

Course Name	LL.B 4 th sem
Subject	Environment Law
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Concept	Protecting environment in IPC or CrPC

Introduction

Environmental crime refers to the violation of laws intended to protect the environment and human health. These laws govern air and water quality and dictate the ways in which the disposal of waste and hazardous materials can legally take place. Individuals or corporations can be found guilty of environmental crimes.

Indian Penal Code, 1860

Public Nuisance under the Indian Penal Code focuses on the operation of the law of nuisance through specific statutory provisions in the Civil and Criminal Codes of India. The Indian penal Code of 1860 contains elaborate provisions defining the crime of public nuisance in its various aspects and instances and prescribes punishments. Chapter XIV of the Indian Penal Code deals with offences affecting public health, safety, convenience, decency and morals. While Section 268 defines Public Nuisance, there are two specific sections dealing with the fouling of water (Section 277) and making the atmosphere noxious to health (section 278) which could be used against perpetrators of water and air pollution.

Section 277 and 278 of the Indian Penal Code read as follows:

Section 277. Fouling water of public spring or reservoir. Whoever voluntarily corrupts or fouls the water of any public spring or reservoir, so as to render it less fit for the purpose for which it ordinarily used, shall be punished with imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees or with both.

Section 278. Making atmosphere noxious to health. Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees. The above two provisions have direct relevance to environmental protection as they seek to prevent water and air pollution through a penal strategy. However, their effective application towards achieving this objective is doubtful, because the technicalities of Indian criminal law require a complete satisfaction of the ingredients of the offence as stipulates in the penal provisions. Take for instance, the provision relating to fouling of water. The wording requires proof of the voluntary corruption or fouling of water, that the water must be of public spring or a reservoir and that the water must have been rendered less fit for the purpose for which it was ordinarily used. Such wording not only creates a burden for the prosecution to prove, but also provide the accused enough grounds to argue his way out. The above provisions did not liberate the criminal justice process from the difficulties of the common law demanding elaborate evidence for sundry matters as well as technical interpretations of obvious things and events.

Section 425: whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change

in any property or in the situation thereof as destroys or demises its value or utility or affects injuriously, commits “mischief”

Explanation 1: it is not essential to the offence of mischief that the offender intended to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause damage to any person by injuring any property, whether it belongs to that person or not.

Explanation 2: Mischief may be committed by an act affecting property belonging to the person who commits the act or to that person and others jointly causing diminution of water supply has been treated as mischief in section 430 of the code and the possible direct cause may also be pollution. Adulterating of food or drink so as to make it noxious has also been made punishable.

The Indian Criminal Procedure Code of 1973 (CrPC)

The Indian Criminal Procedure Code of 1973 has a significant chapter on maintenance of public order and tranquility, which falls into four parts. Part A deals with unlawful assemblies (Section 129-132), Part B with public nuisance (Sections 133-143), Part C with urgent cases of nuisance or apprehended danger (Section 144), and part D with disputes as to immovable property (Sections 145- 148). Most relevant in our present context is Section 133, which has been resorted to as an effective remedy to abate public nuisance in instances of environmental harm. This provision empowers a District Magistrate to pass conditional orders for the removal of nuisances. This section is supplemented with ancillary provisions, contained in Sections 134 to 143 of the Code, to constitute a comprehensive procedure tackling public nuisance.

Section 144 of the Code has to be seen as a significant provision conferring wide powers upon the Magistrate to deal with urgent cases of nuisance or apprehended danger and tranquillity. This magisterial power has been exercised only for the purpose of preventing public disorder arising out of public unrest or riot situations. The potential of this provision is vast, but it does not appear to have been utilized effectively in cases of environmental harm. The provisions in the old Indian law, which have a bearing on the environment, have hardly been used in the past. The consciousness to protect the environment was not as strong then, as it is today. Unless there was awareness on the part of the people to approach the authorities neither the government nor the courts would have had the opportunity to make use of the statutory provisions.

The important role played by the judicial activism of the eighties made its impact felt more in the area of the environmental protection than in any other field. Municipal council, **Ratlam v. Vardhichand** is a signpost. 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.

The processes that are envisaged under S. 133 of the CrPC have a social justice component. The remedies available, and the powers exercisable, under the provision are conducive to the demands of the rule of law necessitated by the conditions of developing countries. The Supreme

Court had no hesitation in endorsing the view that the municipality should prepare a scheme and abate the nuisance which was allowed to continue only due to the lack of initiative from the municipality.

Different Types of Environmental Crimes

Environmental crime covers a wide range of violations that result in harm befalling the environment and human life, from errors at the administrative or record keeping level to the actual illegal dumping of pollutants into the environment. Environmental crimes may include but are not limited to the following:

Littering

Improper waste disposal

Oil spills

Destruction of wetlands

Dumping into oceans, streams, lakes, or rivers

Improperly handling pesticides or other toxic chemicals

Burning garbage

Improperly removing and disposing of asbestos

Falsifying lab data pertaining to environmental regulations

Smuggling certain chemicals, such as CFC refrigerants, into the U.S.

Bribing government officials

Committing fraud related to environmental crime

Punishment

Environmental law violators are usually hit with criminal fines, probation, jail time, or a combination of these punishments. While jail time may be the most formidable punishment for individuals who commit environmental crimes, fines are intended to deter large corporations from violating environmental laws and regulations. Without the threat of heavy monetary punishment, some corporations might find that noncompliance is more cost-effective than obeying the law. Environmental crime fines are meant to offset the financial allure of activities such as illegal dumping. Enforcement is often carried out by joint task forces, which are composed of representatives from federal, state, and local organizations. At the federal level, the

Environmental Protection Agency (EPA) has enforcement authority over environmental law violations.

Indian Penal Code, 1860

268. Public nuisance – A person is guilty of a public nuisance who does any act or is guilty of an illegal omission which causes any common injury, danger or annoyance to the public or to the people in general who dwell or occupy property in the vicinity, or which must necessarily cause injury, obstruction, danger or annoyance to persons who may have occasion to use any public right. A common nuisance is not excused on the ground that it causes some convenience or advantage.

277. Fouling water of public spring or reservoir – Whoever voluntarily corrupts 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 imprisonment of either description for a term which may extend to three months, or with fine which may extend to five hundred rupees, or with both.

278. Making atmosphere noxious to health – Whoever voluntarily vitiates the atmosphere in any place so as to make it noxious to the health of persons in general dwelling or carrying on business in the neighborhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

Of fraudulent deeds and disposition of property of mischief

Mischief – Whoever with intent to cause, or knowing that he is likely to cause, wrongful loss or damage to the public or to any person, causes the destruction of any property, or any such change in any property or in the situation thereof as destroys or diminishes its value or utility, or affects it injuriously, commits "mischief".

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Explanation 2.-Mischief may be committed by an act affecting property belonging to the person who commits the act, or to that person and others jointly.

Illustrations

(a) A voluntarily burns a valuable security belonging to Z intending to cause wrongful loss to Z. A has committed mischief.

(b) A introduces water in to an ice-house belonging to Z and thus causes the ice to melt, intending wrongful loss to Z. A has committed mischief.

(c) A voluntarily throws into a river a ring belonging to Z, with the intention of thereby causing wrongful loss to Z. A has committed mischief.

(d) A, knowing that his effects are about to be taken in execution in order to satisfy a debt due from him to Z, destroys those effects, with the intention of thereby preventing Z from obtaining satisfaction of the debt, and of thus causing damage to Z. A has committed mischief.