

ENVIRONMENTAL POLLUTION BY NUISANCE WITH ITS SUMMARY & URGENT CURE !

Dr Seema Yadav

Asst. Prof, Dept. of Law, Shri Varshney College, Aligarh

ABSTRACT

Why can't pollution be stopped before it begins? It can, but it costs a lot of money in a commodity sector & is loath to part with unless force to; until this decade even the governments planners utterly negligently ignored environmental concerns, irrational policies make a mockery of environmental requirements & many national vis a vis domestic agencies don't care about remedies with precautions, but it's a serious matter towards environment. New perception linked with environment development collaborate with political, legislative, judicial, administrative etc. components. The environment development and political syndrome is the crux of the basic ills of the present world order not among the public and domestic arena of the Nation but also among the protagonists of environment lists to apt for various approaches. Nuisance is one of them. The present paper deals with the summary & urgent cure towards nuisance along with judicial approaches.

INTRODUCTION :

All objects organic or inorganic including man with their existence to five great elements i.e. fire, air, space, water and earth - in a definite proportion on a specific time and place. No doubt man is a social animal he is 'Manas' but for possessing 'Mun' intellect self-respect, mind to think and intellect to decide, self-respect to quality of his action. Interference with nature by addition or subtraction in all the five great elements causing imbalances in ecology & diminution of quality, not only these elements but also deterioration in environment itself.

The term environmental is a combination of Environ + Mental. It is an expression which qualifies conditions of mind rather a situation considerably affected by all these surroundings and perspectives which directly or indirectly have definite bearing upon human responsibility to such surroundings. As such environment is sum total of all conditions & influences that affect the development and life of all organisms .

POLLUTION

It is a sort of defilement in such a manner that it creates hazards or potential hazards to health, hygienic wellbeing of living and non-living organs. Since every substance existing in the environment has a definite composition, when a foreign body is introduced into it or the proportion

of its constituents is modified than the substance loses its original character and qualities. The original constituents fail to serve the purpose which they would have served had the intervening process is called Pollution. As such the environmental pollution is the unfavourable alterations of our surroundings through direct or indirect effects of changes in energy patterns, radiation levels, chemical and physical concentration and abundance of organisms.

For thousands of years the human race has survived countless catastrophes, epidemics floods, droughts, famines, earthquakes, fire etc. activities but could above the on sleights of all out chemicals, bacteriological & nuclear warfare? Atmospheric poisoning air, pollutant water, deafening sounds, resultant product of child producing industry-over population may eradicate humanity for good.

Entire Nature-animate or inanimate consists of five great element - Air, Fire, Ether, Soil and Water. If anything is extracted or added just to disturb the natural proportion in these great elements. This may contribute towards their pollution.

NUISANCE

The doctrinal roots of modern environmental law are to be found in the Common Law Doctrine of Nuisance. It can either be private or public, whereas private nuisance causes a substantial and unreasonable interference with the use and enjoyment of the plaintiff's property. Private nuisance is actionable in Civil Court or under Law of Tort, A public nuisance is one which is an unreasonable interference with a general right of a public by causing an injury or annoyance to persons in general or a class of persons, (residents of a particular locality or neighbourhood). While private nuisance is interference with the use of land, public nuisance denotes an interference with a right common to the general public. Although, both categories have substantial nexus with environment management, so it can't be ignored that the law of public nuisance has a predominant connection with environmental law and the Water (Prevention and Control of Pollution) Act 1974 also established that contamination of water can be said to be pollution when it may or is likely to create a nuisance.

INDIAN PENAL CODE : NUISANCE

Long before environmental legislation founds its way into the statute book in our country, the Indian Penal Code had as far back as 1860, made several provisions which could be invoked to protect the environment. The object of Chapter XIV of the IPC (Section 268 to 294A) is to safeguard public health, safety and convenience by punishing acts which pollute the environment or threaten people's lives & these provisions can be used if there is an escape of noise, gas, filth, water germs etc.

The Public Nuisance as defined under section 268 of Indian Penal Code "A person is guilty of public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger, 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".

Public nuisance is an offence against the public at large, it affects the public as the whole sentimentally or some considerable portion thereof. Interfering with their health, safety comforts or convenience of public generally. It is also clarified that a public or common nuisance cannot be excused on the ground that causes some convenience or advantages. for instance -running dye-casting industry in residential area and using diesel generator during electricity cuts, do certainly pollute air & creates sound beyond permissible limits (maximum decibels- db.) thereby affecting adversely the environment. Although any citizen can initiate a prosecution U/S 268 of IPC by a complaint to the Magistrate ; when an offensive trade carried on by one person pollutes the air or continuous noises interfere with the health, comfort & sleep of the neighbouring residents. But the main drawback of this provision is that the Magistrate can fine the offender a partly sum of rupees 200 only! so, who would like to spend time & money pursuing a complaint of this nature ?.

Leisurely Civil litigation may take years together causing much damage. Fast & busy life of human beings does not allow to wait much.

CODE OF CRIMINAL PROCEDURE : NUISANCE

Here we are concerned with urgent, speedy & imminent relief- means -immediate removal with relief of such public nuisance is to Invoke the provisions of the Criminal Procedure Code. Section 133 to 144 of the Cr.P.C. can be used to control any public nuisance causing pollution of peace of mind, radioactive air, water , noise etc.

Under Section 133,if a Magistrate is of the view, that -

*Any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel lawfully used by the public;

*The conduct of any trade or occupation or the keeping of any goods or merchandise is injurious to the health or physical comforts of the community;

*Any tank, well or excavation adjacent to any public way or public place should be fenced to prevent danger arising to the place;

Magistrate can pass a *conditional order / preliminary order* (which can be made absolute or final order after giving the offender a sufficient opportunity to be heard),directing the offender to remove the public nuisance which is causing pollution. If the concerned person or group of persons fails to obey the final order, can be prosecuted under S.188 of the IPC.

Under Section 144 of the Cr.P.C. A Magistrate can pass an order directing a person to do or to abstain from doing a particular act with regard to certain property in his possession or under his

management, if the Magistrate considers that such a direction is likely to prevent obstruction, annoyance or injury to any person or to prevent danger to human life, health and safety ; such an order can also be passed *ex parte* in fit cases.

CONTOURS OF PUBLIC NUISANCE :

The distinction between public & private nuisance for applying Section 133 of the Cr.P.C. against environmental assaults has been the bone of contention in a few cases. Although in relevant part of Cr. P.C. word 'public nuisance' vis- a-vis in Section only word 'nuisance' is mentioned, so the expression 'nuisance' cannot but be interpreted as public nuisance. In *Jayakrishna Panigrahi vs Hrisikesh Panda*, the Rajasthan High Court held that despite the heading 'public nuisance' in the chapter the literal & unambiguous meaning shall be given to the expression 'nuisance' & the provision shall apply to a case where the interest of a single individual or of a few individuals are affected.

The Supreme Court also observed about the jurisdiction under S.133 of the Cr.P.C. as follows:-
There must at any rate, be an imminent danger to health or the physical comfort of the community in which the trade or occupation is conducted.

CONFLICTING LAWS & JURISDICTION !

Did the enactment of the Water Act 1974 and air act 1981 repeal implied lying the law of nuisance under Section 133 of the Cr.P.C.? The Kerala High Court and Madhya Pradesh High Court in *Tata Tea Limited vs State of Kerala* and *Abdul Hamid vs Gwalior Rayon Silk Manufacturing Co*, respectively held that Water and Air Acts are later special enactment which are presumed to have repealed the prohibitions of public nuisance under CrPC. The issues in both cases were more or less same. Could the Executive Magistrate first class issue orders to prevent or stop the discharge of pollutants to a river? Can there be criminal prosecution if these orders are disobeyed? The court answered that there is a special grievance mechanism under the Water and Air Acts, they are a code in themselves. The State Pollution Control Board can prosecute the offenders (the 1988 amendment gave the right to prosecute directly to a person, but only after giving a sixty days' notice to the Board) & then a Judicial Magistrate first class can take cognizance of the offence under the provisions of the Water Act, as citizen could approach the board for sanction to prosecute. At present he can directly approach to a Judicial Magistrate Court after giving sixty days' notice for prosecution. In the meantime convinced by the truth of the allegations of the citizen the board can withdraw the consent already granted. The court concluded that the Executive Magistrate had no jurisdiction to deal with pollution of water under section 133 of the CrPC, as a special statute, which provided the machinery to redress grievances, had now covered the area.

*Are the remedies under the Water and Air Acts expeditious and exhaustive?

*Are the procedural formalities effective and far from a time consuming process ?

*Will not the harm already have taken place by the time the court seizes of the matter under the complex scheme of complaint and notice envisaged in the Statute?

The Kerala High Court did not consider it as a big problem & said that " There is no reason to assume that while Executive Magistrate could move expeditiously the state board could not do so. On the other hand the state board which has considerable expertise and requisite machinery in aid of its functions can certainly be expected to move purposefully and fruitfully in the case of water pollution.

No implied powers, when the Laws occupy different fields because the Water Act & Air Acts are related to pollution control and the Criminal Procedure Code refers to maintenance of public order & tranquillity. Compelling the aggrieved citizens to approach the Board does not bring effective results, as the Board has to put itself in the position of a complainant and seek remedies before the Judicial Magistrate According to the Court, CrPC provides a mechanism for quick & effective remedy against nuisance because in factual, litigation in India, can be a seemingly unending process & the remedy may certainly not be speedy, as pointed out in *Municipal Council, Ratlam vs Vardhichand* case.

Although in urgent situations the machinery under section 133 of the CrPC has to move in, however, the observation that it does not deal with every potential nuisance appears to ignore certain emergencies when the Executive Magistrate's interference shall be more effective than any other remedies to prevent imminent maladies. In the Court's view, in spite of the provisions in the Water & Air Acts, section 133 of the CrPC can be called in aid to remove public nuisance and thus, avoid hardship to the general public. Implied repeal can be found only when the provisions of the later Act are inconsistent with or repugnant to the provisions of the earlier Act so that the two cannot stand together.

INFERENCE :

Proceedings under section 133 of CrPC a Judicial process carried out by DM, ADM, SDM or by any other Executive Magistrate especially empowered to take this effect may avoid this nuisance in which even the informant is neither party nor has any say Magistrate concerned acts *Suo Motu*. In view of the permissible time limit and brevity of the subject matter, to sum up, air and the ethical (sound) pollution resulting into said nuisance causing annoyance may be dealt with summarily, urgently by its removal by District Magistrate or any other Executive Magistrate especially empowered in this behalf on any Information, act *Suo Motto*. Proceedings, under Section 133 to 143 of CrPC are judicious in nature, independent of Civil Proceedings, to be taken in cases of emergency and imminent danger to the public health or physical comforts of the community at large.

Last not the least ,Being an Indian, We all know very well that; people in far-off villages and towns may find it extremely difficult to approach the Supreme Court or the High Court's highlighting the environmental ecological woes of their region by invoking Article 226 and Article 32 of the Constitution. Nor will they be in a position to succeed in getting a quick and effective remedy by approaching the pollution Control Board. In contrast, available in every district, this grass hoot remedy under the law of public nuisance becomes feasible, functional and reachable to the common man, if wisely & properly used and frees them from this official bias or undue influence. A mechanism has to be evolved to make them act independently with the cold neutrality of a judge. The question, however, remains whether judicial supervision and vigilance will prove to be sufficient for tailoring the standards of their behaviour. It is in such a situation where one has to examine the civil remedies available.

REFERENCES

Books / Journals:

- BM Gandhi : Law of Torts (1987),vEastern Book Company, Lucknow.
- Prof.H.D. Pithawalla : Environmental Law, C Jamnadas & Company.
- P. Leelakrishnan : Law of Public Nuisance; Tool for Environment Protection, Journal of the Indian law Institute 1986, p 230 & 231.
- P.Leela Krishnan : Environmental Law in India (2008), Lexis Nexis, Publications.
- Clark and Lindsay : Torts ,1982; Sweet &Maxwell, London.
- PM Bakshi : The Environment Protection Act,1986 ; Indian Law Institute, Delhi.

Statutes, Rules & Regulations :

- Code of Civil Procedure, 2908
- Council on Environmental Quality Guidelines 1971,(US).
- Code of Criminal Procedure, 1973
- Indian Penal Code,1860.
- Water (Prevention and Control of Pollution)Act 1974.(Water Act).
- Air (Prevention and Control)Act 1981.

Case laws :

- *Jaykrishna Panigrahi vs Hrisikesh Panda ; Cr Lj 1054' 1992.*
- *Kachrual Bhagirat Agrawal vs State of Maharastra ; Cr Lj 4634 ' 2004.*
- *Tata Tea Limited vs State of Kerala; 1984 KLT 645.*
- *Abdul Hamid vs Gwalior Rayon Silk Manufacturing Co.;1989.*
- *M Krishna Paniker vs Appukuttam Nair ;1 KLJ 725; 1993.*
- *Municipal Council, Ratlam vs Vardhichand;A.I.R.q980 SC 1622.*