



## REGULATION OF ENVIRONMENTAL POLLUTION UNDER SEVERAL STATUTES

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### ABSTRACT

What is Environment? In simple terms, Environment can be described as the Atmosphere Surrounding us. Every Human after he/she is being born, will always have the aim to lead a Good, Hygiene and a Healthy Lifestyle. To lead such a Lifestyle, a Good Environment is required for anyone and everyone. But the current scenario is this way. Nothing surrounding us these days is in its purest form. Anything and everything is Contaminated starting from Water, Air, Atmosphere and passes on to many other things associated with the Ecosystem surrounding us. Keeping all these components in the purest form will only lead to a Pollution Free Environment. Awareness regarding these issues have highly increased in all of our minds. Keeping these in mind, various Statutes have devised different provisions regarding this concept of Environmental Pollution. Let us examine these Statutes one by one in detail in order to obtain a Clarity upon these concepts.

### I. INTRODUCTION

The surroundings of your home are referred to as your environment. The lack of reasonable care and neglect on the part of both individuals and the government in formulating various policies and revising the laws that deal with environmental protection are two of the many issues the environment is experiencing today. As a result, the environment is being polluted.

In India, there are numerous environmental problems. India has issues from a variety of sources, including pollution of the air, water, rubbish, illegal imports, and the environment.

India is seeing some severe consequences from nature. Between 1947 and 1995, things got worse. India achieved some of the world's fastest improvements between 1995 and 2010 in resolving its environmental problems and raising the quality of its environment, according to data gathered and environmental assessments examined by World Bank experts. Pollution is still a significant opportunity and issue for the nation, though. One of the main contributors to disease, health problems, and long-term impacts on India's way of life is the environment.

Environmental protection is covered by a number of laws. The following are some significant laws that have been utilized successfully to contain and regulate the many types of environmental pollution:

- A. Law of Torts
- B. Indian Penal Code 1860
- C. Criminal Procedure Code 1973
- D. Factories Act 1948
- E. National Environmental Tribunal Act, 1995

### III. ENVIRONMENTAL POLLUTION AS A TORT

In clear language, Supreme Court Justice Saghir Ahmed made the following observation:

"A civil wrong is pollution. It is a tort that is perpetrated against the entire community by its very nature. Therefore, a person who causes pollution must pay compensation for harm to the environment and ecosystem. In addition to financial penalties, those responsible for pollution may also be ordered to pay exemplary

damages, which serve as a deterrence to others from committing pollution of any kind."

In this instance, a motel was polluting the river Beas by dumping its untreated effluents into it. The natural flow of the river was also hampered by the motel's construction. The motel was pointed out . It was also declared that a "pollution fine" might be imposed on such polluters by adhering to the prescribed method.<sup>5</sup>

Common law, of which tort law is essentially a subset, is founded on judicial decisions. There are a number of torts that fall under different categories that offer relief for environmental contamination. the following are environmental protection-related torts:

- A. Nuisance
- B. Trespass
- C. Negligence
- D. Strict Liability

#### A. NUISANCE AND ENVIRONMENTAL POLLUTION

The common law concepts of nuisance serve as the deepest conceptual foundation for contemporary environmental law, as has been correctly noted. This law covers a variety of environmental pollution-causing actions. "Unlawful interference with the use and enjoyment of land or property, or some right over, or in connection with it," is what is meant by the term "nuisance." It is a persistent situation. This includes the transfer of harmful items and inconveniences to another. A nuisance is typically defined as something that irritates, hurts, or is offensive. Water, smoke, fumes, gas, noise, heat, vibration, bacteria, trees, etc. may all escape.<sup>6</sup>

There are two main categories of Nuisance. They are as follows -

1. Public Nuisance , and

2. Private Nuisance

The Indian Penal Code (Sections 268 and 291) and Criminal Procedure Code define public nuisance as a crime. (Section 133 and 144).<sup>7</sup>

In Dhannan Lal V. Chittar Singh , the M.P. High court ruled that continual noise might be illegal if it interferes with another person's bodily comfort and is odd or uncommon. Although he may be running his business properly in accordance with the rules established in this regard either by the municipality or by the state, the person creating the nuisance may be restrained by an injunction.

The following criteria are important in determining if the discomfort is significant enough to warrant action:

- (i). Degree of Intensity
- (ii). Duration
- (iii). Locality
- (iv). The Mode of using the Property<sup>8</sup>

In the River Ganga Pollution Case , According to the Supreme Court, the Ganga River's pollution causes a public nuisance that is wide-spread in scope and indiscriminate in its effects. One can petition the court through public interest litigation since this has an impact on the entire community. In one instance, tanneries were polluting the water by dumping their untreated effluents into the river, and several nullahs were doing the same with municipal garbage. The Municipal Corporation of Kanpur City received numerous specific instructions from the court regarding how to preserve the purity of the river's water by adopting the appropriate measures to prevent the discharge of industrial effluents and municipal garbage into the Ganga.<sup>9</sup>

<sup>5</sup> M.C. Mehta V. Kamal Nath , (2000) 6 SCC 213

<sup>6</sup> Law of Torts with Consumer Protection Act , By Dr. R.K. Bangia

<sup>7</sup> <https://www.legalserviceindia.com>

<sup>8</sup> AIR 1959 MP 240

<sup>9</sup> 10 WR 803 (1862)

Despite all of these, tort law offers minimal remedies for private nuisance. These are what they are:

(i). Abatement - It entails the aggrieved party removing an annoyance, but it must be done amicably and without risk to life or limb. Before invading another party's territory, this requires giving the other party prior notice and a reasonable opportunity to object.

(ii). Damages - The party who is upset may file a lawsuit for compensation.

(iii). Injunction - It is a court order preventing the opposite party from carrying out a nuisance-causing activity. The inability to effectively compensate for the injury must be demonstrated to the court. Sections 36 to 42 of the Specific Relief Act of 1963 and the Code of Civil Procedure of 1908 both address injunctions.<sup>10</sup>

#### B. TRESPASS

Trespass is frequently used in environmental cases and is very closely related to nuisance. In order to commit trespass, the plaintiff's interest in having sole possession of the property must be intentionally violated. For a plaintiff to be successful in a trespass suit, no evidence of a serious injury is required. The only prerequisite for establishing a trespass is that a person or thing intentionally made an unauthorized physical entry onto someone else's property.<sup>11</sup>

In *Arvidson V. Reynolds Metals Company*, the court noted that the defendant's factory generated aluminum in a way that unavoidably resulted in fluorides of various sorts escaping from the plants, which, if consumed in large enough numbers, could harm cattle. Nevertheless, the court ruled in favor of the defendant on the grounds that the nation's defense depends on the large-scale manufacturing of aluminum.<sup>12</sup>

The trespass theory, however, is insufficient to reduce air pollution. The inability to pinpoint the precise source of air pollution in a location, the high cost of litigation, and the general acceptance of the status quo all work against trespass lawsuits being filed.<sup>13</sup>

#### C. NEGLIGENCE

This additional type of tort stops environmental pollution. It is a failure to use the degree of caution that the situation calls for in every specific instance. When there is an obligation to exercise care, reasonable care must be exercised to avoid situations that can be predicted to result in physical harm to people or property. The plaintiff must establish a causal connection between the defendant's carelessness and the plaintiff's injury.<sup>14</sup>

However, where a fatal pollutant like carbon monoxide is released in the air admittedly under the defendant's exclusive control, it is not essential for the plaintiff to prove a causal connection between the negligent act and the injury experienced, as was decided in *Greyhound Corporation v. Blakley*. Consequently, a public figure filing a lawsuit against the nearby cement and similar factories for causing lung damage from fine dust particles. For instance, the hydrochloric acid and silica produced by the National Silicon Factory in Baroda when rich corosilance and water are combined might cause lung harm. The man's lungs are harmed by fibers that enter his body but are invisible to the human eye. Such situations necessitate the highest level of caution.<sup>15</sup>

A common law negligence action was used in *Mukesh Textile Mills (p) Ltd v. H.R. Subramanya Sastri* to stop any activity that polluted the environment.<sup>16</sup>

#### D. DOCTRINE OF STRICT LIABILITY

<sup>10</sup> <https://www.writinglaw.com>

<sup>11</sup> <https://lawbhoomi.com>

<sup>12</sup> 125 F SUPP 486 (W.D.Wash) 1954

<sup>13</sup> <https://ehlinelaw.com>

<sup>14</sup> *Donogue V. Stevenson* (1932) AC 562 Per lord Atkin

<sup>15</sup> (1968) 262 F 2nd 401

<sup>16</sup> AIR 1987 Kant 87

This tort is quite new (1868). The Rylands v. Fletcher standard is referred to as a strict liability tort. Because it has been used to a surprising diversity of things via fire, gas, explosions, electricity, oil, etc., it is a liability without fault on the part of the defendant and is particularly relevant in regard to actions originating from environmental contamination. Additionally, both personal and property injuries are covered under this provision. However, there is no culpability under the rule until the poisonous material or item escapes from the defendant's land, where it is maintained, to the plaintiff's territory. The courts frequently used it in cases.<sup>17</sup>

In the case M.C. Mehta v. Union of India (oleum gas leakage case), the Supreme Court of India ruled that we must create our own laws and, if necessary, create new responsibility principles to address atypical scenarios resulting from hazardous or risky industries. Regardless of the fact that responsibility concepts may have developed in England, we shouldn't be afraid to develop our own.<sup>18</sup>

Justice Bhagavati notes that as a social cost of engaging in risky activity, such industry must be held rigorously and absolutely accountable for harm it does.

In this instance -

1. There was an oil gas spill.
2. On December 4, 1985, a poisonous gas came from the Shriram food and fertilizer industry.
3. As a result, several people became ill and one advocate passed away from oleum gas inhalation. According to the doctrine of Absolute Liability, the industry was held accountable.

4. Later, in the instance of the Bhopal Gas catastrophe, the same thing was once more allowed.<sup>19</sup>

#### IV. RELEVANT PROVISIONS UNDER INDIA PENAL CODE, 1860

A. Offenses harming the public health, safety, and convenience are covered in Chapter 16 of the IPC.

B. Public Nuisance is covered in Section 268. Therefore, a public nuisance is an act that tends to interfere with the health, safety, comfort, or convenience of the general public.

C. Public nuisance is punishable under Section 290 by a fine that may reach Rs. 200.

D. In the Kurnool Municipality case, it was decided that under section 290, the municipality might be found guilty of failing to keep the town clean.

E. According to the Kerala High Court, smoking in public places in any form is a violation of the right to life and can be prosecuted under IPC Section 290 given under Article 21 of the Constitution.

The following are some of the various provisions that deal with pollution:

A. Section 269: Negligent act likely to cause the spread of a life-threatening disease.

B. Section 270: Dangerous act that is likely to transmit a disease infection.

C. Section 277: Polluting public springs or reservoirs with water.

D. Section 278: Making the environment unhealthy.

E. Negligent behavior with regard to a poisonous material is covered in Section 284.

F. Negligent behavior with regard to fire or flammable material is covered in Section 285.

<sup>17</sup> Rylands V. Fletcher (1868) L.R 3 H.C. 330 and Waschock V. Moffat 379 PA 441

<sup>18</sup> (1997) 2 SCC 353

<sup>19</sup> 1994 Supp (3) SCC 328



G. Section 286: Careless behavior when handling explosive substances.

H. Sections 425 to 440: Includes a variety of vandalism, such as vandalism involving the killing or maiming of animals or cattle.

The majority of the regulations are in force and do not help to reduce the issue of environmental pollution since the punishment for the aforementioned offenses is too meager when compared to the enormous problem of environmental pollution that exists today.<sup>20</sup>

#### V. PROVISIONS UNDER Cr.PC , 1973

There is a public nuisance clause in Chapter 10 of Part B of the Criminal Procedure Code of 1973 that applies to environmental contamination. A district magistrate or sub divisional magistrate has the authority, upon receiving the information, to put an end to the nuisance under Section 133 of the Cr.PC . This clause authorizes the court to issue conditional orders for nuisance abatement. However, if someone disobeys an order, the court has the authority to apply the penalties outlined in Section 188 of the Indian Penal Code, which include a maximum fine of \$1,000 and a six-month sentence in jail. The prohibitory act becomes an obligation when Section 188 of the IPC's punitive tone and Section 133 of the Cr. PC's imperative tone is combined. The Supreme Court's ruling in the Ratlam Municipality case made it quite obvious that a citizen may always rely on Section 133 to get rid of the annoyance of pollution. According to these regulations, corporate entities such as corporations and companies may also be held liable for polluted nuisance. The court stated that Section 133 must be present if there is a public nuisance and that any contrary opinion is against the law. However, it is unclear whether municipalities and other local organizations have the authority to file criminal charges against businesses and companies for generating environmental contamination. Therefore, it is suggested that the municipalities and other local body

authorities of the pollution control board may also be granted the prosecution power. Even in the case of the oleum gas leak from the Sriram food and fertilizer plant in New Delhi, the District Magistrate of Delhi issued an order to close the factory in accordance with Section 133 of the Criminal Procedure Code. This case ultimately became a landmark instance of an industry's culpability for engaging in risky activities.

A. Section 133 is separate and different from other Pollution Laws

In the case of the State of M.P. v. Kedia Leather and Liquor Ltd., the supreme court ruled that the laws governing pollution, such as the Water Act of 1974 and the Air Act of 1981, are distinct from one another and do not have the same objectives. While Section 133 is a preventative measure, the provisions in the two acts mentioned above are not only preventative but also criminal. There was no barrier to their coexistence notwithstanding the provisions' apparent mutual exclusion and differences in their respective sectors. Additionally, as was already established, the passage of new pollution control regulations does not nullify Section 133 of the code.<sup>21</sup>

#### VI. FACTORIES ACT , 1948

The Factories Act of 1948 is one of the fundamental regulations addressing environmental pollution caused by businesses. The factories Act served as the inspiration for the term "occupation" used in the environment (protection) Act of 1986. The supreme court has cited this act in a number of cases involving environmental pollution, including the Taj trapezium case, the Kanpur tanneries case, the Modi distilleries case, the Asbestos Industries case, etc. It is the first act that addresses workplace safety, pollution discharge, hazardous substances, occupational health, and employee welfare. According to Section 12 of the Act, the occupier has a responsibility to implement efficient procedures in the factory for the treatment of wastes and effluents

<sup>20</sup> 1973 Cr L.J. 1277 (AP) and AIR 1999 Ker 385

<sup>21</sup> (1979) 2 SCC 267 , (1980) 4 SCC 162 and (2003) 6 SCC 213

caused by production processes so that they are safe.

Dust and Fumes is discussed under Section 14 of the Act .

In 1987, the Factories Act underwent a change that included the addition of a new Chapter 4-A. It has to do with laws that cover dangerous work. These are what they are:

Chapter 4-A

A. Site evaluation committees are created according to Section 41A.

B. Section 41B: Occupier's obligation to disclose information about hazardous processes.

C. Section 41C: The occupier's specific obligation with respect to hazardous processes.

D. Section 41D: Appointment of an inquiry commission by the national government.

E. Section 41E: Standards for emergencies.

F. Permissible limits for chemicals and hazardous compounds are described in Section 41F.

G. Section 41G: Involvement of employees in safety management.

H. Section 41H: The ability of employees to alert others to impending risk.

I. Additionally, Sections 87, 87A, and 96A contain a number of clauses that allow different state governments to close down factories that subject their employees to dangerous employment. The penalty, which may be up to seven years in prison, and the fine, which may be up to two lakh rupees, are covered under Section 96A.

J. In order to preserve the health of workers, chapter 4-A's restriction of hazardous substances can be viewed as a positive initiative. Although extremely broad, it does not include provisions for citizen's suits.

Another law, the Insecticides Act of 1968, gives the federal and state governments the authority to outlaw the use, sale, and distribution of harmful insecticides.

Its absence of an efficient implementation system and the fact that numerous dangerous pesticides like Agent Orange are not prohibited by this Act are shown by a survey and a comparison with the legislation of other nations.<sup>22</sup>

VII. THE NATIONAL ENVIRONMENTAL TRIBUNAL ACT , 1995

On June 17, 1995, the President gave his assent to the Environmental Protection Act of 1986, which was passed by the parliament and given the necessary powers under Section 3(3) to create an authority with the purpose of exercising and carrying out the powers and functions required to protect and improve the environment.

Objective -

In order to give relief and compensation for damages to people, property, and the environment as well as for matters related to or incidental to those damages, it is necessary to establish strict liability for damages resulting from any accident occurring while handling hazardous substances and a National Environmental Tribunal.

A. There are 5 chapters and 31 sections in this act.

B. The Civil Procedure Code of 1908 does not require the tribunal to obey its rules; instead, it must abide by the moral principles of justice, equity, and good conscience.

C. It gives itself the authority to control its own processes.

D. For its foundation and for its benches, an official gazette must be issued.

<sup>22</sup> (1997) 2 SCC 353 , (1988) 1 SCC 471 , (1987) 3 SCC 684 and (1995) 3 SCC 42

E. It is made up of judicial and technical members who have backgrounds in administration, science, and other technical areas pertaining to environmental issues.

The tribunal and its benches have the competence to determine the amount of compensation due for environmental damages, which must be submitted to the appropriate authorities in accordance with Section 7A of the Public Liability Insurance Act of 1991 in order to be credited to the environmental relief fund. This will be used to repair the environment's damage. The punishment for disobeying the tribunals' orders is covered in Section 25. The penalty might include both a fine of up to 10 lakh rupees and a three-year sentence in prison. The officer shall be deemed to be a public servant within the sense of Section 21 of the IPC, 1860, and its proceedings shall be of a judicial nature. Although the National Environmental Tribunal Act of 1995 has admirable goals, it hasn't yet been fully executed successfully.<sup>23</sup>

#### VIII. CONCLUSION

Even though there are numerous laws and enactments that deal with environmental protection, the majority of them have not yet been put into practice. In addition, the majority of corporate institutions are using these environmental protection laws as a shield against their mistakes and liabilities. The finest illustration of this is the Bhopal Gas Case, in which Dow Chemicals utilized the idea of sustainable development as a defense and refused to compensate individuals who had been injured or killed. These kinds of cases are common. Therefore, in my opinion, the law-making authorities should maintain the stance that they must create laws for the wellbeing of the people rather than for their own benefit. To protect the environment, even the government must put in place efficient policies. The municipal corporation of Bengaluru is working very hard to protect the environment. In order to

reduce air pollution, the city began a green program in 2005 and began planting various trees on the dividers and lanes of the roadways. The city is frequently referred to as Garden City for this reason. We, as responsible citizens and as fellow humans, must work together to limit the pollution despite all these laws and government policies that have adopted numerous plans to do so. We have a moral responsibility to keep our society safe, secure, and clean.

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<sup>23</sup> <http://www.nihfw.org>