that the nuisance complained of, is a public nuisance as contemplated by section 133 of the Cr. P.C.

The Court held this argument fallacious and said;

It is not the intent of law that the community as a whole or a large number of complainants come forward to lodge their complaint or protest against the nuisance; that does not require any particular number of complainants. A mere reading of Section 133(1) would go to show that the jurisdiction of the Sub-Divisional Magistrate can be invoked on receiving a report of Police Officer or other information, and on taking such evidence if any, as he thinks fit. These words are important. Even on information received the Sub-Divisional Magistrate is empowered to take action in this behalf for either removal or regularizing a public nuisance.¹⁶

The Court showing a serious concern observed:

It should be remembered that environmental crimes dwarf other crimes against safety and property but the position of law as it stands in the matter of sentencing such environmental crimes is rather comfortable. A vagrant committing a petty theft is punished for years of imprisonment while a billion-dollar price fixing executive or a partner in a concern as such the petitioner comfortably escapes the consequences of his environmental crime. The society is shocked when a single murder takes place, but air, water and atmospheric pollution is merely read as a news without slightest perturbation till people take ill, go blind or die in distress on account of pollutants that result in the filling of pockets of a few.¹⁷

The case is remarkable in the history of environmental law for its contribution in interpretation of provision of public nuisance in Cr. P.C. for both air and noise pollution and determined a wider scope for law of public nuisance to operate for the purpose of protecting the environment.

The business of loading, unloading and stocking of fodder near a residential locality was considered a serious health hazard by the Supreme Court in *Ajeet Mehta v. State of Rajasthan*¹⁸, the main issue of case was related to atmospheric pollution due to fine dust particles of the fodder. Endorsing the order of the magistrate for removal of the business from the locality, the Court observed:

“It is very unfortunate that little care is now bestowed to the pollution problem and very lackadaisical approach is taken... very rarely people come forward and resist the same. They are normally discouraged on account of slow moving of the state machinery as well as the Court. But this is one of the unique cases in which the petitioner has taken the whole exercise and brought the motion to put an end to this problem of pollution of that area.”¹⁹

In *State of M.P. v. Kedia Leather & Liquor Ltd. And Ors.*²⁰ the Supreme Court defines true scope of section 133 in controlling the environment pollution.

The respondents who owned industrial units were directed by the Sub-Divisional Magistrate in terms of Section 133 of the Criminal Procedure Code to close their industries on the allegation that serious pollution was created by discharge of effluent from their respective factories and thereby a public nuisance was caused. The preliminary issues and the proceedings initiated by the Sub-Divisional Magistrate were questioned by the respondents before the High Court of Madhya Pradesh under Section 397 of the Code. The main plank of their arguments before the High Court was that by enactment of Water Act and the Air Act there was implied repeal of Section 133 of the Code.

The plea was contested by the Sub-Divisional Magistrate on the ground that the provisions of Water Act and the Air Act operate in different fields, and, therefore, the question of Section 133 of the Code getting eclipsed did not arise.

The High Court referred to various provisions of the Water Act and Air Act and compared their scope of operation with Section 133 of the Code.

In the ultimate, it was held that the provisions of the Water and Air Acts impliedly repealed the provisions of Section 133 of the Code, so far as allegations of public nuisance by air and water pollution by industries or persons covered by the two Acts are concerned. As a consequence, it was held that the Sub-Divisional Magistrate had no jurisdiction to act under Section 133 of the Code.

The Supreme Court emphasized:

The provisions of Section 133 of the Code are in the nature of preventive measures, the provisions contained in the two Acts are not only curative but also preventive and penal. The provisions appear to be mutually exclusive and the question of one replacing the other does not arise. Above being the position, the High Court was not justified in holding that there was any implied repeal of Section 133 of the Code.²¹

All these judgments show the judicial enthusiasm in protecting the environment with the tool of remedy for public nuisance even after the passing of special laws for controlling air and water pollutions.

Actually, the remedy of public nuisance is preferable when the nuisance is imminent to avoid the procedural delays and lack of expertise by the boards under the special acts. Moreover, the executive magistrate is available in every district whereas the Pollution Control Boards are usually located in state capitals which are not too far from the site of the environmental offence. But the amendments in eighties to the Water Act and Air Acts have changed the situation by conferring on a person the *locus standi* to approach the courts to prosecute environmental offenders after a 60-day notice period.

The later decisions of various courts have shown a different stance in interpreting the conflict between provisions of special laws and remedy under s. 133 in Cr. P.C. In *M Krishna Panicker v. Appukuttan Nair*²² the Division Bench of Kerala High Court, overruled the Single Bench decision in *Tata Tea*. In this case the Court held that the special law, the Water Act, did not repeal the law of public nuisance under the Cr. P.C. ‘Repeal’ being a legislative exercise, *Tata Tea* case’s assumption of implied repeal cannot be agreed upon.

It is wrong to have presumed that the Water Act and s.133 of the Code operate on the same field. Special law overrides general law, only if, both operate on the same field. One relates to pollution control; the other refers to maintenance of public order and tranquility. Pushing the aggrieved citizens to the board does not bring effective results, as the board has to put itself in the position of a complainant and seek remedies before a judicial magistrate. The Code provides a mechanism for quick remedy against nuisance. Remedy under the law of public nuisance has now become feasible, functional and reachable to the common man.

Similar view was taken by the Karnataka High Court in *Harihar Polyfibers and Another v. The Sub-Divisional Magistrate*²³. The Court stated that

The purpose of the Water (Prevention and Control of Pollution) Act is to provide for the prevention and control of water pollution and the maintaining or restoring of wholesomeness of water, for the establishment, with a view to carrying out the purposes aforesaid, of Boards for the prevention and control of water pollution, for conferring on and assigning to such Boards powers and functions relating thereto and for matters connected therewith. These two Acts are merely concentrated on the factories and industries but Section 133 deals with a general provision. Further if for any emergent order, one has to rush to the Board there is a cumbersome procedure to be followed by the Board to take action in respect of water and air pollution. On the other hand, the Sub-Divisional Magistrate is available very near to their places and the public can approach them for remedial measures. From the reading of the entire Water and Air Act, it is clear that the object is to take preventive measures. Under this Act, remedial measures are not available as far as one could secure from Sub-Divisional Magistrate.

In this case the court discussed the earlier judgments in *Tata Tea Ltd. v. State of Kerala*²⁴ and in *Abdul Hamid v. The Gwalior Rayon Silk Mfg. (WVG) Co. Ltd*²⁵, the Madhya Pradesh High Court wherein it was held that the remedies provided under the Air and Water (Prevention and Control of Pollution) Act are exhaustive and covers all aspects of the matter. Therefore, the jurisdiction of Sub-Divisional, Magistrate under Sec. 133 is taken away.

Resolving the controversy, the Court discusses at length the above cases and clarifies that Sec. 133 is dealing with remedial measures but the provisions of Air and Water Act as discussed above in detail indicate that they deal with preventive measures. The Court validated the view taken by Andhra Pradesh High Court in *M/s. Nagarjuna Paper Mills Ltd. v. Sub-Divisional Magistrate and Revenue Divisional Officer*²⁶ that Water (Prevention and Control of Pollution) Act, 1974 has not taken away powers of Sub-Divisional Magistrate under Section 133.

IV CONCLUSION

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.

REFERENCES

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[²] Section 133 to 144

[³] Puthucherril, Tony George., "One Step Forward, Two Steps Back: Constitutionalism and Environmental Jurisprudence in India", 11-13

[⁴] Shastri, S.C., Environmental Law, Ed. 3rd, p.71

[⁵] Section 188 of I.P.C. :whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment for six months or fine which may extend to one thousand rupees or with both.

[⁶] Municipal Council, Ratlam v. Vardhichand AIR 1980 SC 1622

[⁷] P. LeelaKrishnan, Environmental Law in India, 1999, Lexis Nexis Butterworths, P.38.

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[⁹] *Ibid*

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[¹⁶] *Ibid*

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[¹⁹] *id*, p. 1598, per Mathur J.

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