CHAPTER-V

CONTOURS OF JUDICIAL DECISIONS IN CASES OF PUBLIC NUISANCE IN ENVIRONMENT

5.1 Introduction

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 statues 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 Stockhom conference in 1972. The old laws were interpreted with new zeal for environment protection. The present Chapter 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.

5.2 Environment Protection and Indian Penal Code, 1860

Though the awareness to the hazards of development came after Bhopal leak case and the need had been felt to frame special laws for Environment Protection Act, 1986 is a step towards that precaution. We cannot say that prior to that there was no law for the purpose. The different laws during British raj were enacted to deal with different problems related to environment. Some the laws are still in existence today. One of these is Indian Penal Code which was enacted in 1860 and it is also applicable today.

There are many provisions against pollution in Indian Penal Code, 1860.
Chapter IV of Indian Penal Code deals with offences relating to public health, safety, decency, convenience, morals under Sections 268, 269, 270, 279, 280, 287, 288, 290, 291, 294.

Public Nuisance has been defined in section 268 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.

In *K.Ramakishnan v. State of Kerala*[^217] the Kerala High Court held that smoking, in any form, in public place is a public nuisance and cases can be filed under section 290 of the Penal Code as it is violative of Right to life provided under Article 21 of the Constitution.

As regards water pollution, Section 277 provides that “whoever voluntarily corrupt or fouls the water of any public spring or reservoir so as to render it less fit for the purpose for which it is ordinarily used, shall be punished with simple or rigorous imprisonment for a term extending to three months or fine of five hundred rupees or with both.

Section 269 of I.P.C. also could be invoked against a water polluter. The section provides, “whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both.”

[^217]: AIR 1999 Ker 385
Section 278 of the Act, provides that whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to health of the person in general dwelling or carrying on business in the neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

The water polluter can also be punished under section 425 of I.P.C. for mischief. If his act causes wrongful loss or damage to public or to any person or if his act causes the water pollution could be brought under section 511 of the Act.

Section 440 of the Act deals with mischief caused by killing maiming animals and cattle.

Section 286 of the I.P.C. provides punishment for negligent conduct with respect to explosive substance. Similarly Sections 284 and 285 provide punishments for negligent conduct with respect to poisonous substance and negligent conduct with respect to fire or combustible matter respectively.

The weak side of these provisions is that the punishment provided for the above mentioned offences are too meager, looking to present day gigantic problem of environment pollution. Through revision, by way of enhancement of the fine and period of imprisonment is very essential and desirable.

Apart from Indian Penal Code in British India numbers of legislations were passed which had a direct bearing with one or other components of environment. Some are offshoots of industrial developments. Some are for protection of forest and some for protection of animals and particularly of wildlife.

5.3 The Criminal Procedure Code, 1973 and the Environment Protection

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.

---

218 Shastri, S.C., Environmental Law, Ed. 3rd, p.71
220 section 133 to 144
221 See, Puthucherril, Tony George., One Step Forward, Two Steps Back: Constitutionalism and Environmental Jurisprudence in India
Section 133 of the Criminal Procedure Code provides that a district magistrate or subdivisional 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.222 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.223

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.

Action under this section is anticipatory. It is utilized to restrict certain actions even before they actually occur. Anticipatory restrictions are imposed generally in cases of emergency, where there is an apprehended danger of some event that has the potential to cause major public nuisance or damage to public tranquility. The gist of action under s.144 is the urgency of the situation’ its efficacy is the likelihood of being able to prevent some harmful occurrences. 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

222 Supra n.218 p.77
223 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.
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
4. Order cannot be made to give advantage to one party

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.

5.4 The Contours of 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.

5.4.1 Judicial Interpretation of the Scope of Section 133

Despite the numerous provisions criminalizing instances of pollution which would amount to public nuisance, the efficacy of recourse to them is very limited. This is because of two reasons. Firstly, after a complaint is made to a magistrate under section 190 of the I.P.C., criminal proceeding will have to ensue an adequate evidence of the standard required for criminal proceedings will have to be produced in order to secure a sentence and this may take a long period of time. Secondly, and perhaps more importantly, the maximum punishments (in terms of fine and imprisonment where it is provided for) provided for by the
provisions are very low almost negligible making prosecution under these section almost pointless.

As opposed to the I.P.C., the Cr. P.C. provides a far better option in preventing environmental damage where it amounts to a public nuisance. Section 133 of the Code gives an executive magistrate vast powers put up a stop to public nuisance. From an environmental perspective the section empowers a magistrate if he considers that a) any unlawful obstruction or nuisance shud be removed from any public place or any, way, river or channel which is used by the public or occupation or that b) that the conduct of any trade or occupation, or the keeping of any goos or merchandise, then he may make a conditional order requiring the person causing the nuisance, within a time to be fixed in the order to desist from continuing the nuisance or if he fails to do so, to appear before him on date to be fixed by him and to show cause why the order should not be made absolute. Although the section uses the word ‘may’, it has been held to be mandatory where the circumstances for its use exist.

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. It is also comparatively speedier and when evidence is taken under section 138 it is to be taken as in summons case which provided for trial in a summary manner. In addition s. 144of Cr. P.C provides for situations of emergency where orders can be passed exp-parte, without giving notice etc. The magistrate has wide powers under s.133 to stop or remove the nuisance even he can pass orders requiring public bodies to perform their mandate.

Actually, the true meaning, scope and usefulness of remedy under the Sections 133-144 have been articulated by the judicial interpretation of these provisions for the benefits of people and to avoid environmental damage. The various judgments on the same prove this fact.
Appreciating the provision of Section 133 of Cr.P.C., the Madhya Pradesh High Court in *Shaukant Hussain and Anr. v. Sheodayal Saksaina* \(^ {224} \) observed:

Section 133 of the Code of Criminal Procedure provide a speedy and summary remedy in case of urgency where danger to public interest or public health is concerned. In all other cases the party should be referred to the remedy under the ordinary law. Paragraph 3 of Section 133 runs as follows:

"That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the, community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated."

It will be obvious that the word "community" in this paragraph is deliberately used, and that word has a definite meaning. It means the public at large or the residents of an entire locality. The expression "public nuisance" has been defined in Section 268 of the Indian Penal Code as an act or illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwells or occupies property in the vicinity.

In *Ramachandra Malohirao Bhonsle v. Rasikbhai Govardhanbhai Raiyani* \(^ {225} \) the Court observe as follows;

The matter was related Installation and use of electric motor for lifting water to supply it to other flats in the complex. It caused nuisance to the petitioner who had purchased flat before installation of the motor. The matter was reported to Sub-Divisional magistrate. Sub-Divisional Magistrate directed that the respondent should remove the electric motor installed below the flat to eliminate noise pollution and electric motor pump should be shifted and installed within the premises so that it causes no noise pollution. It was challenged by the respondent on the basis that jurisdiction under sec. 133 of the Criminal Procedure Code can be exercised by the learned Executive Magistrate only in respect of public nuisance and not in respect of private nuisance. Further, in response to the order of Magistrate if there is

\(^ {224} \) *AIR 1958 MP 350*  
\(^ {225} \) *2003CriLJ666*
denial of existence of public right over the place or creation of nuisance over a public place then the Executive Magistrate is bound to proceed under sec. 137 of the Code of Criminal Procedure. The Executive Magistrate shall enquire into denial of existence of public right or creating nuisance at public place.

The High Court Gujarat observed that

The Executive Magistrate should have kept in mind that unless the nuisance was created at a public place no direction could be given under section 133. There may be instances where nuisance is created at a public place but, members or persons belonging to the public may not come forward to move an application under sec. 133 of the Code of Criminal Procedure. In such situation, even one person who is aggrieved from such public nuisance at a public place may report the matter to the Executive Magistrate, and upon such information the Executive Magistrate can proceed under sec. 133(1) of the Criminal Procedure Code. Section 133(1) of the Code of Criminal Procedure provides that, "The Executive Magistrate can proceed under this section on receiving the report of Police Officer or other information." The word "other information" includes information given by any person who is aggrieved from public nuisance. So, what is provided under sec. 133 is that nuisance should be created at a public place. Public place is defined in explanation to sub-section (2) of sec. 133. It says that, "A public place includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or recreative purposes."

Deciding the question of applicability of section 133 of Cr.P.C. it is clear that it is applicable when there is a violation of public right. Interpreting the public right the Kerala High Court held in Ganapathy v. State of Kerala226 where the people of the locality were drawing water during draught i.e. the public had a right for using the well for drawing drinking water and thus there was a public right and as such the Sub Divisional Magistrate had jurisdiction to invoke S. 133 Cr.P.C.

The judiciary has widely interpreted the meaning of public right. It is clearly seen from the observation of the Kerala High Court in Augusthy v. Varkey227 there it was held:

---

226 2001(1) Klt574
227 1989 (1) KLT 654
"The distinct expression 'public place' & 'any way' clearly illustrate, that the section comprehends not only public places, but "any way" which may be lawfully used by the public. Lawful use by the public of "any way" would bring it within the ambit of the section. A private place may be frequented by public and may become a public place for the time it is used. That apart, "public place" for purposes of the section, is not restricted to a place dedicated to public. The expression 'public' or 'public place' has been understood in a larger sense. If public have access to a place by right, permission or use, it is a public place, even if it is not public property. One test of ascertaining this will be to see whether there is a right vested in a large number of persons as to make them unascertainable and make them a class-unascertainable not by vastness of numbers, but by character of class".

As decided by High Court of Rajasthan in Achalachand v. Suraj Raj when there is a danger to the people in neighbor or a family or passersby, the role of section 133 comes into play. If there is a common wall between two houses and if the constructions on this common wall are dangerous which may result in falling down of wall and injuring the neighbours it is a public nuisance and the section 133 of Cr. P.C. would be applicable. ‘Of course, Section 133 does not contemplate action by a Magistrate when the danger is only to the inmates of the house or building which is said to be in a dangerous condition… As soon as danger appears to a neighbour also, the conditions of Section 133 of the Code of Criminal Procedure are fulfilled and such a dangerous structure can even be called a public nuisance.’

The proceedings under Part B of Chapter X are of a summary nature and intended to enable the Magistrate to deal with the cases of emergency and are not intended to settle private disputes between the different members of the public. They are not supposed to be used as a substitute for litigations in a civil court in order to settle a private dispute and if a person has any private right, which he wishes to be enforced, he should take recourse to the civil Courts. The obstruction, which is not caused to the public in general but to some individual of a particular villages, does not fall under Section 133 Cr. PC.

228 1959 CriLJ 235
229 Ibid
The Court has put check on the abuse of power under section 133. The mandate of the Court is very clear. Where in proceedings under Section 133, Cr. P.C., the opposite party denies, the existence of a public right in respect of the land in question, it is the duty of the Magistrate to hold an inquiry under Section 139-A with a view to ascertaining whether there is any reliable evidence in support or the denial on the part of the opposite party, and to record a clear finding on the point before proceeding further. He cannot make his original order absolute under Section 137 without recording any finding under Section 139-A.\textsuperscript{231}

\textbf{5.4.2 Judicial Approach: Balancing the Right to freedom of Trade and Right to Clean Environment}

Judicial activism in use of provisions on public nuisance in the Criminal Procedure Code was rare in the early cases because the courts adopted several self imposed restrictions.

A major element of judicial attitudes which restricted efficacy of the law and which can be deduced from the study of early cases arose whenever the issue of public nuisance conflicted with the carrying on of trade or business of the accused. The trend was akin to the common law traditions of recognizing individual rights in trade, business and property, rather than being aligned to the ‘social justice or human rights jurisprudence with its bias towards public interest and safety of the people at large. This attitude continued till 1980s. It is clearly evident from the approach of the Supreme Court in \textit{Ram Autar v. State of Uttar Pradesh}\textsuperscript{232} when the occasion came for the Supreme Court to interpret s.133 of Criminal Procedure Code, 1973. The judicial rationale in this case did not show much difference from its earlier attitude. In this case, the three appellants carried on trade of auctioning vegetables. As a consequence, many carts in which vegetables were brought were parked in front of residential houses. This caused obstruction and inconvenience to the users of the road. The Magistrate intervened with an order under Section 133 of Cr. P.C. the high court of Allahabad dismissed the application for revision with opinion that:

\textsuperscript{231} (Mandansing and Anr. v. Raghunathsingh 1957 CriLJ 293)

\textsuperscript{232} AIR 1962 SC 1795
When it is clear that the business of auctioning vegetables cannot be carried on without causing obstruction to the passersby, the conduct of the business can be prohibited even though it is carried on in a private place.233

But the Supreme Court held that this proposition of High Court is too wide, construed the provision narrowly and allowed the appeal. The bench of Justice Das Gupta who delivered the Judgment and Justices J.L.Kapur and Raghubar Dayal stated that:

It appears to us that the conduct of the trade of this nature and indeed of other trades in localities of a city where such trades are usually carried on is bound to produce some discomfort though at the same time resulting perhaps in the good of the community in other respects.234

In making the provisions of section 133 of the Code of Criminal Procedure, the legislature cannot have intended the stoppage of such trades in such part of town, merely because of the discomfort caused by the noise in carrying on the trade.235

The comparison of this judgment with the judgment in *Gobind Singh v. Shanti Sarup*236 clearly indicates the change in the judicial attitude after the Stockholm Conference in 1972. The case of Gobind Singh237 was decided in 1979 by the Supreme Court, a bench consisting of Justice Chandrachud, Justices Sarkaria and Chinnappa Reddy.

In this case the Sub-divisional Magistrate had made absolute a conditional order under section 133(1) of the Criminal Procedure Code. The order required a baker to demolish chimney of his bakery as it was found that the construction of the bakery and the volume of smoke emitted by it would play havoc with the lives of people living nearby. According to the order, the baker should cease trading at this particular site and should not light the oven again. The baker appealed by special leave to the Supreme Court. The Supreme Court held:

We are of the opinion that in a matter of this nature where what is involved is not merely the right of private individuals but health, safety and convenience of the public at large. The
safer course would be to accept the view of the learned magistrate who saw for himself the hazard resulting from the working of the bakery.\textsuperscript{238}

Although the Supreme Court dismissed the appeal and upheld the Magistrate’s order, it nonetheless modified the same, holding that:

Preventing the appellant from using the oven is certainly within the terms of the conditional order, but not so the order requiring him to desist from carrying on the tradeoff a baker at the site.\textsuperscript{239}

One can discern a cautious judicial approach here when the issue apparently affects the individual’s fundamental rights to trade and occupation guaranteed under Article 19 of the Constitution.\textsuperscript{240}

5.4.3 Judicial Austerity on Careless Attitude of Public Authorities in Environment Protection

\textit{Ratlam case}\textsuperscript{241} 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.\textsuperscript{242} 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

\textsuperscript{238} Ibid at 145
\textsuperscript{239} (Id.)
\textsuperscript{240} Abraham,C.M.; Environmental Jurisprudence in India, 1999. Kluwer Law International
\textsuperscript{241} Municipal Council, Ratlam v. Vardhichand AIR 1980 SC 1622
\textsuperscript{242} P. LeelaKrishnan, Environmental Law in India, 1999, Lexis Nexis Butterworths, p.38.
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 ill 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 Court observed 243

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

243 Ibid
The true nature and scope of Section 133 of Cr. P.C. is articulated in the case by the Court as follows:

… the guns of section 133 go into action wherever there is public nuisance. The public power of the Magistrate under the Code is a public duty to the members of the public who are victims of the nuisance, and so he shall exercise it when the jurisdictional facts are present as here…

Section 133 Cr. P.C. is categorical, although reads discretionary. Judicial discretion when facts for its exercise are present has a mandatory import… The Magistrate’s power under s.133 Cr. P.C. is to order removal of such nuisance with a time to be fixed in the order. This is a public duty implicit in the public power to be exercise on behalf of the public and pursuant to public proceedings…the imperative tone of S.133 Cr. P.C. read with the punitive temper of S.188, I.P.C. makes the prohibitory act a mandatory duty." 244

The Court further 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." 245

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

244 Ibid

245 Ibid
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.246 The influence of the 
Ratlam in later judicial history is remarkable.247 The case shows the wider concept of locus 
standi that allowed public participation in the judicial Process against malfeasance of the 
municipality.248 Justice Krishna Iyer said 249.

“At issue is the coming of age of that branch of public law bearing on community actions 
and the courts’ power to force public bodies under public duties to implement specific 
plansin response to public grievances.”

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.250

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.

5.4.4 Law of Public Nuisance: An Effective Tool to Abate Environmental Pollution

Criminal law cannot be expected to perform the role that modern environmental legislations 
perform. It is from this perspective that their contribution towards environmental protection 
should be judged.

The criminal law, especially the provisions of the Cr. P.C. relating the public nuisance offer 
a quick and efficacious way of remedy for environmental pollution. The role of Indian 
Judiciary is noteworthy in showing and explaining the efficacy of the provisions in Cr. P.C. 
for abating environmental pollution.
In *Krishna Gopal Verma v. State of M.P*\(^{251}\), 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.

In this case, Smt. Tripathi, a resident of Manora maganj Indore, lodged a complaint with the District Magistrate, Indore, on 26-8-82, alleging that a factory Caplic was being run in House No. 23/2 Manoramaganj, Indore, manufacturing glucose saline where a boiler was installed and coal was used as fuel. It was hardly 8 ft. away from the residence of Smt. Sarla Tripathi. The emitted smoke and ash from this boiler caused a great deal of atmospheric pollution resulting in a deleterious effect on the residents of the locality. It was also alleged that the factory was being run round the clock; at times invariably boiling water used to fall in her house. She also stated in her complaint that before issuance of a No-Objection Certificate to the aforesaid factory she had already lodged her protest with the Joint Director Town and Country Planning, Indore, Development Authority, Municipal Corporation, Indore as also the Collector on 6-12-76 and in face of this objection by her the factory was permitted to be run under the very nose of all these authorities.

She complained that her husband a heart patient, as a result of the running of this factory was deprived of even the minimum legitimate 8 hours sleep which he needed most. Boiling water, at times acid was being thrown and at times even filthy abuses were heard on objections being raised by the Proprietors of the factory. She prayed that the spot be inspected and the nuisance of installation of a boiler be removed.

A report was called from the Police Station, Palasia and on that basis a notice dt. 8-11-82 was issued to the petitioner by A.D.M., City Indore calling upon him to show-cause as to why the factory should not be ordered to be removed from the residential locality.

The petitioner on being served with a show-cause notice submitted his reply on 19-11-82 stating the factory was started in the present premises with the no objection certificate from the Joint Director Town and Country Planning and the Municipal Corporation, Indore also permitted the same by its order dated 15-2-77. Similarly the Chief Inspector of Boilers issued a certificate for the use of boiler on 27-1-82. It was contended by the Petitioner that

\(^{251}\) (1986) Cri LJ 396
even if someone was to stand with his ears fixed to the boiler still he would not be in a position to know if the boiler was working.

Smt. Sarla Tripathi, Nathulal, Mahesh Tripathi, Mahendra Singh Gaur and also the complainant who swore an affidavit before the S.D.M. and all these witnesses with one voice complained of pollution caused by running of the factory. None of them has been cross-examined and on 3-6-83 the S.D.M. Indore City passed a final order directing the removal of the factory from the premises 23/2 Manoramaganj, Indore.

Thereafter feeling aggrieved by the aforesaid order Krishnagopal Kakani preferred a revision before the Sessions Judge Indore on 17-6-83. This revision petition was decided by order dt. 30-10-84 and a modification was made only to the extent that instead of removal of the whole factory it was the boiler alone which was directed to be removed. In the meanwhile the petitioner M/s Caplic filed a Civil Suit No. 108-A/83 in the Court of Vth Civil Judge Class-II, Indore for declaration and perpetual injunction against the Joint Director, Town and Country Planning, Indore seeking a declaratory decree to the effect that the Joint Director had no right to cancel the No-Objection Certificate granted to the plaintiff petitioner. Then the petitioner approached the Madhya Pradesh High Court.

It was contended before the Court that, where only one complainant Smt. Sarla Tripathi has come forward to complain about the 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 argument was inconvenience caused to the inmates of a house, can and should not be considered as a public nuisance as it is essentially private in nature for which it is not permissible to invoke Section 133, 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. (Ibid)

Justifying the action under section 133 the Court held that the requirement of Section 133, Cr. P.C. is fully satisfied. Sub-section (1) (b) reads as follows:-

"That the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated.

The words are wide in their amplitude and undoubtedly cover the present case. Manufacturing of medicines in a residential locality with the aid of installation of a boiler resulting in emission of smoke there from is undoubtedly injurious to health as well as the physical comfort of the community and there is no scope for any interference in this revision petition on that account."

The Court severely criticized the authorities for the disregard of their duties and said that installation of factory itself is contrary to law and for that permission cannot be given.

The Court observed that:

Pollutants discharged from the "Chimney" knows no frontiers of localities and very often they lead to damage not only to the locality or the particular area where pollution originates but also to the neighbouring localities and adjacent areas. Breathing itself becomes a problem in case of air pollution and the Officers who are entrusted with the task to see that air pollution is not permitted in residential localities as the facts of this case have revealed can keep the law at bay and it is this callous disregard to the laws, which at times has resulted in a sort of paralysis due to the corporate crime wave. It is a travesty that such corporate crime wave and criminal behaviour on the part of such Authorities has not been made such a crime as to be punished with deterrent punishment.

The Court showing a serious concern observed:
It should be remembered that environmental crimes dwarf other crimes against safely 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. (ibid)

The Court dismissed the petition and confirmed the order passed by the sub-divisional magistrate.

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.

In *Himmat Singh v Bhagwana Ram*252 the judiciary confronted with the problem of Pollution due to installation and operation of fodder machines. The grievance of the petitioners Himmat Singh and said three others before the Executive Magistrate was that the existence and running of cattle-fodder 'tals' by non-petitioners was causing much discomfort and inconvenience to all the residents of the newly developed Ajit Colony and also to those officials who came on duties and stay in Circuit House, Jodhpur. The Electric operated machines used to cut the fodder create intolerable noise and substantially disturb the physical comfort and sleep during night of the residents. Sand laden wind containing particles of fodder blows out from the electric-operated machines and it widely spreads over the roofs and enters inside the houses of the residents of the locality. They are not able to sleep during summer over the roof of their house and cannot sundry their wet garments outside. Sand-laden wind also enters inside the chowk and rooms of the houses which is injurious to health and more so, when at least four residents of this colony are asthmatic. The sand carried through air pierces into the eyes and particularly affects the eyes of children. Fodder is brought to the 'tals' during night by trucks which are unloaded in the

252 1988 Cri LJ 614
morning and fodder is cut during the day. There is a godown of gas cylinders of Shiv Gas Company near four of the 'fodder tals' and also a petrol pump near one of the 'tals'. If by inadvertence or per chance, a lighted match-stick, thrown after lighting a cigarette or biri, happens to fall on the fodder stock, it will turn the fodder into flames and might result in serious calamity to the life and property of the residents of Ajit Colony.

City Magistrate passed a conditional order on June 1, 1984 under Sub-section (1) of Section 133 Cr. P.C. requiring non-petitioners to remove the cattle fodder from the public ways and to remove their 'tals from the public way as well as the nuisance caused by operating the electric operated fodder-cutting machines and if they object to do so, to appear and show cause why the order should not be absolute. The grievance regarding obstruction of public ways in the colony has already been given a go-by by the petitioners on July 9, 1984.

Non-petitioners showed cause on June, 11, 1984. They pleaded that while non-petitioners Nos. 3 and 5 were carrying on cattle fodders trade on private plots after taking the plots on rent since last about 20 years; other non-petitioners were carrying on the said trade for about last 10 years. They had neither created any obstruction in the alleged way and nor caused any nuisance.

The Sessions Judge, Pali has been of the opinion that there had neither been any complaint from the side of the Municipal Council or its Health Officer nor from the side of the Petrol Pump or Gas-cylinder godown and nor from the Manager, Circuit House, Jodhpur. There was also no grievance from the side of colonisers of Ajit Colony. In such circumstances, it was held, the findings of the City Magistrate, Jodhpur that fodder-cutting machines caused noise or that sand-laden wind spread and affected the health or comfort of the residents of Ajit Colony could not be sustained.

The High Court of Rajasthan held that:

It is obvious that if full loads of truck containing fodder are unloaded near these residential houses in Ajit Colony and the fodder is cut by five 'tal-holders' by electric operated machines even during the whole day. Considerable noise emits and sand-laden wind containing small particles of fodder must, in all probability, blow out from the electric-operated machines and spread over in the air and move in the direction in which the wind is
blowing. It is a daily affair. This sand is bound to spread over the roof of residential houses in the locality and even to enter into the compounds and rooms of the houses constructed in Ajit Colony. There is also bound to remain continuous noise on account of the cutting of fodder from at least five electric-operated machines. Generally these machines may not operate during night but in seasonal months, the possibility of night operations, cannot be ruled out. Trucks reach the 'tals' during the night or early in the morning and unload considerable fodder. It is bound to cause annoyance to the people who dwell or occupy residential houses in Ajit-Colony. Carrying on noisy trade which blows out sand-laden wind containing particles of fodder which go over the roofs or inside the houses of residents will amount to a public-nuisance, if by reason of the injury done to neighbourhood, it interferes with the comfort and enjoyment of all those persons who come within the range of it. Once the noise and dust wind is considered to be a nuisance of the requisite degree, it is no defence to contend that it was in consequence of the lawful trade or business. There is not, and possibly there cannot be a devise to control the noise or the sand-laden wind spreading when the 'fodder-tals' are being run on open land with no mechanical devise or contrivance to prevent the dust from spreading in the air and reaching the houses in the neighbourhood. Any inadvertent dropping of a lighted match stick can engulf the locality in disastrous fire which may cause loss to persons and property of those who are living in Ajit Colony. Thus there is danger to the lives, safety and comfort to a fairly large section of the public in the neighbourhood. Carrying on trades causing intolerable noises, emanating of offensive smells and spreading of dust containing particles of fodder cut while (sic) public nuisance which interferes with health, safety and comfort of the public.

Similar view was taken by the High Court of Madhya Pradesh in *State of Madhya Pradesh v. Mauji Raghu*[^253^], non-applicants were owners of a rice mill and allegations were that the husk ('kandha' and 'bhusa') produced by the working of the mill and the working of the mill at night was injurious to health and physical comfort of the community. T. P. Naik J., answering the various contentions raised before him by the partners of the rice mills, observed:

[^253^]: 1964 (2) Cri LJ 94
That the mill worked at night only during the season which was of about three months duration was not enough to disentitle the inhabitants of the locality to relief under Section 133, Cr.P.C. if it is established that the working of the mill at night during the three months in the season is a nuisance....

The mere fact that the mill did not produce noise as it was run by an electric motor is not conclusive of the fact of its not being a nuisance. It will have to be determined on evidence whether the mill, even though run by an electric motor, produced such noise as effectively and substantially interfered with the health and physical comfort of the community....”

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 Rajasthan254, 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 ad brought the motion to put an end to this problem of pollution of that area.255

In Madhavi v. Thilakan256 the Kerala High Court held:

We recognize every man’s home to be his castle which cannot be invaded by toxic fumes, or tormenting sounds. This principle expressed through law and culture, consistent with nature’s ground rules for existence, has been recognized in S. 133 (1) (b). The conduct of any trade or occupation, or keeping of any goods or merchandise injurious to health or physical comfort of community could be regulated or prohibited under the section.

---

254 (1990) Cri LJ 1596
255 id, p. 1598, per Mathur J.
256 ((1989) Cri LJ 499 at p. 501
5.4.5 Conflict of Laws and Judicial Interpretation

Nuisance is a broad, general category and many types of pollution will come under its purview. The question that have arisen, therefore, are whether the specific pollution related enactments such as the Air Act, 1981 and Water Act, 1974 impliedly repeal section 133 of the Cr. P.C. to the extent of the specific types of pollution dealt with in these statutes. Are the powers of a magistrate to deal with pollution under section 133 curtailed by the Air (Prevention and Control Pollution) Act, 1981 or the Water Prevention and Control of Pollution Act, 1974? The Indian judiciary confronted with these issues in many cases.

In the case of *Nagarjuna Paper Mills Ltd. v. Sub-Divisional Magistrate and Divisional Officer, Sangareddy*\(^\text{257}\), the A.P. High Court considered a petition from a Magistrates conditional order shutting down a paper mill which had failed to take adequate pollution control measures. The mill challenged the order, claiming that the state pollution control Board had exclusive power to regulate air and water pollution. Rejecting this argument the High Court upheld the magistrate’s power to regulate pollution by restoring a public nuisance.

The submission made by the counsel for the petitioners that provisions of Section 133 Cr. P.C. which are inconsistent with the provisions of Air Act were stood repealed by High Court of Delhi in *S.P. Plastic v. State*\(^\text{258}\)

In *Laxmi Cement v. State and Anr.*\(^\text{259}\) the order issued under section 133 was challenged on the ground that after coming into force of the Air (Prevention and Control of Pollution) Act, 1981, the provisions of Chapter X and in particular Section 133, Cr.P.C. automatically stood repealed.

The Court observed as follows:

“...The Act has been enacted to provide for the prevention, control and abatement of air pollution, for the establishment, with a view to carrying out the aforesaid purposes, of Boards, for conferring on and assigning to such Boards powers and functions relating

\(^{257}\) 1987 Cri L.J. 2071

\(^{258}\) 44 (1991) DLT 178

\(^{259}\) 1994CriLJ3649
thereto and for matters connected therewith. Moreover, certain decisions were taken in the
United Nations Conference on the Human Environment held in Stockholm in June, 1972, in
which India participated to take appropriate steps for the prevention of the natural resources
of the earth which, among other thing, include the preservation of the quality of air and
control of air pollution. Hence this Act has also been enacted to implement the aforesaid
decisions in so far as they related to the preservation of the quality of air and control of air
pollution. This Act has come into force w.e.f. 16th May, 1981. Section 46 of the Act simply
bars the jurisdiction of civil courts to entertain any suit or proceeding in respect of any
matter which an Appellate Authority constituted under this Act is empowered by or under
this Act to determine. This bar of jurisdiction does not apply to criminal courts. Chapter X
of the Cr. P.C. deals with the maintenance of public order and tranquility and public
nuisance.

Section 133, Cr. P.C. empowers the Magistrate specified therein to make a conditional order
for the removal of such nuisances in emergent cases. Sections 268-294, I.P.C. which relate
to public nuisances under the Penal Code provide punishments for the commission of
offences, while Chapter X of Cr. P.C. contains a procedure for speedy removal of the
obstruction or the nuisance itself which is injurious to the public. When on disclosure of
existence of a public nuisance from information and evidence the Magistrate considers that
such unlawful obstruction or nuisance should be removed from any public place or
regulated, he is empowered to, initiate proceeding under Section 133, Cr. P.C. and also to
pass conditional order for removal or regulating such public nuisance within a time frame
fixed by him.

It is true that Chapter VI of the Act provides for penalties for failure to comply- with the
provisions of Section 21(5) or Section 22 or with orders or directions issued under the Act
and for trial of such offences, the provisions of the Act shall apply being a Special Act and
override provisions of I.P.C. But proceedings under Chapter X including Section 133, Cr.
P.C. are merely preventive in nature relating to maintenance of public order and tranquility.
Such preventive proceedings are, therefore, independent and separate proceedings, which
are not at all related with the trial of offences enumerated in the Act.
Therefore, in my considered opinion, the provisions of Section 133, Cr. P.C. do not stand automatically or impliedly repealed after the commencement of the Act. In such circumstances, the proceedings under Section 133, Cr. P.C. before the learned S.D.M. were not without jurisdiction or barred by the provisions of the Act."

Proceedings under Section 133 Cr. P. C. are summary and are intended to enable the Magistrate to summarily deal with cases of urgency or of imminent danger to public interest whereas Section 33 of the Water (Prevention and Control of Pollution) Act, 1974 deals with the different situations. The two provisions do not overlap each other. They deal with two different situations.260

In *Anita Tyre Retreading Works v. The City Magistrate and Anr.*261 the High Court of Allahabad clarified that Section 43 of the Air (Prevention and Control of Pollution) Act, 1981 deals with taking the cognizance of the offences mentioned in the aforementioned Act. It has no bearing in regard to a Public Nuisance created under Section 133 Cr.P.C.

In *State of M.P. v. Kedia Leather & Liquor Ltd. And Ors.*262 the Supreme Court defines the true scope of section 133 in controlling the environment pollution.

Factual background needs to be noted in brief as legal issues of pristine nature are involved. 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.

---

260 Gurudev Ice Factory v. State of Punjab and Ors. 1996CriLJ2833  
261 1999CriLJ1874  
262 AIR2003 SC 3236
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.

The High Court was of the view that the provisions of the Water and the Air Acts are in essence elaboration and enlargement of the powers conferred under Section 133 of the Code. Water and Air pollution were held to be species of nuisance or of the conduct of trades or occupation injuries to the health or physical comfort to the community. As they deal with special types of nuisance, they ruled out operation of Section 133 of the Code. It was concluded that existence and working of the two parallel provisions would result not only in inconvenience but also absurd results. 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.

It was contested before the Supreme Court that:

Section 133 of the Code appears in Chapter X of the Code which deals with maintenance of public order and tranquility. It is a part of the heading 'public nuisance'. The term 'nuisance' as used in law is not a term capable of exact definition and it has been pointed out in Hansberry’s Laws of England that "even at the present day there is not entire agreement as to whether certain acts or omissions shall be classed as nuisances or whether they do not rather fall under other divisions of the law of tort". In Vasant Manga Nikumba and Ors. v. Baburao Bhikanna Naidu (deceased) by Lrs. and Anr.\textsuperscript{263} it was observed that nuisance is an inconvenience which materially interferes with the ordinary physical comfort of human existence. It is not capable of precise definition. To bring in application of Section 133 of the Code, there must be imminent danger to the property and consequential nuisance to the public. The nuisance is the concomitant act resulting in danger to the life or property due to

\textsuperscript{263} MANU/SC/1346/1995
likely collapse etc. The object and purpose behind Section 133 of the Code is essentially to prevent public nuisance and involves a sense of urgency in the sense that if the Magistrate fails to take recourse immediately irreparable damage would be done to the public. It applies to a condition of the nuisance at the time when the order is passed and it is not intended to apply to future likelihood or what may happen at some later point of time. It does not deal with all potential nuisances, and on the other hand applies when the nuisance is in existence. It has to be noted that sometimes there is confusion between Section 133 and Section 144 of the Code. While the latter is more general provision the former is more specific. While the order under the former is conditional, the order under the latter is absolute. The proceedings are more in the nature of civil proceedings than criminal proceedings.

One significant factor to be noticed is that person against whom action is taken is not an accused within the meaning of Section 133 of the Code. He can give evidence on his own behalf and may be examined on oath. Proceedings are not the proceedings in respect of offences. The Water Act and the Air Act are characteristically special statutes. 264

Chapter V of the Water Act deals with prevention and control of water pollution. Similarly, Chapter IV of the Air Act deals with prevention and control of air pollution. Sections 30, 32 and 33 of the Water Act deal with power of the State Board to carry out certain works, emergency measures in certain cases and power of Board to make application to the Courts for restraining apprehended pollution respectively. Under Sections 18, 20 and 22-A of the Air Act deal with power to give directions, power to give instructions for ensuring standards and power of Board to make application to Court for restraining persons from causing air pollution respectively.

The provisions of Section 133 of the Code can be culled in aid to remove public nuisance caused by effluent of the discharge and air discharge causing hardship to the general public.

Clarifying the true scope of Section 133 of the Code the Supreme Court held in the case:

There is presumption against repeal by implication; and the reason of this rule is based on the theory that the Legislature while enacting a law has a complete knowledge of the

---

264 Supra 265
existing laws on the same subject matter, and therefore, when it does not provide repealing provisions, the intention is clear not to repeal the existing legislation. The continuance of existing legislation, in the absence of an express provision of repeal by implication lies on the party asserting the same. The presumption is, however, rebutted and repeal is inferred by necessary implication when the provisions of the later Act are so inconsistent with or repugnant to the provisions of the earlier Act and that the two cannot stand together. But, if the two can be read together and some application can be made of the words in the earlier Act, repeal will not be inferred. To decide this question the necessary questions to be asked are:

(1) Whether there is direct conflict between the two provisions.

(2) Whether the Legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law;

(3) Whether the two laws occupy the same field.

The Court further elucidated:

The doctrine of implied repeal is based on the theory that the Legislature, which is presumed to know the existing law, did not intend to create any confusion by retaining conflicting provisions and, therefore, when the court applies the doctrine, it does not more than give effect to the intention of the Legislature by examining the scope and the object of the two enactments and by a comparison of their provisions.

To determine whether a later statute repeals by implication an earlier, it is necessary to scrutinize the terms and consider the true meaning and effect of the earlier Act. Until this is done, it is impossible to ascertain whether any inconsistency exists between the two enactments. The area of operation in the Code and the pollution laws in question are different with wholly different aims and objects; and though they alleviate nuisance, that is not of identical nature. They operate in their respective fields and there is no impediment for their existence side by side.

The 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.\(^{265}\)

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. The judiciary has applied the provisions of public nuisance in Cr. P.C. widely to abate the environment pollution and harmonized the provisions of Cr. P.C. and Air Act and Water act for abating pollution. But the judgments in the *Tata Tea Ltd. v. State of Kerala*\(^{266}\) and in *Abdul Hamid v. The Gwalior Rayon Silk Mfg. (WVG) Co. Ltd.*,\(^{267}\) show that Court at times tend to limit the application of the concept of public nuisance to those areas not covered by new legislation. It is true that Ratlam case has left a positive impact on the later decisions of the judiciary on environment protection. But The Kerala High Court in Tata Tea Ltd. v. State of Kerala had occasion to interpret the statute regarding implied repeal of earlier enactment by later Act and considering the provisions made in the Water (Prevention and Control of Pollution) Act, 1974. At that time it held:

"The preamble of the Act of 1974 itself makes it clear that it has been enacted to provide for the prevention and control of water pollution and to maintain or restore wholesomeness of water and to establish Board to ensure these purpose. The purpose behind Section 133(1)(b) of the Code in so far as it relates to water is also the same. Of course this provision in the Code covers a wider area and range, but it takes in pollution of water also which is the area and range specially covered by the Act. While Section 133 of the Code contemplates enquiry by an Executive Magistrate into complaints of pollution and measure being taken by the Magistrate to obviate such pollution or nuisance, the Act confers such powers in the first instance on the State Board and also on Judicial Magistrate. The scope of the power so conferred is much wider than that conferred under Section 133 of the Code. While under S. 133 of the Code it is open to a citizen to directly approach an Executive Magistrate, he is unable to approach directly a Judicial Magistrate under the provisions of the Act, it is open...

\(^{265}\) ibid

\(^{266}\) 1984 KLT 645

\(^{267}\) 1989 Cri LJ 2013
to the citizen concerned to approach the State Board with his grievance and it is open to the State Board to take such measures as are contemplated in the Act including filing petition before a Judicial Magistrate. All the remedies which could be provided by an Executive Magistrate under S. 133 could certainly be provided by authorities contemplated by the Act. The Act is a special statute, while the provisions in Section 133 are of general nature. In regard to pollution of water by effluents, the Act is a complete Code in itself and if these two provisions are to co-exist that would certainly be causing inconvenience, if not a conflict of jurisdiction. 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. In this view the provisions of the Act, by implication, repeal the provisions of Section 133 of the Code in so far as they relate to prevention and control of water pollution. Therefore the Executive Magistrate has no jurisdiction to deal with it under Section 133 of the Code."

The power vested in the board by the Water and Air Acts to sanction prosecution, as it stood before the amendments in the late eighties, was the ground on which the Madhya Pradesh High Court denied the magistrate’s jurisdiction under s.133 of the Cr. P.C. in the case of Abdul Hamid v. The Gwalior Rayon Silk Mfg. (WVG) Co. Ltd.268 In the Case the Madhya Pradesh High Court has considered the question whether the learned Sub-Divisional Magistrate had jurisdiction to proceed with an enquiry. In paragraph 14, the Court has considered that Section 21 of the Water Act provides for taking samples of effluents. Sub-sec. (2) thereof makes the result of analysis inadmissible in evidence any legal proceedings in the absence of compliance with the various provisions in sub-secs. (3), (4) and (5). Section 26 of the Air Act contains similar provision. These provisions are for the due protection of the industries. They are there to ensure a proper balance between the conflicting claims of nation's industrial progress and the hazards to the health of the citizens. The safeguards provided under the Acts have rational basis and without them the industrialists could be vexed day in and day out by being dragged to the criminal Courts for variety of reasons even unconnected with the vindication of the law. The Water and Air Acts are special Acts brought on the statute-book and constitute a complete Code for prevention

268 Ibid
and control of water and air pollution by any trade or industry. It has expressly been mandated therein that notwithstanding anything inconsistent therewith contained in any enactment order than the Acts their Provisions have to prevail. Inconsistent provisions in any other Act cannot, therefore, be permitted to come in the way of the provisions of the special Acts and defeat them. In view of the express provisions in Section 52 of the Air Act and Section 60 of the Water Act it has to be held that to the extent of inconsistency the provisions of the Penal Code, General Clauses Act and the Code stand repealed. In matter relating to pollution of Air or Water by trade or industry recourse has to be taken to the provisions of the special Acts. On that ground the Court has held that the SDM has no jurisdiction to try the case.

This judgment endorsed the judgments in Tata Tea case even though the Tata Tea case was not discussed in this case. The real purpose of the special law is the protection of environment from abuse by industries. There is no reason to believe that jurisdiction for action against public nuisance will defeat the purpose of the special enactments.

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 *Krishna Panicker v. Appukutan Nair* 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 Te’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

---

269 1993(10 KLJ 725 (DB) per Sankaran Nair J
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-Regional Magistrate²⁷⁰. The important question came before the court was:
whether the Sub-Regional Magistrate has jurisdiction to take action under Sec. 133 of the
Cr.P.C. after coming into force of the Water Air Pollution and Environment (Protection)
Laws.

The Court clearly stated that notwithstanding the fact that there are other special or local
laws dealing with nuisance, the Magistrate's power to act under Section 133 is not affected
by them. Section 133 is of a remedial nature whereas other provisions of law are preventive.
This can be resorted to when there is a question of removal of existing obstruction on a
public place whereas, it is an undisputed fact that the Air and Water Pollution Control Act
though came into force on different dates, the object, scope and purpose are similar. 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-Regional 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-Regional
Magistrate.

²⁷⁰ 1997 CrLJ 2731
In this case the court discusses the earlier judgments in *Tata Tea Ltd. v. State of Kerala*\(^{271}\) and in *Abdul Hamid v. The Gwalior Rayon Silk Mfg. (WVG) Co. Ltd*\(^{272}\), 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 Sub-Divisional Magistrates have jurisdiction to pass orders under Sec. 133, Cr.P.C. to remove public nuisance, notwithstanding the fact that Water (Prevention and Control of Pollution) Act, 1974 and Air (Prevention and Control of Pollution) Act, 1981 have come into force. 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*\(^{273}\) that Water (Prevention and Control of Pollution) Act, 1974 has not taken away powers of Sub-Divisional Magistrate under Section 133. The presumption is, however, rebutted and a repeal is inferred by necessary implication, when the provisions of later Act are so inconsistent with or repugnant to the provisions of earlier Act "that the two cannot stand together". From the above discussion, it is clear that there is no direct conflict between the two provisions. The legislature intended to lay down an exhaustive Code in respect of the subject-matter replacing the earlier law; the two laws occupy the same field. Under the circumstances, it cannot be said that there is implied repeal of Sec. 133, Cr.P.C.

\(^{271}\) 1984 KLT 645
\(^{272}\) 1989 Cri LJ 2013
\(^{273}\) 1987 Cri LJ 2071
5.5 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.