

## ENVIRONMENTAL LAW IN TORTS AND CRIME

Legal Upanishad Journal (LUJournal.com)

Vol 1 Issue 3 | December 2023 | pp- 158-169

Fagun Mathur, Law Student, Mody University, Rajasthan.

### ABSTRACT

*The environment is an ecosystem that supports human development, nutrition, and survival. It is essential to life as we know it on Earth and its natural progression. However, increasing human greed has an enormous adverse effect on the environment due to all the terrible actions. The Environment Law was introduced with the objective of protecting the environment. In this article, the author attempts to analyse the concept of environmental law in relation to the law of torts and the criminal laws, i.e., the Indian Penal Code, 1860, and the Code of Criminal Procedure, 1973. The author has discussed in brief various types of torts along with the landmark cases decided by the Indian courts.*

**Keywords:** *Criminal Laws, Ecosystem, Environment, Survival and Torts.*

## 1. INTRODUCTION

Any regulations that have an impact on how people handle their natural surroundings and are implemented by local, national, and international organizations are collectively referred to as environmental laws. This all-encompassing phrase encompasses all facets of environmental law. Any laws that guarantee the stability of the climate and the security of natural resources, which include land, water, minerals, forests, and air, are included in the field of environmental law<sup>1</sup>.

The Environment Protection Act of 1986 governs environmental law in India. Both the Central Pollution Control Board and the various state pollution control boards have been tasked with enforcing this statute. In addition, there are numerous more guidelines that deal with environmental pollution and have been established to be beneficial in limiting its different forms. A few of them are:

1. The law of torts
2. Indian Penal Code, 1860<sup>2</sup>
3. Criminal Procedure Code, 1973<sup>3</sup>
4. Factories Act, 1948<sup>4</sup>, etc.

In this article, we will be discussing the environment under the law of torts and crime.

## 2. ENVIRONMENTAL POLLUTION AS A TORT

A tort is actually a breach of some duty, independent of a contract, that has caused damage to the plaintiff, giving rise to a certain civil cause of action. In the law of torts, there are two important terms that everyone should know:

**2.1 Injuria Sine Damnum:** It's a legal maxim that states that any kind of harm, loss, or damage that the plaintiff encounters without any physical harm or damage is considered an injury suffered without any loss. In accordance with this maxim, the plaintiff need only

---

<sup>1</sup> SATISH C. SHASTRI, ENVIRONMENTAL LAW (Eastern Book Company 2014)

<sup>2</sup> Indian Penal Code, 1860, No. 45, Acts of Parliament, 1860 (India)

<sup>3</sup> The Code of Criminal Procedure Act, 1973, No. 2, Act of Parliament, 1974 (India)

<sup>4</sup> Factories Act, 1948, No. 63, Acts of Parliament, 1948 (India)

demonstrate that he has suffered some sort of legal harm rather than having to prove that he has suffered actual damage.

**2.2 Damnum Sine Injuria:** This maxim refers to damage without legal damages; in this case, the plaintiff endured property loss or injury to their body, but there were no legal repercussions. This maxim essentially implies that there has been a loss of money, property, or bodily harm, but there hasn't been a breach of any legal rights.

The fundamental basis of tort law is the selections made by judges. There are numerous torts that offer compensation for contamination of the environment under various designations, like:

- Tort of nuisance
- Trespass
- Tort of negligence
- Strict liability

## LEGAL UPANISHAD JOURNAL

### 3. TORT OF NUISANCE AND ENVIRONMENTAL POLLUTION

An illegal interference with the occupancy and enjoyment of land and property, or any right over or in connection with it, is referred to as a nuisance. Anything that compromises the safety or health of a neighbour or reduces their comfort level ought to be considered an actionable discomfort. Environmentally damaging behaviours fall under the purview of nuisance law. Water leaks, smoke, gas leaks, noise, heat, vibrations, electricity, illness, germs, trees, etc. can all be considered nuisances. There are essentially two types of nuisances: private and public. The material disruption of the typical comforts of human existence serves as the primary focus. When evaluating if the discomfort is significant enough to necessitate action, the following components are essential:

- a. Degree of intensity.
- b. Duration.
- c. Locality.

d. The mode of using the property.

In *Dhannal Lal v. Chittar Singh*<sup>5</sup>, in accordance with the M.P. HC, persistent noise that violates someone else's physical comfort may be grounds for action, even if it is rare or atypical. An injunction may be used to restrain the nuisance-causing party, but they are still free to carry out their business in accordance with any regulations set down by the state or local government.

In the River Ganga pollution case [*M.C. Mehta v. UOI*]<sup>6</sup> Water pollution occurred due to numerous tanneries discharging their raw sewage into the river and numerous nallahs dumping city garbage into the river. The Supreme Court of India ruled that the contamination of the Ganga River constitutes a public nuisance since it has an effect on the entire community. The Municipal Corporation of Kanpur City was given specific instructions to maintain the river's water quality by taking the required actions to release municipal waste and industrial effluents into the Ganga. Noise pollution is the term used to describe when people in the neighbourhood are subjected to dangerously high levels of noise. Noise pollution can also refer to the noise generated by mining operations, which is also known as noise nuisance.

In the case of the *Bhadkal Lake-Soorajkund* case, mining operations case, and stone crusher's case [*M.C. Mehta v. UOI, 1996*]<sup>7</sup>, The court issued a stay order on all mining operations being carried out within 2–5 km of Bhadkal Lake and Soorajkund. It was also decided that all vacant land in the region would be converted into a green belt by planting trees before the 1996 monsoon season.

In *Bijay Ananda Patra v. Dist. Magistrate, Cuttack*<sup>8</sup>, it was maintained that noise is considered inappropriate sound that has a negative impact on people's health and wellness. Unwanted sound in the atmosphere can be defined as noise pollution, and as explosives and loudspeakers have been shown to pose serious threats to health, their use needs to be regulated. As a result, courts have suggested that rigorous enforcement of the requirements

---

<sup>5</sup> *Dhannal Lal v. Chittar Singh*, AIR 1959 MP 240

<sup>6</sup> *M.C. Mehta v. UOI*, AIR 1988 SC 1115

<sup>7</sup> *M.C. Mehta v. UOI*, AIR 1996 SC 1977

<sup>8</sup> *Bijay Ananda Patra v. Dist. Magistrate, Cuttack*, AIR 2000 Ori. 70.

for noise pollution be combined with the enactment of an independent, complete noise code that regulates all aspects of noise.

In the case of *Ram Raj Singh v. Babulal*<sup>9</sup>, the court noted that in cases where an act constitutes a public nuisance, an individual may file a lawsuit on his own behalf only if he can demonstrate that he has suffered "special damage," or harm that is exclusive to him rather than harm that the public as a whole endured. Any injury that a reasonable person would deem to be significant qualifies as such.

Solutions for a personal annoyance:

- **Abatement:** The harmed party must remove the annoyance peacefully and without risk to their safety. For this to happen, before entering the other party's property, due notice and opportunity must be given to them.
- **Damages:** A party who feels wronged may file a claim for damages.
- **Injunction:** An injunction is a court order that prohibits the other party from performing an action that is unpleasant. Before the court, it must be demonstrated that the damage cannot be adequately compensated.

LEGAL UPANISHAD JOURNAL

#### **4. TRESSPASS**

An intentional breach of the plaintiff's right to sole possession of the property is called trespassing. To be successful in a trespass suit, a plaintiff is not required to demonstrate a significant injury. The primary prerequisite for establishing a trespass is the planned, unpermitted physical entry by an individual onto the property of another individual.

#### **5. NEGLIGENCE**

Negligence can be defined as an unwillingness to take the appropriate measures in any given circumstance. Where there is a duty of care, reasonable care that is expected to end in property or person injury must be taken. The amount of care varies from situation to circumstance and case to case. The plaintiff has to prove an inadvertent connection between the plaintiff's injuries and the defendant's negligence.

---

<sup>9</sup> *Ram Raj Singh v. Babulal*, AIR 1982 All 285

In *Mukesh Textile Mills (P) Ltd. v. H.R. Subramanya Shastri*<sup>10</sup>, negligence claims were brought to prevent any activity that would cause environmental pollution. In this case, the petitioner owned a sugar mill where molasses was stored. There were three tanks, one made of sludge, located near the defendant's property, which was separated by a waterway. One day, the third tank collapsed, releasing water and damaging the defendant's crops. The court found the applicant liable for the damage to the crops and for failing to properly deal with the liquid leaking from the tank. The advantage of claiming negligence is that the defendant must prove in court and satisfy the judge that their acts or omissions were not negligent. It is the defendant's burden to prove that reasonable care was taken and all precautions were taken to prevent the harmful accident. If the defendant cannot prove his innocence, the plaintiff will receive damages.

## 6. DOCTRINE OF STRICT LIABILITY

The principle of no-fault liability is relevant to cases involving environmental pollution, as it refers to no-fault liability on the part of the defendant and applies to a wide variety of things, such as fire, gas, explosives, oil, fumes, and toxic substances.

This rule was adopted in the case of *Rylands v. Rylands*. Fletcher introduced this rule, which states: Anyone who enters his country for his own purposes, collects and stores there everything that is likely to cause mischief, and flees from it must ensure that he does not endanger it. If he does not do so, he will be responsible for the damage caused as a natural consequence of his flight.

In the case of *M.C. Mehta v. Union of India (Oleum gas leakage or Shriram food and fertiliser industry case)*<sup>11</sup>,

On December 4, 1985, there was an oil spill from the Shriram Food and Fertiliser Industry, which resulted in multiple illnesses and fatalities from oleum gas inhalation. As per the Supreme Court's ruling, any business operating in an industry that is hazardous or inherently dangerous and endangers the health and safety of its employees as well as those living nearby has an unassumed and assumable obligation to the community to ensure that no one is harmed as a result of the activity being undertaken.

<sup>10</sup> *Mukesh Textile Mills (P) Ltd. v. H.R. Subramanya Shastri*, AIR 1987 Kant 87

<sup>11</sup> *M.C. Mehta v. Union of India*, AIR 1987 SC 1086

The court further ruled that damages for any injuries sustained by individuals as a result of risky behaviour had to be commensurate with the size and capability of the business. The amount of compensation that a firm must pay out must increase with size.

In the case of *Union Carbide Corporation Ltd. v. UOI (Bhopal Gas Leakage Disaster Case)*<sup>12</sup> The event involved a leak of the gas methyl isocyanate (MIC) from the Union Carbide Company in Bhopal on December 2 and 3, 1984, resulting in over 3,000 deaths and 2,000 injuries. In this case, the court ruled that Union Carbide Corporation would also compensate for injuries experienced by a foetus whose birth defects were genetic and caused by MIC toxicity.

## 7. ENVIRONMENTAL POLLUTION IN CRIMINAL LAW

Environmental crimes refer to violations of laws protecting the environment and human health. These laws regulate air and water quality and determine how waste and hazardous materials can be legally disposed of. Violating environmental laws can make a person or company guilty of an economic crime. Environmental crimes are acts that cause damage to the environment or human life. They fall under the category of organised crime.

Environmental crimes include a wide range of violations that result in harm to the environment, ranging from errors at the administrative or record-keeping level to actual illegal discharges of pollutants into the environment. Closer is done with the purpose of gaining material or economic gain or gaining power over territory or products. Environmental crimes include<sup>13</sup>:

- i. Poaching;
- ii. Illegal trade of wildlife;
- iii. Unreported fishing;
- iv. Trade in unregulated and illegal products for financial and personal gain - trade in timber, ivory, rhino horn and even sandalwood;
- v. Littering;

<sup>12</sup> *Union Carbide Corporation Ltd. v. UOI*, AIR 1988 SC 1531

<sup>13</sup> Furqan Ahmad, *Origin and Growth of Environmental Law in India*, 43 J. INDIA L. INSTITUTE (2001)

- vi. Improper waste disposal;
- vii. Oil spills;
- viii. Destruction of wetlands;
- ix. Dumping into oceans, streams, lakes, or rivers;
- x. Improperly handling pesticides or other toxic chemicals;
- xi. Burning garbage;
- xii. Improperly removing and disposing of asbestos;
- xiii. Falsifying lab data pertaining to environmental regulations;
- xiv. Smuggling certain chemicals, such as CFC refrigerants, into the U.S.;
- xv. Bribing government officials;
- xvi. Committing fraud related to environmental crime;

Human-caused environmental damage is detrimental to both present and future generations of humans. Humans have already done significant harm to the environment, and it is our responsibility to prevent more harm from occurring. India has passed numerous laws, both national and state-level, addressing various aspects of the environment, such as air quality, water quality, pollution control, forests, and many more. The Indian Penal Code of 1860 and the Criminal Procedure Code of 1973 provide criminal remedies for offences against the environment.

## 8. PROVISIONS UNDER IPC, 1860

The only purpose of including Chapter XIV in the IPC, 1860, is to protect public health, safety, and convenience by criminalising actions that contaminate the environment and endanger people's lives, health, and safety. It has to do with crimes that compromise people's convenience, morals, decency, and public health. A nuisance is, broadly speaking, any action that irritates someone else or that harms, damages, or impedes their ability to enjoy their property. A nuisance can be both private and public. When an offence is committed against the public at large, it is classified as a public nuisance and is illegal.

- Section 268<sup>14</sup>: This provision deals with the concept of a public nuisance.

---

<sup>14</sup> Indian Penal Code, 1860, § 268, No. 45, Acts of Parliament, 1860 (India)



- Sections 269–271: These provisions aim to penalise behaviours that compromise public health by disseminating infections. The maximum sentence allowed is six months, or both.
- Sections 272-276: These sections aim to penalise actions such as adulterating food, alcohol, or drugs. The maximum sentence for these offences is 1000 rupees, or six months in prison.
- Section 277<sup>15</sup>: It outlines the penalties for intentionally contaminating or contaminating public springs or reservoirs, rendering the water unfit for human use. The penalties might include a maximum sentence of three months in jail, a fine of five hundred rupees, or both.
- Section 278<sup>16</sup>: This section says that whoever voluntarily corrupts the atmosphere and makes it toxic for the living beings to inhale that air, to attract this provision, it is not necessary that the alleged nuisance should produce an odour injurious to health; it is sufficient if it is offensive to the senses. Anyone liable for causing this nuisance shall be punished with a fine of 500 rupees.
- Section 425<sup>17</sup>: This section covers all those acts of a person who have an intention to cause wrongful loss or damage to the public, any person, or any property, and the act diminishes its value, commits 'mischief'. This section applies to both public and private damages. Section 426 prescribes punishment for a term up to 3 months, or with a fine, or with both.
- Section 427-440: These sections cover mischief of various kinds, including killing or maiming cattle or animals of any value, mischief by industrial accidents or illegal diversion of water, violation of public roads or bridges, obstruction of public drains, etc.

## 9. LANDMARK CASES

In *K. Ramkrishnan v. State of Kerala*, 1999<sup>18</sup>, the court held that smoking in public places comes under public nuisance.

<sup>15</sup> Indian Penal Code, 1860, § 277, No. 45, Acts of Parliament, 1860 (India)

<sup>16</sup> Indian Penal Code, 1860, § 278, No. 45, Acts of Parliament, 1860 (India)

<sup>17</sup> Indian Penal Code, 1860, § 425, No. 45, Acts of Parliament, 1860 (India)

<sup>18</sup> *K. Ramkrishnan v. State of Kerala*, AIR 1999 Ker 385

In *MC Mehta v. UOI*<sup>19</sup>, the SC held that there is an absolute and non-delegable duty on companies that engage in dangerous or inherently dangerous activities that pose a threat to the health and safety of people and that such activities result in harm. It was decided whether or not companies must be held liable for this damage.

In *M.C. Mehta vs. UOI [Taj Trapezium Case]*<sup>20</sup>, the court held that coke and coal-using industries are the biggest polluters and are having a negative impact on the people living in the Taj Mahal and TTZ. In accordance with the polluter pays principle, effective measures must be taken to anticipate, prevent, and counter the causes of environmental degradation.

In *Gopi Naik v. Somnath*<sup>21</sup>, the respondent suffered unlawful loss and injury as a result of the accused's cutting off of their water pipe connection. Because the accused's actions reduced the value of the property, the court found them guilty of mischief.

## 10. PROVISIONS UNDER CRPC, 1973

# LEGAL UPANISHAD JOURNAL

### Section 133<sup>22</sup>

The Criminal Procedure Code includes a chapter that empowers district judges to issue conditional orders to eliminate nuisances. This section is supplemented by supplementary provisions in sections 134 to 143 of the Code to provide comprehensive procedures for combating public nuisances. In case of non-compliance with the order, the court may impose a penalty on him under Section 188 IPC, which includes imprisonment for up to six months and a fine of up to Rs 1,000.

Under this section, the following categories of public nuisances can be resolved:

1. Unlawful obstruction or nuisance to any public place, river, or channel lawfully used by the public.

<sup>19</sup> *MC Mehta v. UOI*, AIR 1987 SC 965

<sup>20</sup> *M.C. Mehta vs. UOI*, AIR 1997 SC 734

<sup>21</sup> *Gopi Naik v. Somnath*, 1977 CrLJ 1665 Goa

<sup>22</sup> The Code of Criminal Procedure Act, 1973, § 133, No. 2, Act of Parliament, 1974 (India)

2. Conduct of any trade or occupation or storing goods that are injurious to health or cause discomfort to the community.
3. Construction of any project or disposal of any substance that is likely to cause an explosion.
4. Any building, tent, or structure that is likely to cause damage or injury to a person.

In *Mehta v. UOI [Oleum gas leakage case]*, the Delhi District Magistrate ordered the closure of a factory under Section 133 of the Act. This was a landmark case in the area of liability for industries engaged in dangerous or inherently dangerous activities.

In the case of *Municipal Council, Ratlam v. Vardichan*<sup>23</sup>, SC held that citizens can rely on Section 133 of the CrPC to remove polluting nuisances, and entities such as businesses and corporations may also be held liable for polluting nuisances under these provisions. The court also said, "Whenever there is a public nuisance, the existence of Section 133 of the CrPC must be felt, and any opinion contrary thereto is against the law.

In *Ajeet Mehta v. State of Rajasthan*<sup>24</sup>, the Rajasthan High Court held that grazing of fodder on certain land in a residential area amounts to air pollution and is therefore a nuisance to the public. The order to remove the nuisance was found to be valid, and the defendants were directed not to operate a feed business on the premises.

In *Krishna Gopal v. Member of Parliament*<sup>25</sup>, charges were brought against noise, air pollution, and steam leakage at a glucose factory. All this caused inconvenience and discomfort to local people. The court made a very important decision, ordering the boiler to be removed and the factory closed as it was a public nuisance to the area.

In the case of *PC Cherian v. State of Kerala*<sup>26</sup>, the Kerala HC explained the nature and scope of Section 133. In this case, two rubber industries used carbon black in their carbon compounding processes. Excess carbon was released into the atmosphere, causing discomfort, injury, and inconvenience to people nearby. The district judge ordered the discontinuation of carbon blending at both plants under Section 133. The HC also said it was

<sup>23</sup> *Municipal Council, Ratlam v. Vardichan*, 1980 AIR 1622

<sup>24</sup> *Ajeet Mehta v. State of Rajasthan*, 1990 Cri LJ 1956

<sup>25</sup> *Krishna Gopal v. Member of Parliament*, 1986 CriLJ 396.

<sup>26</sup> *PC Cherian v State of Kerala*, 1981 Ker LT 113

a public nuisance and a health hazard affecting the respiratory systems of people. He also said that carbon mixing work could resume after installing devices and equipment to prevent the spread of soot into the atmosphere.

In order to avoid further troubles and the repetition of similar acts, you can consult qualified experts in the field of environmental health and choose equipment that satisfies the relevant authorities.

In *MP State v. Kedia Leather and Spirits Co. Ltd.*<sup>27</sup>, SC explained that the scope of the Act other than Section 133 is different from and is not essentially the same as other pollution laws such as the Water Act of 1974 and the Air Act of 1981. Section 133 is preventive in nature, while the other two laws are not only preventive but also criminal in nature.

### **Section 144**<sup>28</sup>

Section 144 of the Act provides judicial powers that can only be exercised for the purpose of preventing public disorder due to a public disorder or riot. This must be an important provision that gives immense powers to magistrates to make orders in urgent cases where nuisance, danger, and peace are suspected.

## **11. CONCLUSION**

In conclusion, the negative effects of human activity on the environment are addressed and mitigated in large part through environmental law. It is a crucial weapon for protecting the natural resources of our world, the general public's health, and the welfare of upcoming generations in both torts and criminal law. In both civil and criminal contexts, environmental law is a potent tool for addressing and avoiding environmental harm. It offers a framework for the law that is crucial for sustainability, accountability, and environmental protection. Environmental law's function in policing torts and crimes will remain essential in preserving our world for future generations as environmental concerns gain significance.

<sup>27</sup> *MP State v. Kedia Leather and Spirits Co. Ltd.*, AIR 2003 SC 3236

<sup>28</sup> The Code of Criminal Procedure Act, 1973, § 144, No. 2, Act of Parliament, 1974 (India)