

ENVIRONMENTAL LAW
COMMON LAW AND
STATUTORY REMEDIES

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Common Law Remedies

- Customary law of England based upon judicial decisions—Applicable under [Art.372](#)
- Remedies Available under Tort-civil wrong.
- Tortious liabilities for environmental pollution are under:
 1. Nuisance
 2. Trespass
 3. Negligence
 4. Strict Liability.

Nuisance

- Nuisance means anything which hurts, annoys or that which is offensive.
- It may be in the form of smells, fumes, air or water pollution due to the effluents discharge or it may be any kind of obstruction which interferes with right of a person.
- Unlawful interference with right over wholesomeness of land ...
- Public and Private nuisance.

Nuisance....

- Ram Baj Singh v Babu Lal –brick grinding machine in front of consulting chamber of medical practitioner.
- V Lakshmipathy v State—industries located in residential area..held industries to be removed within 60 days and costs Rs 3000/-
- Noise is nuisance even if caused in course of conducting lawful bussiness
- Church of Full God V KKR Majestic colony Assn 2002 SC..NO fundamental right to use of amplifiers in name of religion

Trespass

- Intentional or negligent direct interference with personal or proprietary rights without lawful excuse.
- Actionable per se
- Throwing of garbage on another's land
- Emission of gases or fumes constitute trespass.

Negligence

- Breach of legal duty to care which results in damage.
- **Legal duty to care** on defendant towards plaintiff
- **Breach of said duty**....no reasonable care
- **Consequential damage** due to breach and reasonably foreseeable.
- Mukesh textile v H R Sastry.
- Naresh Tyagi V State of UP

Strict Liability

- ❑ Rule laid down in *Rylands v Fletcher* (1868) HL
- ❑ A person must bring and collect material on his land
- ❑ The accumulation for his own purpose
- ❑ The matter must be likely to do mischief if it escapes (may not be dangerous)
- ❑ Escape from place of accumulation to that out of defendant's control
- ❑ Use of land is non natural
- ❑ Defendant prima facie strictly liable for damage caused

Exceptions:

- Act of God
- Act of third party
- Plaintiff's own fault
- Plaintiff's consent
- Natural use of land by defendant
- Statutory authority.

Rule of Absolute Liability

- Evolved in *M.C. Mehta v Union of India* (Oleum Gas Leak)
- Where an enterprise is engaged in hazardous or inherently dangerous activity resulting, e.g. in the escape of toxic gas, the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis tortious principle of strict liability.

Statutory Remedies

Under IPC Chapter XIV—SEC 268-Sec294A

- **Sec 268:** Public Nuisance :--A person is guilty of a public nuisance who does any act or is guilty of an 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. A common nuisance is not excused on the ground that it causes some convenience or advantage.
- **Sec 290.** Punishment for public nuisance—up to 200/-
- **Sec 269---Sec 271**— Spreading infection of disease dangerous for life.---punishment up to six months imprisonment or fine or both.
- **Sec 272 –Sec 276**— Adulteration of Food, drinks and drugs – imprisonment up to six months or fine up to 1000/- or both.
- **Sec 277**— Fouling water of a spring or reservoir---imprisonment up to three months or fine up to 500/- or both
- **Sec 426, 430,431,432** Pollution caused by mischief

Statutory Remedies

- ❑ Sec 284 –286 : Negligent/ rash handling of poisonous substances, explosive etc causing environmental pollution.---imprisonment up to 6 months or fine up to 1000/-
- ❑ Sec 426: Mischief—imprisonment 3 months or/ and fine
- ❑ Sec 430 : mischief

Provisions under CrPC

- Sec 133 –Sec 143 and Sec 144
- 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.
- a) 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.

Sec 133 CrPC

1. District magistrate/ SDM/ Executive magistrate
2. On report from police or other information
3. Conditional order to remove nuisance.
4. Even against public bodies.
5. Ratlam Municipality v Vardichand AIR1980 SC----open drains.
6. Krishna Gopal v State of MP 1986 –glucose factory
7. Laxmi Cement v. State and Anr. 1994CriLJ3649
8. State of MP V Kedia Leather and Liquor Ltd 2003 SCC—whether repeal of sec 133

CPC and pollution control—Sec 91

- Sec 91—Right of action in public nuisance— suit for declaration and injunction or any other relief .
- Case instituted by
- Advocate general
- With leave of court, by two or more persons—no special damage
- penalty 200/-
- Special laws