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# The Role of Judiciary in dealing with Environmental Issues: Section 133 of CrPC, 1973

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## ABSTRACT

*As we are living in a generation where protection of Environment is a necessity, Environmental Laws play a major role. This paper analyses such Environmental Law Provisions in India. The Pollution cases in India are generally categorised into five broad classes. These include Tortious liability, Nuisance, Trespass, Negligence and Strict liability. Under Chapter X, the Criminal Procedure Code deals with Public Nuisance. Section 133 of the Code of Criminal Procedure plays an important role in dealing with such Nuisance. Under this Section any district magistrate or sub-divisional magistrate, could issue a conditional order to stop such nuisance. The role of Judiciary in upholding, interpreting and widening the scope of Section 133 is assessed in this paper. The trend can be assessed as such that the Judiciary has played a pivotal role in curbing public nuisance by applying Section 133. There are limitation under the Section as all the conditions need to be followed by the Magistrate before issuing an order. In a country with various cultures and traditions, the need to educate public on environmental issues and removal of public nuisance is paramount.*

## I. INTRODUCTION

The Pollution cases in India are generally categorised into five broad classes. These include Tortious liability, Nuisance, Trespass, Negligence and Strict liability. Under Chapter X, the Criminal Procedure Code deals with Public Nuisance.

Chapter X, i.e. Sections 133 to 143 of the Criminal Procedure Code of 1973 provide efficient, expeditious, and preventative remedies for public nuisance cases such as unsanitary conditions, pollution such as water, air and sound.

The Webster Dictionary defines environment as the “Accumulation of all extrinsic factors and conditions affecting the existence and development of an organism.”

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## II. SECTION 133 OF THE CODE OF CRIMINAL PROCEDURE

### (A) Definition

According to Section 133 of the Code of Criminal procedure, a district magistrate or sub-divisional magistrate, or other executive magistrate particularly authorised on this behest by the State legislature, could issue a conditional order to stop such nuisance, but if the hindrance maker objects, the order will be decided to make absolute. Any order issued in accordance with this clause must not be challenged in any civil court.

### (B) Object

The goal or objective of Section 133 of the Criminal code, 1973 is primarily to prevent nuisance and incorporates the feeling of urgency with in spirit that unless the Magistrate does not take action promptly, irreversible damage would be caused to society. A cursory examination of the clauses in Section 133 of the Criminal procedure Code, 1973 reveals that the clause is designed to safeguard the general public from discomfort.

A clause that grants the Magistrate sweeping powers should be used carefully and in such a way that they do not become a nuisance to the society. The purpose of Section 133 is to allow the Magistrate to give fast orders and act quickly.

Under the Criminal Procedure Code, any individual may begin criminal actions by a Magistrate to remove a public disturbance. Under Section 133 of the Cr.P.C, the Magistrate shall act on information obtained from the court document or any reference, including a citizen's complaint.

The Kerala High Court in case of *K. Ramachandra Mayya v. District Magistrate*, upheld the Magistrate's order for shutting down of a stone quarry. Wherein the Magistrate responded on concerns by local homeowners that the quarry's rock blasting caused harm from flying crushed stone

In *Gobind Singh v. Shanti Sarup* Section 133 of the Cr.P.C. was revived by the Supreme Court where a vent for the defendant's enterprise by an oven bakes caused disturbance:

*“We believe that in a case like this, when it is not only a particular individual's right at stake, but the welfare, protection, and comfort of the general public, the better approach is to adopt the learned Magistrate's perspective, who observed for himself the threat caused by the bakery's operation..”*

### **III. JUDICIAL INTERPRETATION OF SCOPE OF SECTION 133**

#### **(A) Ratlam Municipality-Case**

In the Ratlam Municipality-Case, India's top judicial authority issued a remarkable verdict. The Supreme Court was approached to construe section 133 of the Code of Criminal procedure in this case.

#### **1. Order under Section 133**

Ordinarily, the Magistrate can issue an order under Section 133 Cr.P.C. to subside a public disturbance as follows;

- a) To regulate and monitor the operation of every business or activity, or even the possession and holding of products that are likely to harm the community's health or physical comfort.
- b) To eliminate any illegal obstacle or to alleviate the disturbance for any way, stream, or canal that is or may be legitimately utilized by the public or in any public area.
- c) To require the enclosing of any container, well, or trench that is close to a public route or public space.
- d) To remove constructions, housing developments, or temporary shelters which are in severe deterioration conditions that they may fall and injure those residing or doing activity with in vicinity or passing through such structure.
- e) As against development of any structure or the decommissioning of any material that has the potential to produce or cause fire and explosion.
- f) Restriction, confinement, or euthanasia of any hazardous animal.

#### **2. Observation**

Section 133 Cr.P.C. is comprehensive, yet it appears to be discretionary. Judicial leniency has a necessary influence when the facts for its use are available. As a result, when the subdivisional Magistrate has evidence and facts revealing the presence of a public nuisance upon him and, based upon on materials placed, he takes into consideration that certain illegal blockage or nuisance should be removed from any public area that may be legally in use by the public, he shall respond.

Thus, after passing through the process, his judicial power shall fire on the obstacle or annoyance generated by the circumstances.

#### **3. The Magistrate's responsibility**

The Magistrate's obligation under Section 133 Cr.P.C. is to order the discharge or other such

disturbance within the period specified in the order. This is a public obligation derived from public power and carried out in the course of a public action. Failure to follow the instructions shall result in the penalties outlined in Section 188 of the I.P.C.

As a result, the Municipal Officer or any other authority obligated by the order under section 133 of the Code must comply such order. Because disobedience causes hindrance, irritation, or harm to any person legitimately pursuing their work, it is penalised by a fine or simple imprisonment, as provided in the provision.

If the disobedience is likely to endanger human health or safety, the offence is amplified. The prohibition act becomes a necessary obligation when the urgent tone of Section 133 Cr.P.C. is combined with Section 188 I.P.C.'s disciplinary tone.

The Ratlam case is a watershed moment in India's environmental jurisprudence. With the decision in this case, the environmental movement has taken a different direction and gained momentum.

In this decision, the Supreme Court established municipal governments' obligations for environmental preservation and introduced the law of public nuisance in the Criminal procedure Code as an effective tool for implementing those responsibilities.

## **(B) Case Laws Dealing with Different Types of Nuisances**

### **1. Conditional Order for the removal of the nuisance**

The first case law that substantially defined nuisance is *Govind Singh v. Shanti Sarup (1979)*. The court imposes a conditional order for the elimination of the nuisance under this clause, which contains extremely broad words such the development of buildings, the discharge of materials, the conduct of commerce, and habitation.

The prohibitory act becomes a required regulation when the urgent language of Section 133 CrPC is combined with the penal language of S.188 IPC (Ratlam case). From this situation, it was clearly reflected that a person may always rely on S.133 CrPC to get rid of pollution's nuisance.

It is even more significant given that the Water Act and the Air Act don't really give aggrieved persons the power to pursue violations of the clauses. Another important aspect to note is that under these rules, organizational entities such as firms and companies can be held liable for pollution nuisance. "“Any opposite finding is opposed to the provisions,” the Court stated, adding that “whenever there is a public nuisance, the application of section 133 must be regarded.””

## **2. Water Pollution- Discharge from a factory into a river**

It's been explained in Section 133, sub-section (I), provides enough authority to make an order preventing the dumping of a pollutant from a production plant into a river that may be harmful to the health of the people that has a right to utilise the river's water. In *Deshi Sugar Mills v. Tupsi Kahar* (1926) , it was held that orders under Section 133 (1) could not be imposed only because the complaint was brought by more than two people.

## **3. Air Pollution**

Section 133 has been efficiently invoked in *Krishna Gopal v. State of M.P.* (1986). In this case, a case was brought about sound, air pollution through wood ash, as well as the emission of vapor into the air from a glucose plant. All of this combined to create difficulty and pain to the residents of the area. The Court made an important decision in this case:

*“This is not the objective of the legislation that the entire community or a significant number of people step out to submit their grievances or object to nuisance. The law makes no requirement for a specific number of complainants. A quick perusal of Section 133(1) would indicate that subsection's authority could be exercised upon receipt of a law enforcement officer's report or perhaps other relevant data.....”*

The essence and extent of S.133 were clarified in *P.C. Cherian v. State of Kerala* (1981). A couple of rubber companies in the industrial region were utilising carbon for the carbon blending procedure in this scenario. No apparatus was available to prevent such spread. An inconvenience was caused due to the same.

The Kottayam Sub-Divisional Magistrate, in the above case has ordered the halting of the carbon blending in both of the factories, acting under Section 133. It was determined by the High Court that the spread of carbon black in the aerosphere constituted as a public nuisance and a danger to health which affects people's respiratory functions.

## **4. Physical comfort of the community**

In the case of *Madhavi v. Thilakan* (1989) the court has observed that: “Each person's house is considered to be their palace, and this must not be invaded by noxious finances or obnoxious noises. This notion is represented in both law and our culture, in accordance with nature's fundamental laws for life, as stated in Section 133(1) (b); the section may restrict or prohibit the practice of commerce or occupation, or the holding of any products or commodities harmful to the welfare or bodily comfort of the public.”

## 5. Dangerous Structure

According to the decision of the High Court of Rajasthan in *Achalachand v. Suraj Raj* [13], where there is a risk to individuals in the neighbourhood, a household, or bystanders, section 133 comes into action. It is a public nuisance if there is a shared wall between two houses and the compositions on this shared wall are unsafe, resulting in the wall collapsing and harming the neighbours then Section 133 is applied. The court stated-

*“In a situation where a risk appears to a neighbour, the criteria of Section 133 of the Code are met, and any such problematic or dangerous building could even also be termed as public nuisance.”*

### (C) Condition precedent to apply section 133

The Supreme Court made it plain in *Suhelkhan Khudyarkhan v. State of Maharashtra* (2009) that the clause for the applicability of such a provision would be that the performance of the business should be harmful to the medical or bodily comfort of the society. There has to be an urgent threat to the public's wellbeing or physical comfort in the area where the business or profession is carried out.

## IV. LIMITATIONS

The Magistrate, when issuing any application under Section 133, must pay close attention to all the complaints to ensure that the essential circumstances are met. If not, such order issued will be held to be illegal which has been done in case of *Chabila Roy v. State*.

In the present case the applicant and other people of neighborhood were not examined as to the bodily discomfort or danger to health due to the "khatal" and had issued an order. The ruling was deemed unlawful because it contradicted clear requirements of Section 133 CrPC. Hence the Section Limits the Magistrates and doesn't provide absolute authority.

## V. RECOMMENDATIONS

The Legislature should ensure that the education on such laws and provisions and why environmental protection is a necessity, should be provided to the public at large. Awareness camps should be organised for the same. This helps the public to act accordingly and not create nuisance or to protect the environment rather than cause destruction. To do the same the Government can use media as a platform as it has the most reach to the common people.

There should be a frequent and systematic examination of the laws and the application. Necessary changes to the same need to be done based on such recommendations as Environmental Law is still at a developing stage.

## VI. CONCLUSION

The above discussion shows that environmental protection legislations have existed prior to the adoption of the Environment (Protection) Act and other specific laws by the Legislature of India and Judiciary. Criminal machinery is utilised for environmental protection and to ensure that pollution problems can be resolved quickly and inexpensively.

A statement said by Justice V.R Krishna suits well in this situation “*it is not how many laws we have, it is how effectively we implement*”. There are however numerous environmental regulations in place at the moment, measures such as Section 133 of the Criminal procedure code assist to attain this aim quickly and efficiently. Such regulations alone are insufficient to protect the environment; public endorsement and knowledge are also necessary for successful environmental management as well as the reduction of nuisance.

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