CHAPTER - II

BASIC ELEMENTS OF WATER POLLUTION
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INTRODUCTION:

Indian civilization is of being proud to have its continuity from the time immemorial irrespective of India’s present geographical boundaries. Environmental preservations, on which the very existence of the mankind is dependent, is posing an overriding challenge to him. Environmental degradation is not a new problem. It has been arising ever since the human civilization began on earth and man began to exploit the natural resources for his survival. At that time the population was not so imposing a problem as it is now. Therefore, environment was not much affected. With the arrival of western culture in India, consumerist culture began to flourish, and worked havoc on environment.

The ancient Indian religious literature, for example, Vedas, Upanishads, Smiritis and Dharmas preached a worshipful attitude towards earth, sky, air, water, plants, trees, and animals and enshrined a respect for nature and environmental harmony and conservation. It regarded sun, air, fire, water, earth and forest as God and Goddesses. Many animals, birds, trees and plants were associated with the names of God and Goddesses. Nature and environment was given great importance from the Rigvedic period, the medieval period. A Sukta (Verse) of Ridveda states that, “the sky is like a father, the earth is like a mother and the space like their son. This universe consisting of these three is like a family. Any kind of damage to any one of three throws the universe off balance²²".

The aim in giving such messages was to warn people of the hazards of environmental pollution. In Chanakya Niti, it is said that planting even a single tree with fruits and flowers makes the environment full of fragrance just as a family becomes delighted with a worthy son. Hence, we will be safe, so far the earth is full of nature\(^5^3^\). Almost every Sukta of Rig Veda is devoted to personified nature where environment as a whole is prayed upon by the Rishis and Grahasthas to bestow not only prosperity but also overall well-being and peace. Hymns devoted to Sun, Sky, Earth, Energy (Agni), Varuna (Water), Marut (Vaayu) reveal the holistic vision of divine connectivity and interdependence. Rig Veda tells us about the harmonious existence of man and environment by suggesting an ecosystem where welfare of each depends on the other. It situates the relationship of man and environment within the ethical framework coming from within and not from without. By doing so Rig Veda also fixes the responsibility and accountability of man to environment\(^5^4^\).

The seeds of modern development and progress and consequent effect thereof are very much present in its classical literature like Vedas, Smrities, commentaries, digests and epics like Ramayana and Mahabharatha and Arthashastra besides poetries, dramas, etc. The term “environment” in Sanskrit/Hindu language is “Paryavaran” literally means “Pari-aavaran”, external covering or a thing encircling or encompassing the human existence. The Indian viewpoint or the Hindu philosophy viewed man and environment as part and whole of the same thing but this part and whole keep their position constantly interchanging in different context and situations and in this way and environment is the condition of the other\(^5^5^\). Vedas for the first time emphasized the need for man to live in harmony with nature by explaining the importance

\(^{53}\) Ibid, P.2.
\(^{54}\) Dr. Pushpa Tiwari, “Environment issues as Reflected in the Classical Thought of India; Some Reflection” published by Ganga Seva Nidhi Project on Environmental Issues.
of Nature (Mother earth, air, fire, water and the space). Five elements in nature are to be balanced equally, any imbalance results in dangerous developments leading to degradation of Environment.

In Hinduism, it is found from Vedic period that the Environment was part of ethos of ancient people. According to Rig Veda, the five elements of nature are the basis of life of everything and man is ordained to conserve them. Nature is considered as “the body of God” – plants (Tulasi), trees (Peepal), birds (Garuda) and animals (Lion), hills, mountains, rivers are worshipped. ‘Love is God (Power)’, ‘God is Nature’, so ‘Love of Nature’ is an olden concept but it existed from the beginning of humanity. Man loves Nature and nature in turn nourishes him. Man serves society and society in turn protects him. Human life is meant to glorify God who is creator of the earth. None can glorify the God while heaping contempt on the earth as it is his creation. The ancient Indian Law relating to environment protection is found in Kautilya’s Arthashastra, the people worshipped the objects of Nature.

The study of Arthashastra enables us to discern the following relevant points which have their bearing on the environment:

1. Restraint over collection and consumption;
2. Proper management of natural resources;
3. Welfare of the State and natural resources;
4. Knowledge of agriculture, horticulture, husbandry, water resources, forestry, mining, necessary for overall prosperity.

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56 See Vedanta Darshan, Sutra 2.
5. Sustainable development and production policies to be followed by the State.


All these features constitute the eco-friendly economy of Arthashastra. Manu, who is regarded as the first law giver, gives the ideals of human life according to bio-cultural needs. A careful perusal of Manuscript reveals the scheme of integrated growth and development underlying its discourse of ‘dharma’, ‘arth’, ‘Kama’, ‘Moksha’, ‘Purity’, ‘Preservation of Earth’, ‘Water’, ‘Air’ and balanced human attitude towards the nature has been given primacy in the ‘manavadharma’ (Religion of Man)\textsuperscript{58}. The trees, water, land and animals gained important position in ancient times\textsuperscript{59}. Rivers were considered goddesses. Rishis warned against deforestation and cutting of trees as they thought that this would result in poor rainfall.

Man’s association with nature is primeval. In ancient India, nature in all its splendor and forms was reversed. Thus, Nature (Prakriti), is manifested in the form of:

- Earth or Prithvi.
- Fire or Agni.
- \textit{Water} or Jal.
- Sky or Akash.
- Wind or Vayu.

The elements of nature were known as Panchmahabut, and were worshipped throughout India. It is believed that the universe comprising the Earth was the creation of Brahma. Likewise,

all major religions have references to the environment and its intricate link to God. India has a rich heritage which shows deep reverence towards the environment. Ancient Indians worshipped the forces of nature, including animals and plants. A peep into environmental jurisprudence will show that preservation of environment emanated from spiritual teachings and sacred texts. Gautama Buddha, Mahavira, and Prophet Mohammad had all echoed the same thought of love and harmony between man and environment.\(^60\)

The first efforts to codify the aspect of environmental protection came from Kautilya, Prime Minister of Chandragupta Maurya. As early as 300 BC, he realized the significance of the environment and formulated rules which mandated the rulers to protect forests and animals.\(^61\) Penalties were also prescribed. This is the first documented case of legislation on environmental protection anywhere in the world. Similar writings were also found in the fifth Rock Edict of Asoka.\(^62\)

**WATER OWNERSHIP:**

India does not have any specific law defining ownership and rights over water sources. The rights are derived from several legislations and customary beliefs.

**Groundwater Rights:**

Groundwater is often the primary source for domestic and industrial water supply, and support the major demand for agriculture by providing large quantities of irrigation water,

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\(^{61}\) In laws concerning forests, there were specific rules on the States to maintain forests; selling of trees; damaging trees; forest produce; forest reserves for wild animals; protection of wild life; fee for hunting etc.; see V.Gupta ‘*Kautilyan Jurisprudence*’ (1987) 155 in Divan Shyam Rosencranz Armin, *Environment Law and Policy in India*, 2\(^{nd}\) edn, 7\(^{th}\) impression (2005), New Delhi: Oxford University Press, p.24.  
especially in zones with rather dry climate where crop production without irrigation is not possible. It plays a key role in keeping wet ecosystems sustainable, and often also maintaining a suitable environment for human settlements. All over the world groundwater is an extremely important natural resource, more important than most people realize.

Some grounds for determining groundwater rights are provided by the Indian Easement Act of 1882. The act allows private rights to use a resource that is, groundwater, by viewing it as an attachment to the land. It also states that all surface water belongs to the state and is a state property. An ‘easement’ is a right that the owner or occupier of certain land possesses, for beneficial enjoyment of that land. Examples of easements are right of way, right to light and air, and right to standing or flowing water not on one’s land. The Indian Easement Act states that every landowner has the right to “collect and dispose” of all water under the land within his own limits, and all water on its surface that does not pass in a defined channel. Hence, by this Act, the owner of a piece of land does not, strictly speaking, “own” the groundwater under the land or surface water on the land; he only has the right to collect and use the water. However, it is customarily accepted across India that a well on a piece of land belongs to the owner of that land, and others have no right to extract water from the well or restrict the landowner’s rights to use the water. This belief and practice is indirectly supported by various laws such as land Acts and irrigation Acts that list all things on which the government has a right. These Acts do not mention groundwater.

Interpretations of the Transfer of Property Act of 1882 and the Land Acquisition Act of 1894 also support the position that a landowner has proprietary rights to groundwater; it is connected to the ‘dominant heritage’ (land) and cannot be transferred apart from the land. But

63 Section 7(g) of the Indian Easement Act, 1882.
The right to property in India is not absolute. It is not a fundamental right as it was given earlier under Art.19 (1) (g). It is the Constitutional Right now and the government has power to restrict it in the interests of the larger public good. Thus, the government enjoys the right to take over anybody’s land to construct dams, build roads, etc. While the government has to follow due process and pay due compensation (failure to do so can be challenged), its right to acquire the property itself is unchallengeable.

Further, the government is duty-bound by the Directive Principles of State Policy under the Constitution to work towards social, political and economic justice and equity, and protection of the environment. Hence, the government has the right as well as the duty to regulate use of groundwater in the interests of justice, equity and environmental protection. Several court judgments in Post-Independent India have affirmed that all natural resources that are by nature meant for public use and enjoyment are held by the State in public trust. For instance in *M C Mehta v. Kamal Nath*, the Supreme Court declared that “the State is the trustee of all natural resources”; as a trustee, the State has “a legal duty to protect the natural resources,” and “these resources meant for public use cannot be converted into private ownership”. However, the legal position on whether groundwater is a resource meant for public use is fuzzy, and India has no law that explicitly defines groundwater ownership (Orissa did amend its irrigation Act to assert State right over groundwater, but this has been challenged in court).

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64 Article 300-A of the Indian Constitution.

65 Article 39 (b) of the Indian Constitution lays down that: ‘The State shall, in particular, direct its policy towards securing that the ownership and control of the material resources of the community are so distributed as best to subserve the common good.’ Article 51-A (g) says it is the fundamental duty of every citizen ‘to protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures.’

Surface Water Rights:

Rights over water in rivers and lakes are defined by land and state irrigation Acts. Formulated first in colonial times, these Acts explicitly state that the government has absolute right over this water. For instance, the Northern India Canal and Drainage Act, 1873, states about the government control over water has the right to “use and control for public purposes the water of all rivers and streams flowing in natural channels, and of all lakes.” Irrigation Acts or their rules specify who can use canal water, and for what purpose. Only use rights not ownership rights are granted. Typically, use rights are granted only to people who have land in command areas. However, in Maharashtra, lift irrigation schemes have been permitted to take water to lands outside the command area. Further, a new law allows ‘bulk’ users such as water users’ associations to sell the water allotted to them. But such sale will be regulated by the authority that grants the bulk allotment in the first instance.

Civil Law Actions:

Common Law or Commune ley is the basic law of England. It is the body of customary law of England based on judicial decisions. The term ‘Common Law’ is derived from the latin words ‘lex communis’. The entire English law is based on the common law. In modern times statute law was developed and certain portions of common law were translated into the Statute law by the process known as codification. The common law was developed by English lawyers from time to time. Common law includes the principles of law and procedures which help the courts to make justice in a particular manner. Common law was adopted in India during the
British period and followed *mutatis mutandis* even after independence under Article 372 of the Constitution of India in so far as it is not modified, altered or repealed by statutory law\(^{68}\).

The industrial growth and the growing water pollution call for statutory control and stricter regulatory measures directed to check the hazards of pollution. However, this legislative measures for controlling water pollution extends to cover both the common law actions and statutory rules. For example, many aspects of public nuisance are though covered by the statutory provisions, the common law of nuisance continues to apply situations which remain statutorily uncovered. The areas of nuisance, strict liability and negligence are identified as effective instrumentalities under the law of torts to control pollution, including the one caused by hazardous processes in industries.

**Nuisance:**

Nuisance can be divided into public and private. A public nuisance is a crime, while a private nuisance is only a tort. Under common law, nuisances are widespread in their range and include such diverse activities as carrying on an offensive trade, keeping a disorderly house, selling food unfit for human consumption, obstructing public highways, and throwing fireworks on the street\(^{69}\). Thus it is widespread in its range and commonly consists in establishment or maintenance of some state of affairs which continuously or repeatedly causes the escape of noxious things onto the plaintiff’s land, for eg., diverting a stream of foul water, or the constant noise and smell that comes from a factory\(^{70}\).


An action lies for pollution of water, for eg., rendering the water noxious or unfit for use, making soft water hard, making water salty, altering its temperature, discharging substances which become noxious in combination with other things in water\textsuperscript{71}. Altering the natural quality of water whereby it is rendered less fit for useful purposes gives cause of action in nuisance. Thus, the pollution of water is an actionable wrong even without the proof of actual damage\textsuperscript{72}, though the proof that the polluter has rendered the water less fit for use to which the riparian is entitled would be needed. An English decision on this point is \textit{Pride of Derby and Derbyshire Angling Association Ltd. v. British Celanese}\textsuperscript{73}. In this case, the Chancery Court laid down that the corporation authorities who had a legal duty and obligation to provide sewage system could be restrained from discharging noxious effluents to pollute the river. The riparian owners were awarded damages for the losses suffered by them. Rivers, streams and other water resources are the common sources for water use for all and an act of pollution constitutes a breach of a general duty against the public for which pecuniary compensation could be granted. Likewise, in the case of \textit{Overseas Tankship (UK) Ltd. v. Morts Dock and Engineering Co. Ltd.}\textsuperscript{74}, the carelessness of the servants of the defendants resulted in spillage of oil on sea water, amounting to nuisance.

The Indian legal position as summed up by Justice Alagiriswami of the Madras High Court is that the act of altering the natural quality of water to make it less fit for the purposes for which it is capable of being used in its natural state gives a cause of action in nuisance\textsuperscript{75}.

\textsuperscript{72} \textit{Ibid.}
\textsuperscript{73} (1953) 1 ch. 149. Here the plaintiffs were the owners of a fishery in a river and the defendant local authority was diverting the effluents of sewer into the river after treatment. The treatment was not successful in rendering the effluent harmless. It was held to be a nuisance. For details see \textit{supra} note 69, p.36.
\textsuperscript{74} (1961) (1) All. E.R. 404 (P.C.).
\textsuperscript{75} See \textit{Pakkle v. p. Aiyaswamy Ganapathy}, AIR 1969 Mad. 351. In this case a water tank was polluted by the Zamindar of the village who placed some “salt pans” in the tank bed making water salty.
However, in the light of leading decisions\textsuperscript{76} of the Supreme Court and the High Courts in public interest litigations on environment, one may hopefully expect that in India too the law of torts in relation to nuisance may develop further so as to provide relief to the affected persons. It may also prevent occurrences of environmental pollution incidents.

**Strict Liability:**

Another regulatory control under the civil law is through the doctrine of strict liability. This doctrine can be of great use in environmental litigation and pollution accident cases. The law of strict liability is based on the rule in *Rylands v. Fletcher*\textsuperscript{77}. The doctrine of strict liability can be favored since it tends to build pressure on prevention of accident by large businesses and also by government units. The difficulty may sometimes arise in convincing the courts that in every case of damage caused by pollution accident as well as the application of the doctrine of strict liability, paving the way to other forms of liability as well.

**Negligence:**

Negligence or intention, in itself being an independent tort, can also be employed for determining liability for pollution if the elements of careless use of noxious and polluting objects like insecticides and pesticides are present and cause material losses to human health and pollute the water as well as the environment in general\textsuperscript{78}. The word intention implies the full knowledge of the conduct and its consequence in the mind of the defendant. Negligence denotes either total or partial inadvertence of the defendant as to his conduct and for its consequences.


\textsuperscript{77} (1868) L.R. 3 H.L. 330.

\textsuperscript{78} See Asit Kr. Bose, “Legal Control of Water Pollution in India” in S.L. Agarwal (Ed.), “Legal Control of Water Pollution in India”, N.M. Tripathi, Bombay 121 (1980).
While in common law countries, the law of torts have made advancement through judicial decisions to handle issue of environmental pollution, the Indian Law of Torts has yet remained behind this growing challenge. Although some cases relating to noise nuisance by flour and oil mills have been dealt with, yet the potential for growth of law in this direction does not seem promising.

**DEVELOPMENT OF LAW RELATING TO PREVENTION OF WATER POLLUTION:**

There were some earlier acts relating to water protection. British rule of India saw several laws related to environment. The various Statutory and non-statutory sources in controlling and abating the water pollution are given below in a chronological manner:

1. **The Shore Nuisance (Bombay and Kolaba) Act, 1853:**

   This Act was enacted to facilitate the removal of nuisance and encroachments below high water mark in the Islands of Bombay and Kolaba. The Act empowers the Collector of Land-Revenue at Bombay to serve notice requiring the removal of any nuisance, obstruction or encroachment. If they are not removed as per notice, the Collector is empowered to remove or abate the nuisance.

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79 Radhey Shiyam v. Gur Prasad, AIR 1978 All. 86.
80 Ramlal v. Mustafabad Oil and Cotton Ginning Factory, AIR 1968 Punj. 399. In this case the defendants were held liable for the nuisance committed by them, which was of a degree and a such intensity as to make it actionable.
81 Amongst the earliest were Shore Nuisance (Bombay and Kolaba) Act of 1853 and the Oriental Gas Company Act of 1857.
2. The Oriental Gas Company Act, 1857:83

The Oriental Gas Company is liable to pay penalty, if it causes or suffers to be brought, or to flow into any stream, reservoir, pond, or place for water or into any drain communicating therewith, any washing or other substances produced in making or supplying gas and the water is fouled84. The penalty will be Rs. 1000 and further Rs. 500 for each day, if continued, after the service of notice upon the company by the person whose water is so fouled. The Company shall be liable to, whenever may water shall be fouled by the gas of the said Company, forfeit to the person whose water shall be so fouled for every such offence a sum not exceeding Rs.200, and a sum not exceeding Rs.100, for each day during which the offence shall continue, after the expiration of the twenty four hours from the service of notice of such offence85.

3. The Indian Sarais Act, 1867:86

It is a general law dealing with the water pollution. The Act enjoined upon a keeper of a sarai or an inn to keep certain quality of water fit for the consumption by the persons and the animals using it to the satisfaction of the District Magistrate or his nominee87. The act imposes a penalty of Rupees twenty for the failure to maintain the required standard of water. This Act is hardly used in practice. Moreover, the quantum of fine, in comparison to the recent money value, has made it almost obsolete.

83 Ibid.
84 Ibid, sec 15.
85 Ibid, sec 17.
86 Supra note 82.
87 The Indian Sarais Act, 1867, Sec 7.
4. The Northern India Canal and Drainage Act, 1873: 88

This Act is intended to regulate irrigation, navigation and drainage in the northern India using and controlling for the public purpose the water of all rivers and streams flowing in natural channels, and all lakes and other natural collections of still water. The preamble of the Act says, The provincial government is entitled to use and control, for public purposes, the water of all rivers and streams flowing in natural channels, and of all lakes and other natural collections of still water’. This Act enlists certain offences and provides that any interference with or alteration in the flow of water in any river or stream so as to endanger, damage or render less useful any canal or drainage work would be an offence.

5. The Obstruction in Fairways Act, 1881: 89

The object of this Act is to empower the Government to remove or destroy obstructions to navigation, which may exist in the fairways leading to the ports, and to prohibit the creation of such obstructions for the future. As such, under the Act 90, whenever, in any fairways leading to any port, any vessel is sunk, stranded, abandoned, or any fishing stake, timber or other thing is placed, and the Central Government may, if in its opinion such thing is or likely to become an obstruction or danger to navigation, it may take such action as prescribed by the Act 91.

The Government has got the power to sell the thing in certain cases. Similarly, the Government has the power to prohibit, by notification, the placing of fishing-stake, casting or

88 Supra note 82.
89 Ibid.
90 The Obstruction in Fairways Act, 1881, Sec 2.
91 a) Cause such things or parts thereof to be removed, or, b) If such thing is not removable in the opinion of the Central Government, cause the same or any part thereof to be destroyed.
throwing of ballast, rubbish or any other things, likely to give rise to a bank or shoal, or the doing of any other act which will cause or likely to cause obstruction or danger to navigation\textsuperscript{92}.

6. The Indian Easement Act, 1882: \textsuperscript{93}

With regard to the Pollution of Water, the Indian Easement Act, 1882 is one of the earliest statues dealing with the rights of the individuals inter se. The common law doctrine of the riparian rights to the unpolluted water has been codified in this Act. But the other common law remedies under the torts of negligence, nuisance, trespass, and strict liability have not been abrogated.

Section 7 particularly refers to the Water Pollution\textsuperscript{94}. In common law doctrine such rights of riparian owners extend only up to the natural streams. But the scope under this Act is wider as it extends not only up to the natural streams, but also to the water percolating and flowing in an unidentified channel and the stagnant water such as sea, lakes or ponds. Section 7 defines a natural stream, whether permanent or intermitted, tidal or tireless, on the surface of land or underground, which flows by operation of nature only in a natural or known course. The term ‘pollution’ has not been defined in the Act, but it must refer to ‘any alteration of natural

\textsuperscript{92} Ibid, Sec 8.
\textsuperscript{93} Supra note 82.
\textsuperscript{94} The Indian Easement Act, 1882, Sec 7, illustrations (f) and (h). Illustration (f) runs as: “The right of every owner of land, within his own limits, the water which necessarily passes or percolates by, or over though his land, shall not, before so passing or percolating, be unreasonably polluted by other persons.” Under the illustration (j) of Section 7 various uses have been mentioned. They are: drinking, household purposes, watering the cattle and sheep, irrigation, or other manufacturing purposes. The material injury to other like owners has been prohibited. A temporary or trifling pollution will not come under this Act as the words ‘unreasonable pollution’ appears. Illustration (h) runs as: “the right of every owner of land that the water of every natural stream which passes by, through or over his land, in a defined natural channel, shall be allowed by other persons to allow such owner’s limit without interruption or without material alteration in quantity, direction, force or temperature; the right of every owner of land abutting on a natural lake or pond into or out of which a natural stream flows, that the water of such lake or pond shall be allowed by other persons to remain within such owner’s limits without material alteration in quantity or temperature.”
quality of water whereby it is rendered less fit for any purpose for which in its natural state it is capable of being used.\textsuperscript{95}

The illustrative (h) of the Section 7 protects the rights of every riparian owner to get water of a natural stream, natural lake or pond into or out of which a natural stream flows from any material alteration in temperature of water. The relief is the injunction or the damages from the polluter. The right of the upper land owner to discharge his surface water to the lower land is a natural right and neither is it lost for non-user nor can it be extinguished permanently. But the upper land owner has no right to discharge through drain foul refuse water of a factory to land situated on the lower level. A riparian owner can use water for irrigation, but cannot store water by constructing dam across the stream or channel.\textsuperscript{96}

Some of the important decisions of the court crystallizing the riparian rights regime are briefly mentioned below:

- Riparian rights is available only when the owner’s land is in contact with the stream’s flow, at least at time of ordinary high tides. Dawood Hamini v. Tuci Shein\textsuperscript{97}.
- No riparian owner should face obstruction in flow (by a dam), interference with such is an actionable wrong. Jagannath v. Chandrika\textsuperscript{98}.


\textsuperscript{96} With this understanding, the two widely recognized theories of riparian rights may be stated here:

The natural flow theory: Under this theory, the primary or fundamental right of each riparian proprietor of a watercourse is to have the body of water flow as it was to flow in nature, qualified only by the privilege of each to make limited use of the water.

The reasonable use theory: Under this theory, the primary or fundamental right of each riparian proprietor on a watercourse or lake is to be free unreasonable use that causes harm to his own reasonable use of the water.

\textsuperscript{97} AIR 1931 PC 72.

\textsuperscript{98} AIR 1919 Oudh 74.
➢ A lower riparian has cause of action if (he feels) there is material decrease in water.

    Sethramanamalingam v. Anada Padyach\textsuperscript{99}.

➢ Upper riparian has a right to drain of excess water through channels while not injuring a lower riparian; all rights only in natural streams/rivers and not in artificial watercourses.

    Malipat Madhatil v. Neelamance\textsuperscript{100}.

➢ Riparian rights are natural rights.

    Secretary of State v. Sannidhiraju\textsuperscript{101}.

    Ram Sewak Kaz v. Ramgir choudhary\textsuperscript{102}.

    Though the Easement Act also legitimimized customary right through long use/prescription and prevalence of local customs, it did not talk of customary right over groundwater. However, the recognition of customary rights even by statutes like the 1882 Act and the Bombay Irrigation Act, 1879 was a pointer to the existence and continuance of local customs for water management. Nevertheless, the laws subsequent to the Easement Act slowly shifted emphasis on people’s water resources from being natural rights to proprietary or usufruct rights. A case study from State of Bihar also illustrates how rights to traditional irrigation tanks changed in the colonial and post-independence periods\textsuperscript{103}.

\textsuperscript{99} AIR 1934 Mad 583.
\textsuperscript{100} AIR 1938 Mad 649.
\textsuperscript{101} AIR 1932 PC 46.
\textsuperscript{102} AIR 1954 Pat 320.
\textsuperscript{103} See Negotiating Water Rights, (ed Bruns and Meinzen), Sage Publications,(2000).
7. The Indian Fisheries Act, 1897:104

Poisoning of water and consequent destruction of fish is prohibited by this Act. This Act provided that if any person puts any poison, lime or any obnoxious material into any water with intention thereby to catch or destroy fish he shall be punishable with imprisonment which may extend to two months or with fine which may extend to two hundred rupees105.

8. The Indian Ports Act, 1908:106

The Act107 authorizes the conservator of the forest to remove or cause to be removed any timber, raft or other things floating or being in any part of such port, if these things obstruct the navigation. Chapter III and IV of the Act, deal indirectly with the quality of water in course of dealing with the protection and safety of the ports. Any unlawful obstruction is removable under the Act108. Similarly, the conservator of the port has the power to raise, remove or destroy any vessel, which is wrecked, stranded, or sunk in the port109. It prohibits improper discharge of ballast or rubbish or any other things, which are detrimental to navigation110. The special provision is made to the effect that no oil or water mixed with oil shall be discharged in or into any port except in accordance with the rules made under the Act111.

104 Supra note 82.
105 The Indian Fisheries Act, 1897, Sec 5.
106 Supra note 82.
107 Supra note 82.
108 Ibid, Sec 12.
109 Ibid, Sec 14.
110 Ibid, Sec 21.
111 Ibid, Sec 6.
9. The Indian Steam Vessels Act, 1917:112

This Act does not deal with the water pollution directly. It imposes duty upon the State Government113. If any mechanically propelled vessels or other vessels is wrecked or stranded or sunk in any inland water is likely to become obstruction, impediment or danger to the safe and convenient navigation or users inland waters or the landing place or embankment or part thereof, the government is under duty to cause the vessel to be raised, removed or blown up or otherwise destroyed as the circumstances may warrant. The Government is authorized to recover the cost of such action by selling the property of the vessel in some cases. Not only can these, the government remove any other obstruction caused by any timber, raft, or other thing being in any part of the inland water.

10. The Indian Forest Act, 1927:114

The Act provides that any person who, in contravention of the rules made by the state government, inter alias, poisons water, shall be punishable with imprisonment for a term of one year or with fine which may extend to one thousand rupees or both115.

11. The Factories Act, 1948:116

The factories Act of 1948 also provides for the effective disposal of water and effluents of a factory by an amendment of 1976 to the Act117.

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112 Supra note 82.
113 The Indian Steam Vessels Act, 1917, Sec 44A.
114 Supra note 82.
115 The Indian Forest Act and The Indian Forest (Conservation) Act, 1927, Sec 26(1)(i).
116 Supra note 82.
117 The Factories Act, 1948, Section 12 states that: “Disposal of waste and effluents- (1) Effective arrangements shall be made in every factory for the treatment of wastes and effluents due to the manufacturing process carried on therein, so as to render them innocuous, and for their disposal. (2) The State Government may make rules
12. The River Board Act, 1956:118

The object of the River Board Act is to provide for the establishment of the River Board for the regulation and development of interstate rivers and river valleys. As such, under Section 2, the Central Government, in the public interest, should take control of the regulation and development of the interstate rivers and the River Valleys. Though this Act does not deal with anything about the water pollution, it has a bearing on the same.

The development and regulation of the river and river valleys will obviously be to protect the natural resources and impliedly includes the issue of the water pollution. For this purpose, the Central Government is empowered to establish, on requesting from the State Government or otherwise, by notification in the official Gazette, establish the River Board for advising the government interested in the regulation and the development of any interstate rivers or river valleys and also about such other purposes, as may be specified in the notification.


The International Convention for the Prevention of Pollution of Sea by Oil, 1954 has been ratified by India. The Convention intended for the ban on the discharge of oil and oily mixture anywhere into the sea except where the instant rate discharge does not exceed the prescribed limit. To give effect to this Convention, the Merchant Shipping Act of 1958 has been prescribing the arrangements to be made under sub-section (1) or requiring that the arrangements made in accordance with sub-section (1) shall be approved by such authority as may be prescribed.” Non-observance or non-compliance has been an offence under Sec. 92 of the Act. The occupier and manager of the factory shall be liable for the offences so committed and punishable with the imprisonment for a term, which may extend to two years or with fine, which extend to Rs. 1 lakh or with both. In case of continuing offence after the conviction another fine may be imposed.

118 Supra note 82.
119 Ibid.
enacted and many new provisions have been added to tackle oil pollution in seas. Part XB of this Act, deals with the civil liability for the oil pollution damage.

14. The Maharashtra Prevention of Water Pollution Act, 1969:120

The Act for the first time defined pollution in elaborated terms. It is much more comprehensive statute covering the wide area of application extending not only to rivers but water courses (whether flowing or the time being dry), inland water (whether natural or artificial), subterranean streams or sea to such extent and tidal water to such point as the State Government may specify in this behalf. The Water Board constituted under this Act was given power to control the existing and the new outlets and discharges. The Act provided a separate treatment of different offences, which included the non-compliance with the direction of the Board.

INDIAN CONSTITUTION AND THE ENVIRONMENTAL PROTECTION:

There are more number of Central and State Laws today that can be interpreted one way or the other to protect the environment. The earliest of them was enacted in the year 1853121. But laws enacted with the specific intention of controlling environmental degradation have been slow coming partly because of inadequate appreciations of environmental problems and partly because of wrong notions about legislative competence. Until 1976, environment protection as such did not figure anywhere in the Indian Constitution. When the Constitution was amended in 1976 in its 42nd amendment, certain environmental provisions were incorporated. Only after this amendment the expression, “environmental protection” found a place in the Indian Constitution. Article 48-A was added to the Directive Principles of State Policy, which give directive to the

120 Ibid.
121 The Shore Nuisance (Bombay and Kolaba) Act, 1853.
State for the protection and improvement of environment\(^{122}\). The chapter on Fundamental Duties imposes upon every citizen the duty to protect the natural resources of the country\(^{123}\). The Constitution also deals with certain environment-related problems like, ‘public health’\(^{124}\), ‘Organization of agriculture and animal husbandry’\(^{125}\), and ‘Protection of monuments and places and objects of national importance’\(^{126}\).

In the Seventh Schedule, which classifies various legislative entries into three groups, the Union List, State List and the Concurrent List. There are various entries like forest and wildlife related to environment. On the face of it, it seemed that the State Legislatures alone are empowered to legislate on some of the vital matters affecting environment. Powers to legislate on industry, mines and minerals, oil fields, fishing, inter-state rivers and river valleys have been assigned to the Central Government under List-I, and further, it has been authorized to social planning under Concurrent List-III\(^{127}\). The State Government can also legislate on industry, mines and minerals, fisheries, but subject to the provisions of the Central Legislation.

The procedural features of the Constitution pertaining to environment are envisaged in Articles 252 and 253 of the Constitution. The first of these provisions authorizes the Union Government to adopt national legislation at the request of the two or more States. Article 253

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\(^{122}\) Constitution of India, Article 48-A: “The State shall endeavour to protect and improve the environment and to safeguard the forests and wildlife of the country”.

\(^{123}\) Ibid, Article 51-A(g): “It shall be the duty of every citizen to protect and improve the natural environment including forests, lakes, rivers, and wildlife and to have compassion for living creatures”.

\(^{124}\) Ibid, Article 47: Duty of the State to raise the level of nutrition and the standard of living and to improve public health.

\(^{125}\) Ibid, Article 48.


\(^{127}\) Schedule VII of the Indian Constitution.
authorizes it to claim competence over subjects in the state list in order to implement a decision taken by an international organization or a declaration adopted by an international conference.

In its original form, the Constitution of India contained no provision relating to protection of environment. The Apex Court in *KM Chinnappa v. Union of India*¹²⁸, opined on how Constitutional set up is now attuned to commitment to the ideals of environmental protection. The word ‘environment’ is of broad spectrum, which brings within its ambit ‘hygienic atmosphere and ecological balance’. It is, therefore, not only the duty of the State, but also the duty of every citizen to maintain hygienic environment. The State, in particular, has duty in that behalf to forge in its policy to maintain ecological balance and hygienic environment. Article 21 protects right to life as a Fundamental Right.

Enjoyment of life and its attainment, including their right to life with human dignity, encompass within its ambit, the protection and preservation of environment, ecological balance free from pollution of air and water, sanitation without which life cannot be enjoyed. Any contrary acts or actions would cause environmental pollution. Therefore, hygienic environment is an integral part of right to healthy life, and it would be impossible to live with human dignity without a humane and healthy environment. Environmental protection has now become a matter of grave concern for human existence. Therefore, there is Constitutional imperative on the Central Government, State Governments, and local bodies like municipalities, not only to ensure and safeguard proper environment, but also an imperative duty to take adequate measure to promote, protect, and improve the environment.

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¹²⁸ AIR 2003 SC 724.
PROVISIONS UNDER THE INDIAN PENAL CODE:

In the history of legal control of environment pollution the year 1860 is the landmark period when attempts were made for the first time to control environmental pollution, mainly water and atmosphere through criminal sanction. There are various provisions under the Indian Penal Code, 1860, which makes several acts affecting environment as offences. Chapter XIV of the Indian penal code under Sections 268 to 294 deals with offences affecting public health, safety, convenience, decency and morals by making those acts punishable which pollute environment or threaten the life of the people.

Public nuisance is covered under Section 268 of IPC\textsuperscript{129}. Section 290 of the Act provides for punishment for public nuisance. It provides that whoever commits a public nuisance in any case not otherwise punishable by this code shall be punished with fine which may extend to two hundred rupees. Section 291 provides for punishment in respect of continuance of a public nuisance\textsuperscript{130}. This section makes it clear that a public nuisance is not directly punishable. The aggrieved party first obtains the remedy of injunction under sections 142 and 143 of the code of criminal procedure, 1973. If after the order of injunction he repeats or continues the same, only then he shall be punished. A negligent act resulting in an infection that is dangerous to life\textsuperscript{131}

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\textsuperscript{129} Section 268 of IPC runs as follows: “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 and advantage.”

\textsuperscript{130} It provides: “Continuance of nuisance after injunction to discontinue:- Whoever repeats or continues a public nuisance, having been enjoined by any public servant who has lawful authority to issue such injunction not to repeat or continue such nuisance shall be punished with simple imprisonment for a term which may extend to six months, or with fine, or with both”.

\textsuperscript{131} The Indian Penal Code 1860, ss 269 & 270.
acts of adulteration of food drinks and drugs\textsuperscript{132} are offences inviting punishment of a varying nature for sale and adulteration of drugs respectively.

Indian Penal Code makes contaminating water punishable. The water on earth belongs to every member of the public in common and if a person voluntarily fouls it, he commits a public nuisance. Contaminating 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 imprisonment for a term which may extend to 3 months, or with a fine which may extend to Rs.500, or with both\textsuperscript{133}. Such definition of the offence under Section 277 of IPC is confined to voluntary act and does not include acts without any knowledge or accident. Moreover its operation is limited to the water of public spring or reservoir and does not extend to include water in running streams, canals, and rivers.

Poisoning the atmosphere so as to make it noxious to the health of persons in dwelling or carrying on business in the neighborhood or passing along a public way shall be punished with fine which may extend to Rs.500\textsuperscript{134}. Further negligence in the use of poisonous substances, fire and combustible matter, explosive substances and machinery is also punishable, if it results in danger to human life\textsuperscript{135}. Disobedience of an order of a public authority is made a criminal offence\textsuperscript{136} only if such disobedience causes or tends to cause danger to human life, health or safety. Sections 425 to 429 cover mischief to animals. Sections 430 to 440 covers mischief by injury to works of irrigation or by wrongfully diverting water, injury to public road, bridge, river,
or channel, by fire or explosive substance with intent to cause damage or destroy house etc., committed after preparation made for causing death or hurt.

**PROVISIONS UNDER THE CODE OF CRIMINAL PROCEDURE:**

The Code of Criminal Procedure provides some preventive action for the protection of our environment from pollution. Chapter X, Part B having Sections 133 to 143 and Part C containing Section 144 can be more effective and speedy remedy for preventing and controlling public nuisance\(^\text{137}\) which cause air and *water pollution*.

**Conditional order for removal of nuisance (sec.133)**

(1) Whenever a District Magistrate or a Sub-Divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers –

(a) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel, which is or may be lawfully used by the public; or

(b) 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; or

\(^{137}\) Public nuisance may be defined as an obstruction, risk or injury to the life, health, comfort or convenience of public at large.
(c) that the construction of any building, or the disposal of any substance, as is likely to occasion conflagration or explosion, should be prevented or stopped; or

(d) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighborhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(e) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(f) that any dangerous animal should be destroyed, confined or otherwise disposed of,

Such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation, or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within time to be fixed in the order, if he objects so to do, to appear before himself or some other Executive Magistrate Subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

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138 The conditional order of the magistrate may be, (i) to remove such obstruction or nuisance; or (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise, or to regulate the keeping thereof in such manner as may be directed; or (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or (iv) to remove, repair or support such building, tent or structure, or to remove or support such trees; or (v) to fence such tank, well or excavation; or (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order.
(2) No order duly made by a Magistrate under this section shall be called in question in any civil court.

Explanation. A “public place” includes also property belonging to the state, camping grounds and grounds left unoccupied for sanitary or recreative purposes.

The object of Section 133 is to prevent public nuisance that if the magistrate fails to make immediate recourse to Section 133 irreparable damage would be done to the public. However, no action seems possible under Section 133, if the nuisance has been in existence for a long period. In that case the aggrieved party has to move the civil court for the remedy. The proceedings under Section 133 are more or less summary and it cannot be kept pending for a long time. The importance of Sec 133 of Cr PC was very well recognized by the Supreme Court in Ratlam Case.\textsuperscript{139}

**The Ratlam Case:**

The verdict in *Municipal Council, Ratlam v. Vardhichand*\textsuperscript{140} is a landmark. The residents within Ratlam municipality were suffering for a long time from pungent smell emanating from open drains. The odour caused by public excretion in slums, and the liquids flowing on to the street from the distilleries forced the people to approach the magistrate for a remedy. Following a direction from the magistrate to remove the drain, a time bound six-month programme had to be adopted for constructing drainage and public latrines. Instead of complying with the order, the municipality opted to challenge it, pleading financial constraints and inability to carry out the scheme. The apex court identified the responsibilities of local bodies towards the protection of


\textsuperscript{140} AIR 1980 SC 1622.
environment, and developed the law of public nuisance in the Cr PC as a potent instrument for enforcement of their duties.

According to the court, the imperative tone of these provisions demands a mandatory duty\textsuperscript{141}. The court was of the view that statutory agencies should not defy their duties by urging in self-defence, a self-created bankruptcy of perverted expenditure budget\textsuperscript{142}. The plea of financial inability has no place when the municipalities have a mandatory duty to protect the people from environmental hazards. As a result, now public bodies are made accountable for their callous negligence and corporate bodies for their persistent violation of emission standards.

**Controversy between General Law and the Special Laws:**

Did the special laws Water Act 1974 and Air Act 1981 repeal impliedly the law of nuisance under Sec. 133 of the Cr PC? The Kerala High Court\textsuperscript{143} and the Madhya Pradesh High Court\textsuperscript{144} respectively held that water and the air acts are later special enactments which are presumed to have repealed the prohibitions of public nuisance under Cr PC. The issues in both the cases are more or less same.

*In Tata Tea Ltd v. State of Kerala*\textsuperscript{145}, a complaint was lodged against a tea factory for discharging effluents into Nallathanni river. The grouse was that due to effluents river water got polluted and became unfit for drinking which was used by the people for this purpose. The Magistrate after examining all the facts passed an order under Section 133, Cr PC requiring the petitioner to make suitable arrangements for the passage and storage of effluents from the factory

\textsuperscript{141} Ibid at p 1629.
\textsuperscript{142} Ibid.
\textsuperscript{145} (1984) KLT 645.
in such a manner as to prevent the same from passing into the river within 7 days from the date of this order.

The order of the Magistrate was challenged on the ground that the factory had obtained sanction under the Water Act in the matter of discharge of effluents and hence the provisions of Section 133, Cr PC in so far as they relate to water pollution must be deemed to have been repealed and thus, the Magistrate has no jurisdiction to pass order in such a matter. As against this, the opposite party contended that there are significant differences between the two statutes and hence the Magistrate was well within his powers to pass such an order. The High Court of Kerala held that a statute may provide in express terms that an enactment will repeal on earlier enactment. Even where the latter does not contain such express words, if the co-existence of the two sets of provisions is destructive of the object with which the latter Act was passed, the court would treat the earlier provisions impliedly repealed. The Court came to the conclusion that the Water Act, by implication, repealed the provisions of Section 133 of Cr PC in so far as they relate to prevention and control of water pollution and hence the Executive Magistrate has no jurisdiction to deal with it under Section 133 of Cr PC.

In *Abdul Hamid v. Gwalior Rayon Silk Manufacturing Co*¹⁴⁶, allegations were laid against a chemical factory and a hospital that they were causing air pollution as well as water pollution. The effect of pollution/nuisance was that many children, animals and water creatures had died. In addition to this, crops were also damaged. The plaintiff initiated legal proceedings under Section 133 of Cr PC against the defendant before a Magistrate. However the contention of the defendant was that for taking cognizance of an offence under the Air Act, 1981 and Water Act, 1974, previous sanction of the State Board constituted under the above Acts is necessary. This contention was accepted by the Magistrate and he dismissed the plaint. Against this order a

revision was filed in the High Court and the question before the Court was whether the Magistrate had jurisdiction to proceed with the enquiry. The High Court of Madhya Pradesh held that the special statutes on pollution of air and water have to prevail over Section 133 of Cr PC and hence, the Magistrate had no jurisdiction to proceed with enquiry under Section 133 of the Cr PC.

Resolving the Controversy by the Supreme Court

It took some time for the Apex court to resolve the controversy in State of Madhya Pradesh v Kedia Leather and Liquor Ltd. In this case the sub-divisional magistrate directed the respondents to close their industries on the ground that discharge of effluents to the nearby stream caused danger to the health of the villagers, thereby resulting in public nuisance. The High Court decided it on the basis of Tata Tea case, and held that the power of the magistrate to interfere under the Cr PC is impliedly repealed. The Supreme Court went into various dimensions of the power and observed:

The object and purpose behind sec.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. The nuisance is the concomitant act resulting in danger to the life or property due to likely collapse etc. It applies to a condition of 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 been further stated that implied repeal can be found only when the provisions of the later Act are inconsistent with or repugnant to the provisions of the earlier Act so that the two

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148 Ibid.
cannot stand together. Justice Arijit Passayat explained as the area of operation in the Code of the Criminal Procedure 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. While the provisions of Sec.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\textsuperscript{149}. Despite possible criticism on a highly legalistic plane, it cannot be denied that Kedia Leather has strengthened the environmental content in the law of nuisance contained in sec 133 of the Cr PC.

**Sec.143 of Cr PC: Magistrate may prohibit repetition or continuance of public nuisance**

A District Magistrate or sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, may order any person not to repeat or continue a public nuisance, as defined in the Indian Penal Code (45 of 1860), or any special or local law\textsuperscript{150}.

**Sec.144 of CrPC:**

**Power to issue order in urgent cases of nuisance or apprehended danger.**

Section 144 is a major tool in the hands of the Executive Magistrate to prevent obstruction, annoyance; injury etc. to the Public in general\textsuperscript{151}. Once Section 144 is promulgated,

\textsuperscript{149} Ibid, p 395.
\textsuperscript{150} Section 6(12) of the IPC states that ‘public’ includes any class of the public or community.
\textsuperscript{151} Section 144 of Cr PC runs as follows: (1) In cases where, in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under this section and immediate prevention or speedy remedy is desirable, such Magistrate may, by a written order stating the material fact of the case and served in the manner provided by section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to
the Penal Provision of it, breach is covered u/s 188 of IPC, where the disobedience of the order causes or tends to cause obstruction, annoyance or injury, to any persons lawfully employed or danger to human life, health or safety, or a riot or an affray. According to this section the offence is bailable except for the States of Madhya Pradesh and Chhattisgarh, where it is non-bailable.

**Constitutionality:**

Section 144 is covered by the provisions of article 19(2) of the Constitution. After the enactment of the Constitution (First Amendment) Act, 1951, a law imposing restrictions on the liberty of speech or expression cannot be said to be ultra vires the Constitution if the restrictions have been imposed in the interest of public order. Hence the provisions of section 144 which prevent, or tends to prevent, obstruction, annoyance or injury to any person lawfully employed, or danger to human life, health or safety, or a disturbance of the public tranquility, or a riot, or an affray.

(2) An order under this section may, in cases of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex-parte.

(3) An order under this section may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

(4) No order under this section shall remain in force for more than two months from the making thereof:

Provided that, if the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any, affray, it may by notification, direct that an order made by a Magistrate under this section shall remain in force for such further period not exceeding six months from the date on which the order made by the Magistrate would have, but for such order, expired, as it may specify in the said notification.

(5) Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate Subordinate to him or by his predecessor-in-office.

(6) The State Government may either on its own motion or on the application of any person aggrieved, rescind or alter an order made by it under the proviso to sub-section (4).

(7) Where an application under subsection (5), or sub-section (6) is received, the Magistrate, or the State Government, as the case may be shall afford to the applicant an early opportunity of appearing before him or it, either in person or by pleader and showing cause against the order, and if the Magistrate or the State Government, as the case may be, rejects the application wholly or in part he or it shall record in writing the reasons-for so doing.
empower the District Magistrate to impose pre-censorship on newspapers, are not inconsistent with the provisions of article 19(1) (a) of the Constitution. It also empowers a District Magistrate or Sub-divisional Magistrate, or any other Executive Magistrate empowered by the State Government or the District Magistrate in this behalf, to promulgate an order to any person not to repeat or continue a public nuisance, as defined in Section 268 of IPC, or any special or local law.

**Serving the Order personally or ex parte:**

As far as practicable the order must be served on that person personally and in case of emergency or in cases where the circumstances do not admit of the serving in due time of a notice upon the person against whom the order is directed, be passed ex parte. The order u/s 144 Cr PC may be directed to a particular individual, or to persons residing in a particular place or area, or to the public generally when frequenting or visiting a particular place or area.

Remedy to aggrieved for Rescinding the Order:

Any Magistrate may, either on his own motion or on the application of any person aggrieved, rescind or alter any order made under this section, by himself or any Magistrate subordinate to him or by his predecessor-in-office. Similarly, the State Government may, either on its own motion or on the application of any person aggrieved, rescind or alter any order made by it. In case of an application by an aggrieved person, the Magistrate or the State Government

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152 Duration of the Order: The order can only remain in force for a period not exceeding two months, unless the State Government considers it necessary so to do for preventing danger to human life, health or safety or for preventing a riot or any affray. In that case the State Govt. may, by notification, direct that the order made by a Magistrate u/s 144 Cr PC shall remain in force for a further period not exceeding six months from the expiry of magistrate’s order. This makes the possibility of having Section 144 Cr PC in force for a period of 8 months at a stretch.
shall provide an early hearing to the applicant or his Advocate, and if the application is rejected wholly or in part, a reasoned order in writing is a must.

**Comparison with Section 133 Cr PC:**

A proceeding under Section 133 is of a summary nature. It appears as a part of Chapter X of the Code which relates to maintenance of public order and tranquility. The Chapter has been classified into four categories. Sections 129 to 132 come under the category of "unlawful assemblies". Sections 133 to 143 come under the category of "public nuisance". Section 144 comes under the category of "urgent cases of nuisance or apprehended danger" and the last category covers Sections 145 to 149 relating to "disputes as to immovable property". Nuisances are of two kinds, i.e. (i) Public; and (ii) Private. `Public nuisance' or `common nuisance' as defined in Section 268 of the Indian Penal Code, 1860 (in short the `IPC') is an offence against the public either by doing a thing which tends to the annoyance of the whole community in general or by neglecting to do anything which the common good requires. It is an act or 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. `Private nuisance' on the other hand, affects some individuals as distinguished from the public at large. The remedies are of two kinds - civil and criminal.

The remedies under the civil law are of two kinds. One is under Section 91 of the Code of Civil Procedure, 1908 (in short `CPC'). Under it a suit lies and the plaintiffs need not prove that they have sustained any special damage. The second remedy is a suit by a private individual for a special damage suffered by him.

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153 Sections 129 to 132 come under the category of "unlawful assemblies". Sections 133 to 143 come under the category of "public nuisance". Section 144 comes under the category of "urgent cases of nuisance or apprehended danger" and the last category covers Sections 145 to 149 relating to "disputes as to immovable property".
There are three remedies under the criminal law\textsuperscript{154}. The provisions of Chapter X of the Code should be so worked as not to become themselves a nuisance to the community at large. Although every person is bound to so use his property that it may not work legal damage or harm to his neighbor, yet on the other hand, no one has a right to interfere with the free and full enjoyment by such person of his property, except on clear and absolute proof that such use of it by him is producing such legal damage or harm. Therefore, a lawful and necessary trade ought not to be interfered with unless it is proved to be injurious to the health or physical comfort of the community. Proceedings under Section 133 are not intended to settle private disputes between different members of the public. They are in fact intended to protect the public as a whole against inconvenience.

A comparison between the provisions of Section 133 and 144 of the Code shows that while the former is more specific the latter is more general. Therefore, nuisance specially provided in the former section is taken out of the general provisions of the latter section. The proceedings under Section 133 are more in the nature of civil proceedings than of criminal nature. Section 133(1) (b) relates to trade or occupation which is injurious to health or physical comfort. It itself deals with physical comfort to the community and not with those acts which are not in themselves nuisance but in the course of which public nuisance is committed. In order to bring a trade or occupation within the operation of this Section, it must be shown that the interference with public comfort was considerable and a large section of the public was affected injuriously. Section 144 Cr PC brings along a very solid example of delegated legislation, where the magistrate is empowered to pass an order on his subjective satisfaction prohibiting certain

\textsuperscript{154} The first relates to the prosecution under Chapter XIV of IPC. The second provides for summary proceedings under Sections 133 to 144 of the Code, and the third relates to remedies under special or local laws. Sub-section (2) of Section 133 postulates that no order duly made by a Magistrate under this Section shall be called in question in any civil Court.
acts/ omissions and making its violation penal u/s 188 IPC. The order is passed in absence of legislative machinery superficially granting some limited sovereign powers to the Executive Magistrate.

Municipal and Public Health Acts on the pattern of Local Authorities Act of United Kingdom conferred powers on the local bodies for controlling water pollution caused by industrial effluents and for necessary action against the erring industries. These Acts prohibit the discharge of any pollutant or trade effluent from factories into municipal drains, except in accordance with the relevant byelaws. These Acts prohibit the discharge of sewage into any watercourse until it had been treated so as not to contaminate the water. These laws are applicable to large industrial cities and municipal towns. Until 1947, the environmental problem was not serious because of the low rate of population growth and lack of industrialization, except in and around a few big cities.

**PROVISIONS UNDER THE CODE OF CIVIL PROCEDURE:**

The law of easement guarantees to a owner of the land, beneficial enjoyment thereof free from air, water or noise pollution\(^ {155}\). This law enables an aggrieved individual to challenge any act of pollution\(^ {156}\) by moving a court under the Code of Civil Procedure 1908\(^ {157}\). In all cases where environmental assaults amount to private nuisance, this provision can be invoked. The court can give different kinds of remedies\(^ {158}\). In the year 2004, the provision in CPC for suing for public nuisance attracted the attention of the Madras High Court in *Perumal Naicker v.*

\(^{155}\) The Indian Easement Act 1882, sec 7, illustrations (b)-(f) and (h).

\(^{156}\) *Guhiram v. Uday Chandra* AIR 1963 Pat 455; *Kailash Chand v Gudi* AIR 1990 HP 17.

\(^{157}\) Sec.9 of CPC empowers the court to try suits of civil nature and reads: 'The court shall have jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred'.

\(^{158}\) Relief in the form of damages, injunction, interim orders, declaration and decree.
Rathina Naicker. According to the court, the provision deals with ‘public nuisance’, which is the combination of civil and criminal characters. The provision in sec.91 of CPC is a reservoir for class action against environmental violations. However, it is not widely used. It is necessary to develop this remedy as a potent weapon against ecological maladies that spring up in the form of public nuisance.

In Sreenivasa Distilleries v. SR Thyagarajan, the Andhra Pradesh High Court held that a suit for permanent injunction against discharging noxious fluids into the river is maintainable. The bar is directed to annul any orders passed by an authority under the Water Act and not to provide a shield to polluters. No order was passed under the Water Act. Hence, the high court held that there is no bar against a suit for restraining a person from causing pollution.

In certain cases, discharge or emission of pollutants or disposal of the hazardous waste is made without proper care and treatment. This would cause soil and the groundwater highly contaminated and dangerous. Thus, it makes restoration of the region to a healthy environment impossible. In Indian Council for Enviro-Legal Action v. Union of India, the Supreme Court was anxious for remedial action in one such situation. The industry was run on blatant disregard of the law to the detriment of life and liberty of the citizens living in the vicinity. Fixing the responsibility on the errant industry, the court held that it was open to the villagers or any organizations on their behalf to institute suits forma pauperis in appropriate civil court and that if they do, the government should not oppose the application. It is self-evident that the court intervened and protected the fundamental right to life and liberty of the citizens.

159 AIR 2004 Mad 492.
160 Code of Civil Procedure 1908, Order 1, Rule 8 is an amplification of the concept of class action with the permission of the court.
161 AIR 1986 Andh Pra 328.
162 AIR 1996 SC 1446.
SUMMARY:

In a fast developing country like India, environmental issues keep arising. Balancing functions are to be performed by the administration, which makes decisions, and the legislature, which initiates measures for achieving the goals of sustainable development. India has a number of legal sources to prevent and control the water pollution. Such legal rules can be divided into two groups: Non-statutory legal sources and statutory legal sources. The non-statutory legal rules are the common law principles under the law of tort. The common law doctrines of nuisance, trespass, negligence, rule of strict liability and absolute liability, the riparian owners rights are in enforceable in India. Those doctrines enshrined the common law control for the liability for the escape of the noxious objects, careless use of noxious articles and pollutants and the infringement of property rights in water.

In recent times, the riparian right theory has increasingly been rejected as the appropriate basis for adjudicating water claims\textsuperscript{163}. Further, common law rights must today be read in the context of the recognition that water is a public trust\textsuperscript{164}. If the latter principle is effectively applied in the future, it would have important impacts on the type of rights and privileges that can be claimed over surface water. Common law standards concerning groundwater have subsisted longer. The basic principle was that access to and use of groundwater is a right of the landowner. In other words, it is one of the rights that landowners enjoy over their possessions. The inappropriateness of this legal principle has been rapidly challenged during the second half of the 20th century with new technological options permitting individual owners to appropriate not only water under their land but also the groundwater found under neighbours’ lands. Further,

\textsuperscript{163} Report of the Narmada Water Disputes Tribunal with its Decision in the Matter of Water Disputes regarding the Inter-State river Narmada and the river valley thereof between the states of Gujarat, Madhya Pradesh, Maharashtra and Rajasthan, Chapters 8 and 9 (New Delhi: Government of India, vol.1, 1979).

\textsuperscript{164} M.C.Mehta v. Kamal Nath, 1997 1 SCC 388.
the rapid lowering of water table in most regions of the country has called in question legal principles giving unrestricted rights to landowners over groundwater.

Similarly, the growth of concerns over the availability of drinking water in more regions has led to the introduction of social concerns in groundwater regulation. As a result of the rapid expansion of groundwater use, the central government has tried since the 1970s to persuade states to adopt groundwater legislation\textsuperscript{165}. It is only over the past decade that some states have eventually adopted groundwater acts. Apart from common law principles the provisions for environmental protection is given under the general laws like CPC, Cr PC, IPC to some extent. The Indian Constitution also has some important provisions for the protection of environment.

A number of statutory sources both national as well as international are available to abate the water pollution. They may be divided as before Stockholm and after Stockholm period. Before Stockholm statutes contain the water pollution problems as the passing references. After Stockholm statutes have dealt with the water pollution problems and also air in a comprehensive and dedicated manner, with some limitations. Control of water bodies and organisms serving the purpose of water protection should be reinforced and carried out by all available means including legal enforcement under the provisions laid down in Water (Prevention and Control of Pollution) Act, 1974 and the Environment (Protection) Act, 1986. Statutes regarding water pollution before Stockholm period are discussed in this chapter. But Statutes after the Stockholm period like the Water (Prevention and Control of Pollution) Act, 1974, the Water Cess Act, 1977 etc, have been discussed under the heading National Concern for Water Protection in the subsequent chapters. International Declarations, Conventions, Treaties and the various international instruments

\textsuperscript{165}  \textit{Model bill to regulate and control the development and management of groundwater, 2005}, available at http://www.ielrc.org/content/e0506.pdf.last accessed on 5th November (2014).
relating to the protection of environment in general and water related issues in particular are discussed in the next chapter.