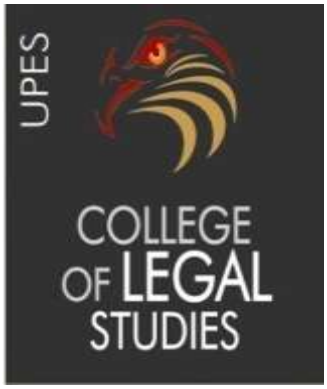
TORT LAW OF PUBLIC NUISANCE: CHANGING DIMENSIONS AND INNOVATIVE APPLICATIONS IN ENVIRONMENTAL JURISPRUDENCE

Author : Urvashi Yadav

Submitted under the guidance of: Dr. Shikha Dimri

This dissertation is submitted in partial fulfillment of the degree of B.A., LL.B. (Hons.)



College of Legal Studies

University of Petroleum and Energy Studies

Dehradun

2016

DECLARATION

I declare that the dissertation entitled "**TORT LAW OF PUBLIC NUISANCE: CHANGING DIMENSIONS AND INNOVATIVE APPLICATIONS IN ENVIRONMENTAL JURISPRUDENCE**" is the outcome of my own work conducted under the supervision of Dr. Shikha Dimri, at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun. I declare that the dissertation comprises only of my original work and due acknowledgement has been made in the text to all other material used.

Urvashi Yadav

B.A., LL.B. (Hons.) 10th Semester

2011-2016

Date:

CERTIFICATE

This is to certify that the research work entitled **"TORT LAW OF PUBLIC NUISANCE: CHANGING DIMENSIONS AND INNOVATIVE APPLICATIONS IN ENVIRONMENTAL JURISPRUDENCE"** is the work done by **Urvashi Yadav** under my guidance and supervision for the partial fulfillment of the requirement of Int. B.A., LL.B. (Hons) with specialization in Energy Laws degree at College of Legal Studies, University of Petroleum and Energy Studies, Dehradun.

Dr. Shikha Dimri

Assistant Professor (Senior Scale)

College of Legal Studies University of Petroleum & Energy Studies,

Dehradun

Uttarakhand

Date:

ABSTRACT

The law of public nuisance provides the widest scope for promoting environmental justice claims and actions. But it has its own drawbacks and limitations. Owing to the present construction and interpretation of rule of public nuisance's special injury, the scope for raising action under public nuisance law has been limited, prima facie, as with respect to private actions. The changing interpretations of the special injury rule, has led to cause conflict in public nuisance theory in the contemporary world.

Like major other fields in civil jurisprudence, India borrowed the concept of nuisance from Common Law. Before the development of the Code of Civil Procedure in a conceptualized form, in 1908, the liabilities accrued in the offence of nuisance originated from the common law construction of ‘civil wrongs' that imposes a tortious liability on the wrong-doer. The imposition of tortious liability was a sufficientbasis for claiming damages for the damage caused due to the inconvenience and nuisance prevailing for a substantial span of time.

Therefore, the concept of nuisance is not statutorily developed in the Indian civil jurisprudence. However, through the machinery of adjudication on the same, as well as comprehensive criminal construction and interpretation of nuisance along with its forms of application in tort law, such has paved way for different dimensions.

With the passing time, the dilemma of environmental pollution is acquiring immense and severe proportions. It is left in the hands of Indian Judiciary to go behind the letter of the law and interpreting it in a way to promote the spirit of the law paving way for plausible solutions to this grave problem.

The Dissertation is an attempt to outline the environmental jurisprudence in India focussing on the different dimensions of law of public nuisance and the efficiency as such to attain sustainable development. This Dissertation will address the intrinsic challenges under common law of public nuisance, shedding light on the significant legislations which deals with public nuisance.

Keywords: Public Nuisance, Environment, Judicial Activism, special injury rule

ACKNOWLEDGEMENT

I sincerely convey my deepest gratitude to my mentor Dr. Shikha Dimri, who has actively & consistently helped me in the preparation of this Dissertation. She has been the source of motivation and encouragement and the one who generated interest in the specific field.

Without her valuable insights and comments, this dissertation would not have been possible. Her active words of advice and her guidance not only helped for this research work but also for my future and career.

I would also like to acknowledge and extend my heartfelt gratitude to all the persons whose participation has made the completion of the dissertation possible.

Urvashi Yadav,

B.A., LLB. (Hons.) With specialization in Energy Laws,

Sap ID – 500017870,

Enrollment No. – R450211109

College of Legal Studies,

University of Petroleum & Energy Studies, Dehradun.

CONTENTS

1. LIST OF CASES

1. AB and others v. South West Water Services Limited, [1993] QB 507
2. Abhilash Textiles v. Rajkot Municipal Corporation , AIR 1988 Guj 57
3. A.P. Pollution Control Board versus M.V. Nayudu, [1999] 2 SCC 718
4. Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42
5. Colour Quest Limited and Others v. Total Downstream UK Plc, [2009] EWHC 540 (Comm)
6. Dilaware Ltd. v. Westminister City Council, (2001) 4 All ER 737 (HL)
7. Exxon v. Baker, 490 F.3d 1066 (9th Cir. 2007);
8. Emperor vs. Nama Rama, (1904) 6 Bom LR 52 44
9. Gramophone Company of India Ltd. v. Birendra Bahadur Pandey, (1984) 2 SCC 534.
10. Gobind Singh v. Shanti Swaroop, AIR 1979 SC 143
11. Indian Council for Enviro-Legal Action v. Union of India, AIR 1996 SC 1446
12. *In re* Exxon Valdez, 236 F.Supp.2d 1043 (D.Alaska 2002)
13. Jan de Nul (UK) Limited v. NV Royale Belge, [2000] 2 Lloyd's LR 700
14. J.C. Galstaun v. Dunia Lal Seal, (1905) 9 CWN 612
15. Jolly George Verghese v. Bank of Cochin, (1980) 2 SCJ 358.
16. Leanse v. Egerton, (1943) 1 KB 323,
17. Macdonald V. Perry, 74 F.2d 371 (1934)
18. M.C. Mehta v. Kamal Nath, (1997) 1 SCC 388
19. M.C. Mehta v. Shri Ram Foods and Fertilizer Industries , AIR 1987 SC 965
20. M.C. Mehta, v. Union of India, AIR 1988 SC 1037
21. M.C. Mehta (Taj Trapezium Matter) v. Union of India & Ors., [1997] 2 SCC 353,
22. Municipal Council, Ratlam v. Vardhichand., AIR 1980 SC 1622.
23. Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp., 345 N.W.2d 124 (Iowa 1984).
24. Queen v Vitti Chokkan , (1889) I.L.R. 4 Mad 229
25. Ramachandra Malohirao Bhonsle v. Rasikbhai Govardhanbhai Raiyani, (2001) GLR 25
26. Ram Raj Singh v. Babulal, (1865) 77 HCL 642
27. Re Corby Group Litigation [2009] QB 335

28. R.L.E.K. Dehradum, v. State of U.P., AIR 1985 SC 652.
29. Rylands V Fletcher , L.R. 3 H.L. 330 (1868)
30. Sears v. Hull, 961 P.2d 1013, 1018 (2008)
31. Tarun Bharat Singh Alwar v Union of India, 1993 SCR (3) 21
32. Transco Plc v. Stockport, [2004] 2AC 1
33. Union Carbide Corporation vs Union Of India, 1989 SCC (2) 540
34. Vellore Citizens Welfare Forum v. Union of India, AIR 1996 SC 2715
35. Vineet Kumar Mathur v. Union of India, (1996) 7 SCC 714
36. Wandsworth London Borough Council v. Railtrack Plc, [2001] BLR 160

2. INTRODUCTION

The seeds of environmental law were sown roughly about forty years ago. Tort law has been regarded as a conventional tool to remedy damages done to the environment. True that, due to lack of frequency match between specific damages relating to environmental concerns and a relief through the common law tort framework, has created a huge impetus for the expansion in environmental rules, regulations and statutes the course of the last few decades.[1]

Nevertheless, principles of general tort law framework have been effectively used to cure the damages done to the environment. This happens in cases where the mischief is done to a characterized region or particular individual or class of persons, and is promptly followed by the general and particular causation, and nearly fits the conventional components of a tort law framework.[2]

Also, the harms remedied by the tort framework are generally immediate injuries done to an individual or any other legal person. This prerequisite of an immediate damage is important to be fulfilled in order to fall within the sphere of tort law.

While tort law is correspondingly wide in degree, affecting numerous different zones and fields of law, the essential goal of it has always been to provide *corrective justice*. Stated clearly, tort law is planned to give "*a peaceful medium*" which seeks "to restore the original conditions of the injured parties" for mischief brought about by another's wrongful conduct. The main principle lying at the centre is to provide a compensation framework as a remedial equity measure.

In providing such redress by way of compensation, and relying upon the level of wrongful harm done along with the punitive damages, tort law additionally advances other objectives, mainly on the principle of deterrence.

The *principle of deterrence* is however a secondary aim of tort law framework of Public Nuisance where it is principally concerned with remedying the harms. Interestingly, tort law standards have not reached out to zones where the aim of remedial equity is more vague or ambiguous.

---

[1] Todd S. Aagaard, *Environmental Law as a Legal Field: An Inquiry in Legal Taxonomy*, 95 CORNELL L. REV. 221, 226 (2010)

[2] L. M. Walker, Dale E. Cottingham, An *Abridged Primer on the Law of Public Nuisance*, 30 Tulsa L. J. 355 (2009)

The tort law of Public Nuisance is especially to be understood in a manner, so as to observe the intersection point between environmental law and tort law.[3] It has been one of the essential common tort law remedy to rectify ecological harms.

The tort law of Public Nuisancehas additionally, developed as a standout amongst the most controversial concerns, in the convergence of environmental law and tort law, as Courts have considered whether such a corrective justice relief could apply to the manufacturers of cars, oil refineries, public utilities dealing with electricity, and different other entities for the damages connected with alleged change in environment due to climate change.

While Courts so far have denied recognizing such endeavours, a couple of Courts, have allowed claims of Public Nuisance against weapon manufacturers to continue. It is to be seen whether this notion will or will not be dispossessed totally, as with other alleged damages, for example, the claims arising in cases of decayed lead paint in homes and the risks associated with gun violence.

Initially, an examination of the main principles and standards encompassing the environmental law and tort law of Public Nuisance indicates a sphere of overlap; tort law of Public Nuisance is for the most part based on the core standards of remedial equity or compensation based on the harm inflicted, and deterrence, while a lot of environmental law is upheld by standards of counteractive action, which incorporate ecological prevention and preservation.

Public Nuisance law has vast effectiveness in curing the environmental harms and providing corrective justice. But, the problem lies in the fact that the existing notion of Public Nuisance is extremely confined and not many environmental issues are remedied in an effective manner by virtue of such limited scope.

There is need to extend the scope of tort law of Public Nuisance by reducing these restrictions, that have been strictly followed during the whole twentieth century.

---

[3]Jill D. Jacobson, Rebecca S. Herbig, *Public Nuisance Law: Resistance to Expansive New Theories*, available at http://www.bowmanandbrooke.com/insights/~/media/Documents/Insights/News/2009/09/Public%20Nuisance%20Law%20Resistance%20to%20Expansive%20New%20__/Files/MassTorts%20-%20Fall%202009/FileAttachment/Public%20Nuisance%20 ; (Feb. 27,2016)

With the progressive advancements done in the field of social equity and environmental justice, the tort law of Public Nuisance have turned out to be fairly outdated.

But sadly, there have been, only a couple of huge endeavours as of late, to enhance the principles such as rule of special injury, underlying the law of Public Nuisance.

In light of this, the dissertation seeks to shed light on the current tort law framework of Public Nuisance in the arena of environmental protection. Not only, an attempt has been made to elucidate the different facets and aspects attached with the tort law of Public Nuisance, but also the loopholes in such framework has been analysed. This Dissertation is an attempt to outline the environmental jurisprudence in the national and International level, focussing on the different dimensions of law of public nuisance and the efficiency as such to attain sustainable development.

3. RESEARCH METHODOLOGY

3.1 STATEMENT OF PROBLEM

For centuries, Tort law has been recognised as a means to tackle specific environmental injuries. In certain areas, it remains the sole weapon to address an environmental claim. With the development of the sphere of environmental law, the responsibility of addressing environmental injury has been inclining toward state and environmental statutes and legislations. New legal remedies and principles have been evolved by many of these laws which did not existed under the tort system.

The traditional aspects of remedies in public nuisance are quite old,however, during the recent years, new dimensions and aspects have been imparted to it by the Judiciary by the way of extensive construction and interpretation so as to facilitate the way for citizens to bring public nuisance actions against the public bodies and to keep a check on the increasing environment pollution. During the 1980s, range of legal provisions was sought out by number of Indian Legal activists which might be used to remedy the environmental claims. Justice Krishna Iyer, in an early decision of public interest litigation, considered the criminal law doctrine of public nuisance, and sought to instil it with 'the new social justice orientation' signified by the Constitution.[4]

This paved a way for a new enthusiasm toward law of public nuisance. Law of Public nuisance, thus, emerge as a tool for Judges, academics and citizens for remedying government inaction toward environment problems, and thus paving way for populist environmental movements.

Nuisance is a wide category and different types of pollution come under its ambit. The conflict arises in context of governance, so as to determine whether specific pollution related enactments such as the Air Act, 1981 and Water Act, 1974 govern a specific nuisance or the other statutes like Cr. P.C. or I.P.C.[5] The Indian judiciary has

[4] M. K. Ramesh, '*Environmental Justice: Courts and Beyond'*, 20 Indian Journal of Environmental law (2002)

[5] S.S. Prakash and P.V.N. Sarma, *'Environment Protection vis-a-vis Judicial Activism'*, 2 Supreme Court Journal (1998)

confronted with the like issues in many cases which will be dealt comprehensively in the Dissertation.

Public nuisance is primarily covered by the law of crime, is also covered by the law of tort. It is here that the different definitions accorded to public nuisance law gets muddled up and remains confused.

The Dissertation seeks to analyze the distinct spheres of overlap and exclusivity of tort and environmental law, in the context of law of public nuisance and the incidental aspects attached with it. The Dissertation will ponder upon the different aspects attached with the right protected by the public nuisance litigation, the historical understanding of the evolution of law of public nuisance, the consideration of the scope of law of public nuisance and the contentious issue of determining the category in which it falls.

The gradual changes and adaptation in Indian environmental jurisprudence have paved the way for development of public law rationale from earlier legal order rooted on the foundation of common law rationale. With the passage of time, the common law foundations on public nuisance to deal with environmental injuries have become inherently defective.

The Dissertation will ponder upon the inherent deficiency of common law on public nuisance, throwing light on the relevant legislations dealing with public nuisance and its historical application. The Dissertation, will finally, address the different changes and strategies adopted in India within the last decade, so as to improve the efficiency of public nuisance law within the public law rationale. A highlight of international efforts in combating environment related problems will also be made in the context of public nuisance law. The ongoing concern for the need to bring modifications and changes in different dimensions of public nuisance law and the efficiency of such legislations in dealing with environmental injuries has been the motivating factor to choose the same as the research topic.

3.2 OBJECTIVE OF STUDY

The new regime of public law rationale in India has brought significant changes to remould and revive the principles of law of public nuisance in order to promote its efficiency in dealing with environmental injuries. The main objective behind this research is to examine the current scenarioand to have understanding the nature and degree of extent of till date developments concerningthe law of public nuisance as a tool to tackle with the environmental problems. The Dissertation also seeks to analyze the role of Indian judiciary in changing the dimension of public nuisance law in order to promote environmental protection. The author further seeks to identify the various lacunas, and loop holes that are still required to be repaired, the various remedies and the promotions which can be adopted or needed to be done.

3.3 SCOPE AND SIGNIFICANCE OF STUDY

- Legal framework for addressing the issue of public nuisance with reference to environmental damage.
- Issues and Challenges in enforcement of laws pertaining to environmental damage.
- Analyse interrelation between the public nuisance and environmental damage.
- Development of Environmental Jurisprudence through judicial decisions.

3.4 HYPOTHESIS

The laws pertaining to nuisance have become obsolete in the country as they do not keep pace with the change in time and needs of the society therefore there is a greater need to update the laws to keep pace with the changing dimensions and innovative applications in order to protect rule of law.

3.5 METHODOLOGY

The nature of research adopted is doctrinal involving examination of existing law of public nuisance and incidental cases as well as opting analytical methodology in order to arrive at a complete understanding of the concerned topic. The research methodology adopted for this paper requires gathering significantresourcesmostly from the secondary data which includes journals, articles, commentaries, textbooks, reference books, internet sources, e-books. Citation method used is Bluebook 19th Edition.

Further, the research methodology is adopted because the aim of this dissertation is to analyse the existing legislations in context of law of public nuisance and to examine the efficiency of such laws in curbing environmental harms and the related challenges incidental to it. In light of this, the Dissertation will use the deductive method of research so as to reach a sum up result by concluding the general findings.

Researcher has gathered materials from various sources i.e. primary as well as secondary sources available at the UPES Library and UPES online e-resources database. For this mentioned reason, the Researcher will analyse the scholarly articles, legislative provisions, decided case laws, and comments on different aspects associated with the issue.

3.6 LITERATURE REVIEW

1. **David R. Hodas*, Private Actions for Public nuisance : Common Law Citizen Suits for Relief From Environmental Harm*, 16 Ecology Law Quarterly (1989)**

   This Article analyses the origin of public nuisance law since the 1972 and emphasizes on the two aspects namely, the distillation of the traditional special injury rule into a the principle of standing (injury-in-fact) and proximate cause, and the feasibility of public nuisance activities in light of current environmental statutes. It throws light on the prospect of the validity of traditional policies that aid the special injury rule is no longer valid. The author has further addressed the different aspects of the public nuisance taking in consideration, a number of cases where emphasis is given on the special injury rule in light of public nuisance law.

2. **Tseming Yang*, Environmental Regulation, Tort Law and Environmental Justice : What Could Have Been*, 41 Washburn Law Journal (2002)**

   The article outlines the background of the environmental justice movement that led to creation of environmental laws. The article proceeds by giving outline of the complaints of environmental justice activists and the different various solutions they had provided to these problems. Further, the article throw light on the tort law principles that surrounds the environmental pollution and other incidental issues related to it. In specific, the emphasis has been given on the challenges and drawbacks in the existing environmental

laws focussing on the common law remedies that are adopted in reference to environmental harms.

3. **James A. Sevinsky, *Public Nuisance: A Common-Law Remedy Among the Statutes*, 5 Natural Resources & Environment (1990)**

   The article articulates the law of public nuisance in the light of environmental cases, provides overview of the development of various new legislations over the past twenty years defining comprehensive regulatory and enforcement framework, reflects on how public nuisance is an effective remedy to fill the voids or complement those legislations, and addresses a few probable new guidelines for the relevance of public nuisance law. The article further addresses the laws of public nuisance showcasing the balance between these laws with the other like new legislations.

4. **J. R. Spencer, *Public Nuisance : A Critical Examination*, 48 The Cambridge Law Journal,(1989)**

   The article reviews the different facets that are attached to the law of public nuisance. The writer examines the development of law of public nuisance in special reference to the contribution made by it, in remedying the environmental harms. The article proceeds by reflecting light upon the history of the law of public nuisance, the legislations governing it, that have been evolved with time and the necessary changes that are required in order to fill the voids of the laws and governing legislations.

5. **Mark Latham &Victo E Schwartz,*The Intersection of Tort And Environmental Law : Where The Twains Should Meet And Depart*, 80 Fordham Law Review (2005)**

   Tort law has been one of the most significant tool for remedying the environmental harms since the historical times. Various legislations have been enacted by different countries owing to the intricacies of various modern environmental harms and the actual or perceived deficiencies of the common law In the light of this, The Article analyzes how these laws operate in context of the common law of torts, and provides strategies for judges to ascertain whether tort law furnishes a sufficient and effective solution for an assumed

environmental harms. The Article further throws light on the most uncultivated issue in the legal system, explicitly the intersection of tort and environmental law and the other incidental issues attached to it.

6. **Environmental Protection Law And Policy In India, (4th ed., 2007**)

   The book explores, comprehensively, the legislations and statutes that govern environmental protection in the context of different pollutions. The book also shed light on the development of environmental policies from pre-independence era to the current scenario. Further, it also addresses the trends that have evolved in the judicial approach while dealing with the environmental protection.

7. **Richard O. Faulk*, Uncommon Law: Ruminations on Public Nuisance*, 18 MO. ENVTL. L. & POL'Y REV (2010)**

   The article addresses the incidental issues and challenges that exist in the relationship between national laws and international standards in context of common law.The article proceeds by reflecting on the ancient common tort of public nuisance of contemporary tort law jurisprudence which is one of the most highly visible issue. Its development is particularly remarkable in climate change and environmental harms, where it is adopted as the "tort of choice" for plaintiffs taking recourse for broad relief from global warming and trans-border pollution. In light of this, the author attempted to define the scope and efficiency of law of public nuisance in comprehensive way.

8. **Michael Anderson, *Public Nuisance and Private purpose: Policed Environments in British India, 1860-1947,* SOAS Law Research Paper (1992)**

   This paper sought to trace the origin of the law of public nuisance in India, by analyzing the common law foundations on which such law was based upon and, thereby, adopted. It emphasizes on the application of the law of public nuisance during the pre-independence era, focussing on property and criminal law which was used as devices to obstruct massive intervention in the use of

environment. The author has sheds some light on the application of the law of public nuisance during colonial times.

9. **Mandy Garrells*, Raising Environmental Justice claims through the Law of Public Nuisance*, 20 Envtl. L.J. 163 (2009).**

   The article showcases in detail, the current inefficacies of environmental justice movement, the administrative legislations and regulationsand judicial recognition accorded to public nuisance at the international level. Further, the author addresses the development in the understanding of the special injury rule, from the "difference-in-degree" standard to the "different-in-kind" standard, which has posed difficulties and created clash in public nuisance theory in the contemporary world. The article emphasises the need for changes in such framework that frustrates the principles of public nuisance law. The Article thus, explores the evolution and development of public nuisance theory andascertain how the laws and legislations may rejuvenate its principles so as to pave the way for promoting the widest grounds for raising environmental justice movement under common law.

10. **GeetanjoySahu, *Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence*, 41 Law Environment and Development Journal (2008)**

    The article seeks to explore the different judicial initiatives that have been undertaken in the promotion of environmental jurisprudence. The article further sheds light on the pro-active role of courts in the development of laws and principles relating to environmental protection. The author finally addresses the procedural and substantive innovations and their implications for environmental jurisprudence.

11. **Albert C. Lin, *Public Trust and Public Nuisance: Common law Peas in a Pod?*,45Dav. L. Rev. (2012)**

    The paper explores the widest scope of the relationship between the dogma of public trust and public nuisance in various ways. The article provides the summary characterizations of the two doctrines, along with recognizing the essential differences between the two, establishing that the two doctrines

contribute to a fundamental goal of safeguarding the communal interests in the context of environment and natural resources. The similarities and the differences of doctrines plays an important role in addressing how the doctrines would apply to different environmental challenges and harms. The article further showcases the responses that thedoctrines had accumulated with respect to its efficiencies and legislative failures.

12. **Denise E Antolini, *Modernizing Public Nuisance : Solving The Paradox of the Special Injury Rule*, 28 Ecology L.Q. (2001).**

    Public nuisance has been regarded as a significant remedy for community-based problems in various state courts encompassing in itself the perplexing persistence of the special injury rule and different-in-kind test. In this light, it is important to get a deeper and comprehensive understanding of the various facets of law of public nuisance and whether it is feasible, to modify this significant cause of action with an alternative approach to the doctrine. Thus, this Article seeks to break new ground in solving the special injury rule paradox. This Article therefore places a special focus on a detailed legal origin of the rule and sets out the legal background of public nuisance.

13. **C.M. Abraham, Environmental Jurisprudence in India (2nd ed., Kluwer Law International,1999)**

    Within the last two decades, India has progressed in not only enacting particular legislation on the subject of environmental protection but has also virtually recognized the right to clean environment as fundamental in the Constitution. In this light, the book analyzes the various models and methods embraced in the Indian context which are similar to those of other common law systems. Further, it addresses the subtle differences which, with the passage of time, have changed the structure and elements of legal development in India.

14. **John E. Bryson & Angus Macbeth, *Public Nuisance, the Restatement (Second) of Torts, and Environmental Law*, 2 Ecology L.Q. (1972)**

    The law of public nuisance as a tort is an important mechanism that is widely being used in environmental litigation. In this Article the authors analyses the

position of the various legislations and standards in context of the tort of public nuisance taking in special reference of Tentative Drafts leading to the Restatement (Second) of Torts. Further, the article also focussed on the growth of the American Law Institute in aiding the development of the various elements of public nuisance actions.The various case lawsare analyzed and evaluated to determine the trends and the weaknesses in the common law remedy of public nuisance..Finally, the role of public nuisance theories in different types of environmental litigation such as water, air and noise pollution is reviewed and those areas areascertained where public nuisance law can be most appropriately and efficiently be used.

15. **William L. Prosser, *Private Action for Public Nuisance*, 52 Virginia Law Review (1966)**

    Public or "common" nuisance is always regarded as an offence. The essential element to convert such crime into a tort is to prove that the plaintiff has suffered some "special" or "particular" damage. The article not only focuseson any specific type of damage, but emphasizes on the damage of any kind to the plaintiff, as distinguished from that which he shares with the rest of the public. In this light, the author has explored the widest possible connotations of the special injury rule in reference to the law of public nuisance. It is the purpose of this Article to investigate into the nature of the particular damage which will convert the crime into a tort ascertaining the scope and limits of law of public nuisance and its application to environmental harms.

16. **David A. Dana , *The Mismatch Between Public Nuisance Law And Global Warming,* 18 Supreme Court Economic Review, (2010)**

    This article sheds light on the three major points concerning the recent efforts to employ public nuisance litigation to tackle the problemsand issues related to climate change. The article further proceeds by reflecting on why the courts should not invoke the political question doctrine to dismiss public nuisance cases and the need to emphasizemore on lack of private party standing and the difficulty in proving causation as grounds for dismissal. Further, the author focussed on understanding the disadvantages of common law litigation as a tool of addressing the issue of climate change which is a large- scale commons

resource management issue. Finally, the article reflects the need to strike a balance between state legislative actions and the international regulations to address climate change via public nuisance litigation in order to be more effective for remedying the environmental harms.

17. **David Rose, *Global Climate Change: A Nuisance to the Public Without a Public Nuisance Remedy*, UNIV. S. CAR. ENVTL ADVOCACY SEM. (2006)**

    The paper briefly sheds the light on the threats caused by global climate change in reference to both the regional and global perspectives. Owing to the contentious problem of global warming which is caused by plentiful actors across political boundaries, the paper explores the boundaries of public nuisance claims in respect of environmental litigation in context of global warming. The author attempts to analyze the character of the environmental litigation that have been taken up by various countries in this reference and the need to fill up the voids that are left by the existing laws in this regard in light of the current political and legal realities.

18. **Henry N. Butler & Todd J. Zywicki, *Expansion of Liability under Public Nuisance*, 18 Supreme Court Economic Review, (2010)**

    The article addresses the various facets of the law of public nuisance exploring the issues ranging from the cases of lead paint to sub- prime mortgages to global climate change, where the common law doctrine of public nuisance is widely used by the multiple parties to recover damages invarious causes of actions that are rising significantly in the area of environmental harms.The article further focuses on the viability of the legitimacy of public nuisance as a tool to extract compensation for such widespread harms in light of the other incidental issues. The article thereby, also emphasizes on the voids that is created by the common law remedies that is hindering the progress of curbing environmental harms.

19. **Madhuri Parekh, *Tortious Liability For Environmental Harm: A Tale of Judicial Craftmanship*, 2 Nirma University Law Journal, (2013)**

Tort is a civil wrong. It signifies the liability of persons that are arises in case of breach or tort of their own duties toward others. It recognises the interests of concerned parties that civil law recognizes in the nonexistence of contractual relations between the wrongdoer and the injured person. In light of this, the author has shed light on the aspects attached to the law of public nuisance in the Indian scenario. The article further addresses the different innovation and development that was followed after the inception of law of public nuisance in India. The paper attempts to review the application of torts' principles in India in context of environmental harms. The principles of torts have been used by Indian judiciary in numerous cases of environmental harms that violates people's right to have clean and healthy environment. It further makes analytical study of the judicial response in the promotion of the principle of absolute liability, public nuisance and negligence giving wide interpretation of tortuous remedy by ascertaining the efficiency of tort in curbing environmental pollution in India.

20. **Ratanlal and Dhirajlal, The Law of Torts, (24th ed., 2004)**

    The book deals comprehensively the various aspects of the tort law. It shed light on the different facets of remedies that are available in the sphere of tort law. One such remedy, i.e., law of public nuisance, has been dealt by the author. The historical origin, the application and the various cases in context of law of public nuisance has been addressed.

21. **Jesse Elvin*, The Law of Nuisance and the Human Rights Act, 62 Cambridge Law Journal*,(2003)**

    The article briefly addresses the different Convention obligations related to environment, reflecting the use of mechanism for securing the Conventions objectives. Further, the author sheds light on the limitations that are involved in this context. Along with it, the article also examines the different public nuisance actions and cases that arose in context of human right violations.

22. **Randall S Abate**, ***Nuisance and Legislative Authorization*, 52 Columbia Law Review, (1952)**

Common law provides numerous forms of legislative authorization for a number of activities which would otherwise make up public' or private nuisance which the author addresses in the article. The degree to which such authorization constitues a privilege from nuisance activities is examined and evaluated in terms of the three categories into which such activities falls, namely, the public actions to command or to inflict criminal punishments upon public nuisances, private actions for special damages that arises in context of public nuisances, and private action to enjoin or to assemble compensation for injuries arising in context of private nuisances.

23. **Keith N. Hylton,** ***The Economics of Public Nuisance Law and the New Enforcement Actions,*** **188 Supreme Court Economic Review,(2010)**

    The law of Public nuisance is rational body of rules that serves asan important mechanism to control the environmental harms for promoting sustainable development. The new enforcement legislations for lead paint abatement or gun control purposes or for global climate change have an arguable notional basis in nuisance law which the author has comprehensively dealt with. Further, the article also sheds light on the inconsistency of various lawsuits in this regard with the other significant parts of the law of public nuisance reflecting the conflicts that arise in this context.

24. **MahajanNiyati,** ***Judicial Activism for Environment Protection in India,4 International Research Journal of Social Sciences,*** **(2015)**

    The environmental protection was of least concern in India's post-independence era owing to the increasing industrialization andpolitical disturbances. Conversely, the Bhopal Gas tragedy becomes an eye opener and the subject of environmental protection was brought up at theCentre stage. In the light of this, the paper has shed light on the evolution of different legislations and principles by the Indian judiciary in the context of Environmental jurisprudence. Further, the author attempts to showcase the insufficiency of the developments brought about by the judicial activism in dealing with environment injuries.

4. THE INTERSECTION OF TORT LAW AND ENVIRONMENTAL LAW

A basic initial phase in breaking down the crossing point of tort and environmental law is to analyze the foundational standards and public policy goals hidden in every aspect of such laws. With respect to environmental law, this reflects a significant challenge.[6]

While recognized globally by Courts, legal researchers, academicians, and even the general population as a particular field of law, environmental law does not have a universally accepted definition. Maybe, the name "environmental law" has come to envelop the varied statutes, rules and regulations, and activities at common law affecting environmental concerns.

These concerns incorporate both mischief to people from dangerous substances brought into an environment, and damage to the environmental surroundings independent of direct harm to a man or other legitimately perceived entity. These interests might include an extensive range of public policy, for example, the control of pollution and counteractive measures taken to prevent such pollution, instruction, scientific tests, recovery, prevention, and remedial equity.

Currently, there is ongoing discussion within the scholarly group over where lines ought to be made, so as to add structure and substance to the prospering field of environmental law. Several scholars and commentators have strived to build up a consolidated platform system, or possibly distil the benefits of, and concerns with, contending formulations.[7] A limit inquiry in this sphere is whether environmental law incorporates any ecological interests being influenced or applies only to specific environmental damages.

For instance, a law putting forward the number of hunting grants accessible in a zone amid a season influences ecological interests, for example, the quantity of a specific species being chased and hunted and the effect on different species in that biological

[6] *See* Elizabeth Fisher et al, *Maturity and Methodology: Starting a Debate About Environmental Law Scholarship*, 21 J. ENVTL. L. 213, 219 (2009) ("Environmental law, as a subject, is ad hoc, a conceptual hybrid, straddling many fault lines, and presumed to have no philosophical underpinnings.").

[7] David A. Westbrook, *Liberal Environmental Jurisprudence*, 27 U.C. DAVIS L. REV. 619, 621–24 (2008)

community. So also, a law constraining the sort or number of guns a man might take with him, or any weapon registration law, can be said to involve ecological interests since it likewise identifies with that hunter's capacity to affect the environmental condition of the environment.

The issue that exists here is whether something like a hunting permit or weapon registration law truly is viewed as falling under environmental law? This is only one fundamental issue enveloping the field, which clarifies why an unambiguous definition is hard to concur upon.A generally acknowledged reason is that environmental law mainly revolved with the anticipation or rectification of ecological harm. What constitutes such mischief, however, is also dangerous to characterize.

Like for example, a law prohibiting the release of crude sewage or dangerous chemicals into a water resource, would likely be seen as a law intended to anticipate or amend an evident environmental damage. All things considered, these substances can bring about serious damage to people, oceanic species, and wildlife. But shouldn't something be said about a law that intends to save a natural preserve? Probably, the reason for such law is to make, a secured zone for environmental life to thrive, prevent any artificial advancement, and anticipate future mischief to the earth. Is this can be referred as environmental law?

It too has the impact of isolating a territory to save a natural environment and limit further advancement, which could damage or generally be said to harm natural surroundings. Should this additionally be taken as environmental law? Furthermore, if it is to be incorporated into the field of environmental law, shouldn't something be said about different laws, for example, zoning laws, which can deliver comparable effects?

The trouble in the sphere of such overlapranges from determining the kind of ecological mischief to be avoided or remedy that could be accessed, and at last unhelpful, definition.[8] This trouble continues to pinpoint the standards and public policies that the sphere of environmental law intends to promote.[9]

[8] Michael Anderson, *Transnational Corporation and Environmental Damage: Is Tort Law the Answer?*, 41 WASHBURN L.J. 399, 415 (2002)
[9]*See* Elizabeth, supra note.1

THE OVERLAPPING SPHERE:

While the core standards reflect how environmental law and tort law can and ought to meet in principle, the limits and the separation of these laws can be reflected by the practical application of these, in field of laws. Tort law has given a way to address certain ecological harms for centuries. In a certain areas, it remains the only selective component to remedy an environmental harm. With the development and advancement of environmental law, tort law has progressively surrendered this obligation, where government and state "environmental" statutes and regulations have been established. A considerable of these laws have additionally introduced new legal mechanism where none of it existed under the tort framework.

The tort framework has never given a solution for nuisance affecting ecological interests without an immediate damage, and has been hesitant to perceive a nuisance endured where the harm alleged is minimal or highly smaller in magnitude towards the plaintiff.[10] For instance, Courts have generally seen with incredible suspicion claims brought by environmental activists or citizens exclusively asserting nuisance done to the environment, frequently, indicating inability to fulfillthe direct damage prerequisites.

The essential tort theories that have been effectively used to cureenvironmental damages are established in the negligence and law of nuisance. The law of Public Nuisance has developed as an important remedy to address environmental interests, only to a limited extent, due to the apparent unclearness and expansive scope of the tort activity.

As Deans William Prosser and W. Page Keeton famously observed, "*There is perhaps no more impenetrable jungle in the entire law than that which surrounds the word 'nuisance'*"[11]

The tort framework of nuisance originated as a criminal writ that could be only enforced by the Crown in the twelfth-century.[12] Since then, the tort law has been associated moderately with only specific set of common law class of crimes. Because governments couldn't make criminal law for each offense, the means of Public

[10] *See* Westbrook, supra note. 2
[11] W. PAGE KEETON ., PROSSER & KEETON ON TORTS 616 (5th ed. 1984).
[12] Denise E. Antolini, *Modernizing Public Nuisance: Solving the Paradox of the Special Injury Rule*, 28 ECOLOGY L.Q. 755, 767 (2010)

Nuisance was used as catch-all mechanism for considering individuals responsible for low-level crimes.[13]

It consequently could be observed that where a environmental law or activity mainly advances restorative equity and prevention, the core principals would seem to envelop the tort law. Such a postulation clarifies why a law dealing with natural preservation, which various Courts might observe as environmental law, does not cover the tort law. The standards and policy goals supporting the law are totally different from that of tort law. Then again, a law that imposes liability for rectifying the harms done by hazardous substances is a law which intends to support corrective justice providing adequate compensation for the direct harm caused and certainly would overlap with the core principles of tort law.[14]

In spheres where an environmental law or activity primarily revolved with other policy considerations, in cases like prevention and preservation, tort law would seem less suited for overlap.

Presently, both categories of nuisance inculcate an element of "unreasonable obstruction" with another's territory and, along with providing the corrective justice.

A Public Nuisance is the "unreasonable harm to the right of public," which incorporates, for instance, the right to use a public street or road, to have clean water resources. The law of Public annoyance has likewise been utilized to end protests, harm caused by the gang activities; over the previous century, different governments have also developed authorized statutes and mandates classifying certain behaviour as falling under the purview of Public Nuisance.[15]

A claim under Public Nuisance can be initiated by individuals or public authorities that have endured a physical harm "different in kind" from that endured by public.

The relief under the law of Public Nuisance is generally the abatement of such nuisance, yet harms can be awarded in specific situations—in particular, where the

[13] Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. CIN. L. REV. 741, 743 (2003)
[14] *Id.*
[15] Oliver A. Houck, *Tales from a Troubled Marriage: Science and Law in Environmental Policy*, 17 TUL. ENVTL. L.J. 163, 165 (2005)

extraordinary damage prerequisite is fulfilled that would permit an individual to take the claim of Public Nuisance.

For instance, in a claim of Public Nuisance which relates to the blockade of Public Street, the relief would regularly have been the abatement of such, that is, removal of blockade. In the event, when the blockade is not detectable and a driver collides with it, he or she would likewise have the capacity to sue for harms arising out of that unique damage not affecting the general society in particular.

On the other hand, Private nuisance includes the unreasonable obstruction with another's entitlement to the personal use. Basically, it relates to the construction of a building that impedes a neighbour's view, or the emission of foul smell, or doing unlawful exercises on adjoining premises. Such exercises which affect individual's possessory interest for his area might likewise, intelligently, ensnare ecological interests, for instance, pair or discharging unsafe substances ashore. The relief accessible here is, for the most part, is tort damages, despite the fact that abatement is likewise conceivable.[16]

To accomplish natural equity within the Indian framework, the structure that imposes liability in environmental harms ought to have unambiguous goals, a substantial hypothetical premise and suitable procedural mechanism. The tool of common law remedy falling under tort law framework as a device for settling environmental cases in India in advanced time was perceived strictly after the Bhopal Gas Disaster in 1984 and the Shriram Gas Leak Tragedy in 1987[17].

From that point, statutory environmental laws grew to a great extent taking into account the procedural mechanism given by the Constitution of India (COI) and the authoritative structure as visualized in the various statutes of Air Pollution (1982), Water Pollution (1974), and the Environmental Protection Act (1986) and many other like statutes, by the means of judicial activism, by introducing the device of Public Interest Litigation and by altering procedural principle of locus standi within it.

With respect to India, the oldest form of claim in the ecological matters was the remedy of a common law, mostly, in the form of nuisance action. An analysis of the

[16]*See* Denise E. Antolini, supra note.7
[17]Madan B. Lokur, *Environmental Law: Its Development And Jurisprudence* , 9 J. Envtl. L. (2001)

Supreme Court cases of the periods of 1905–1950 and of1950–1980, unravels that only a modest bunch of tort actions concerned with public and private nuisance claims were in favour of the plaintiff where he was compensated in the form of damages.

The common law was a part of the "laws in force" preceding the reception of the Constitution and was continued to be enforced by virtue of Article 372(1) of the Constitution, and in addition to it, has developed by mixing the principles underlying the common law of torts of England and adjusting these to Indian situations.[18]However, the relief for damages arising under tort and ecological claims has been comparatively low.

In this context, Divan and Rosencranz states that the remedy in the form of damages did not acted as a deterrent to the polluter[19]. Furthermore, such cases took quite a while to go through the Courts and the issue of inflation and its incidental effects in the developing economy weakens the estimation of the damages that an offended party received in a successful claim.

Accordingly, most claims in the environmental cases were filed asking for the relief of temporary and permanent injunctions. The two relief of injunctions under the framework of tort law, have end goals of deterrence and remedial equity i.e., corrective justice.

However, the Technical challenges relating to the private action claim India, in addition to the different variables, for example, contrasting philosophy and amendments done in respect to right to property, have further acted as constraints for limiting the scope of tort law action.

Furthermore, claims of tort law action requires unreasonable interference by a specific identifiable respondent and a causal connection to be set up between the injurious conduct and environmental injury, which requires specialized knowledge along with environmental understanding.

[18]AnshumanMozumdar, KartikeyMahajan,Krithika Ashok, *Environmental Torts: A Step Towardsthe Legal Revamping Policy Related To Environmental Protection,*3 Journal of Environmental Research and Development, (2008)
[19]*Id;*

As was observed in the famous **Bichri case**[20], that the tort law does not work efficiently in situations where there are various unidentified defendants. Furthermore, a fundamental element to be considered in the tort law is that it is primarily concerned with the individual's interest rather than the environmental interests. However, it could be seen that the legal tradition in India has peculiar characteristics as it is mainly influenced by the interrelations among different law, theories and religious customs, which is distinct from the legal tradition enveloping the west.

The progression of the environmental jurisprudence depended mostly on the statutory and constitutional provisions falling within the sphere of public law in India. This application of different mechanisms of liability arising in cases of violation of public right and the protection of environment via regulation gives a common platform where specific features of tort law framework and legal tradition intersects with the goals intended to be achieved by environmental law. However unfortunately, the principle hindrances that lawyers and injurious parties faces, falls under the sphere of, enforcement, operation, segregation and ambiguous areas under which environmental liability acts.[21]

In spite of the acknowledgment of the legal tradition, the Environmental arena in India has its own peculiar characteristics. It is not easy to separate the application of the official law or that which is prevalent under the legal structure of India. The common law framework of tort which was not so efficient in resolving the environmental issues has advanced by acquiring its own characteristics in the manner of the modification of principle of strict liability into absolute liability principles through the various decisions rendered by the Courts. However, it has only efficiently advanced in England by the change in its principles of civil liability and not elsewhere.

In the traditional environmental tort claim imbibing elements of nuisance or negligence done or both, an accident happens discharging a risky substance onto another's property. The polluter is plainly identifiable, the affected sphere being generally restricted, the harms brought about and or capable of being brought without remediation are known, and the degree of the harm done both to persons and his

[20] 1996 AIR 1446,
[21] *See* Anshuman, supra note 15.

premises are promptly quantifiable. The components of the tort activities are fulfilled, and thus, the common law can give sufficient relief. Yet, only once in a while in environmental tort actions are these concerns, so obvious. Parties generally debate over the extent of the affected region, the side which would be held accountable, cause of action, and the potential long haul impacts of a perilous substance discharge.[22]

Under the sphere of tort law framework as common law remedy, for example, through the claims of negligence and nuisance claims, the essential strategy goal is to give remedial equity through remuneration to the harmed person. The subsequent advantage with respect to the environmental protection is accomplished by rectifying the harms by means of relief under tort law, which all or more nearly looks like a subservient goal or the outcome of the restorative equity. In other words, the claims under the negligence or nuisance cases are not specifically associated with enhancing or anticipating natural conditions; the goal is to restore the affected parties to their original, pre-damage condition, paying little heed to how the environment and its surroundings was antagonistically affected.[23]

This highlights a noteworthy weakness of tort law as a solid solution for natural damages. By and large, for an offended party to succeed under a tort law hypothesis of nuisance or negligence, a damage of some sort more likely than not happened.

Despite the comparative efficiency provided by the common law, tort law remains an imperative means to determine damages done to nature. On account of nearly basic and direct damages, in cases like, flooding another's property or damaging the plants, tort law might give the only main method for relief that is available.

Also, where an introduction of a matter onto another's property or public sphere is not principally lethal in nature, for instance dumping a soil heap or bringing on undesirable vegetation, such activity will likely to rest solely within the tort framework.

Again, These claims are zones where the tort components promptly suits and the extent of the harm is very much characterized and comprehended, just like the

[22] Joseph H. Guth, *Law for the Ecological Age*, 9 VT. J. ENVTL. L. 431 (2008), available at: http://www.vjel.org/journal/pdf/VJEL10068.pdf (March 04, 2016)
[23] *Id*;

measure and type of remedial means. Where the circumstance is more genuine and unpredictable, various parties are included, and the extent of claimed harm is wide enough, the environmental enactments reflects to be more fundamental and successful than the law of public nuisance.[24]

The limited scope between tort law and enactments intended to cure ecological harms leaves a huge room where number of environmental statutes and incidental laws and regulations works outside the purview of tort framework.[25] Generally, this sphere range is covered mostly by statutory laws, expected to preserve ecological assets or keep future damages from happening rather than reacting to a mischief that has, as of now already happened.

Statutory environmental laws aim to promote a conduct that facilitates an ecological goal.These laws intends to fill up the hole created by a tort framework that does not address damages relating to environmental interests or incidental things, where harms are not principally preposterous or carelessly done.

The partition lying between tort law framework and the various enactments and statutes that intends to advance environmental goals, brings up the issue of whether, and if so how, tort law could be said to be connected to spheres where an environmental law braces tort law approaches, yet the common law has not customarily given a relief. This would be the circumstance in which an enactment promotes remedial equity and deterrence, and is generally adjusted to the principle goals of tort law framework, but no enforcement or implementation means has been provided by the law that is at issue. Could tort law act as hero in these situations?

While illustrations reflecting these precise standards are hard to discover, one helpful instance can be the present push to utilize the mechanism of law of Public Nuisance to discourage emissions with respect to the worldwide concern of climate change, and to apply remedial equity against extensive emitters.[26]

Several tort claims have arisen against both public and privately owned businesses asserting that their outflow of carbon dioxide and different gasses, referred as

[24]Thomas W. Merril, *Global Warming as a Public Nuisance,* 30Coulm. J. Envtl. L (2005)
[25]*Id.*
[26] Dana, David A., *The Mismatch Between Public Nuisance Law and Global Warming,* Faculty Working Papers, (2008),available at http://scholarlycommons.law.northwestern.edu/facultyworkingpapers/151, (March 07,2016)

"**greenhouse gases**" (GHGs), have essentially added to **"Public Nuisance of global warming**."[27] The offended parties in these activities have sought for reduction of the affirmed aggravation and private people have sought for both monetary relief and reduction.

The relief of abatement is not the quick suspension of discharges as would be the situation in a conventional Public Nuisanceclaim, but instead, a predefined lower level of such emanations would be accomplished. Once more, environmental enactments are creation of perplexing standard-setting for necessary conduct to be followed, fusing numerous scientific standards, public policy standards as inputs; law that is different from tort law which looks at the issue whether a damage is brought about by an unreasonable behaviour under the tort law.

The use of law of Public Nuisance as a solution for the issue of climate change starkly shows the significant issues that emerge in endeavours to extend the utilization of tort law past its conventional limits. In addition, the sources related to emission of carbon dioxide and different GHGs are scattered all over the world, and the cure looked for, by the offended parties in the Public Nuisance cases relating to climate change ,will give small, if any, advantage with respect to compensation, or lessening, any of the damages connected with the alleged offender's tortious behaviour.

Regardless of the fact that the offended parties were to win on the benefits in these cases, coal entities in China, autos in Brazil, planes in Russia, steel organizations in India, would keep on emanating billions of huge amounts of GHGs every year into the environment, as would the same emitters worldwide. In this manner, emanations of GHGs connected with the unfavourable effects emerging in relation to climate change will proceed without any reduction around the globe.[28] Hence, the principle reason of the existence of tort law is to give a type of restorative equity through a relief that can end unreasonable behaviour or make up for mischief done by way of damages and is absolutely ailing in the general claims of Public Nuisance relating to climate change. [29]

[27] Connecticut v. Am. Electric Power Co., 582 F.3d 309, 314 (2d Cir. 2009)
[28] JANE A. LEGGETT ET AL., CONG. RESEARCH SERV., RL34659, CHINA'S GREENHOUSE GAS EMISSIONS AND MITIGATION POLICIES 8 (2008)
[29] Stout, Lynn A. and Barnes, David D., *Economics of Property Rights and Nuisance Law*,(2001)available at http://encyclo.findlaw.com/2100book.pdf , (March 5,2016)

Considerably more essential to the maintenance of a genuine tort law case is a situation where the litigants are, conducting a lawful behaviour which is in accordance to the terms and states of licenses issued by the authorities falling under the environmental law. There, the litigants are said to have not disregarded any statutory environmental law that, albeit different from liability arising under the common law tort framework, that could be said to reflect wrongful behaviour.

Utilization of tort law with an end goal to rectify harms of climate change is lost for different reasons also. The utilization of framework of law of Public Nuisance in this specific arrangement sphere has reflected that, when endeavouring to address an issue with complexities associated with the issue of climate change, efficiency could not be achieved by way of tort law.

5. DEVELOPMENT OF PUBLIC NUISANCE PRINCIPLES

The law of Public Nuisance is old, just like the perplexity and the clashes and the open deliberations with respect to its definition. The tort originated during feudalism of the Middle Ages and was adopted by British India. Despite its constant suitability, the tort law has dependably been hard to comprehend and apply. Typically, when Horace Wood distributed the principal American treatise on nuisance in 1875, he depicted Public Nuisance as a "impenetrable jungle."[30]

A few legal jurists attempted to dissipate this perplexity. For instance, United States Supreme Court Justice George Sutherland once portrayed a Public Nuisance as "just a right thing in the wrong place—like a pig in the parlour rather than the barnyard." His perception is reliable with the legitimate saying "*sic uteretuoutalienum non laedas*," which implies that property is held with restriction that its utilization ought not harm others or violate the rights of public and interests of the society. This rule is the establishment of the tort law of nuisance.

It is by and large concurred that English common law Courts developed the tort of nuisance amid the twelfth century. Initially, it was just accessible to the Crown and was used to prevent individuals from infringing on the King's property or obstructing a public street or road.[31] Earlier, most nuisance cases were conveyed to cure infringement of property rights. In very rare events, nonetheless, early nuisance cases were conveyed to cure hostile acts not relating to property (for instance, "offering a homicidal crazy person' to get away with some assistance and stealing public funds").[32] Consequently, the power to initiate actions against Public Nuisance was not sourced from the notion of private "tort" idea but instead it was taken from what is currently known as the sovereign's "police power."

During the period of 12th and 16th centuries, Public Nuisance was regarded as a "criminal" tort held only for the King. Residents were not permitted to file cases of nuisance to recoup for damages perpetrated by other person against them.[33] This restriction was put to an end in 16th century, subsequent to the contradicting view of a

[30] H. G. Wood, A Practical Treatise on the Law of Nuisances in Their Various Forms; Including remedies Therefor at Law and in Equity (3d ed. 1893)
[31]Louise A. Halper, *Untangling the Nuisance Knot*, 26 B.C. Envtl.Aff. L. Rev. 89, 90 (1998).
[32]*Id.*,
[33] Michael Anderson, *Public Nuisance and Private purpose: Policed Environments in British India, 1860-1947*, SOAS Law Research Paper (1992)

judge that normal individuals ought to be permitted to sue and recoup harms created by acts of Public Nuisances in specific circumstances. Thus, private individuals were guaranteed the right to file cases in respect to Public Nuisance, however, such can only be filed if they could demonstrate that theyendured a "specific" or "extraordinary" damage that was definitely not common to the public.

To be extraordinary, the damage must be "diverse in kind," not simply more serious than that endured by the general public. Another critical difference between the cases of Public Nuisance activities taken up by the Crown and those brought by the overall population was with respect to the cure accessible. Private individuals were constrained to only seek monetary related relief , in light of the fact, that injunctive remedy or remedy for reduction of harms were exclusively held for the Crown. Consequently, the law of nuisance started to incorporate components of criminal, property and tort law.

Slowly, English common law Courts permitted individual in addition to the Crown to file cases relating to Public Nuisance activities so as to resolve the issues of public, for example,the privilege to securely walk on public expressways, to inhale clean air, to not to be disturbed by huge social events and to be vindicated from the spread of irresistible diseases.

The common law was introduced in India by The British, in the eighteenth century. In the quarter century subsequent to 1857 rebellion, the lawful framework was systematized.[34] Various Courts were set up in each district. A number of laws, taking into account, the English law were made and were applied to the British India. Till 1882, laws relating to crime, business, and procedures were completed and codified. The significant area which was not codified was the tort law. The general applicable law in India with respect to the tort claims is the common law of England.

The term nuisance is taken from a French term "nuire" which means ''to hurt or pester". [35]As per Blackstone, nuisance is "anything that worketh hurt, inconvenience or damage."The definition engulfs the different wrongs happening in the ambit of nuisance. By virtue of common law, land proprietors or lease holders and so forth

[34]Id,

[35] Mary Elliott Rollé, *Accountability :Contesting Legal And Procedural Barriers In International Toxic Tort Cases*,26 Geo. Int'l Envtl. L. Rev.,**(1997)**

thathave the genuine property have a right to use their property minus all potential limitations. In spite of the fact that this does exclude those individuals who does not have any interest in the subject matter of the property of the proprietor or who is a outsider to such premises. In the event, that a person or a neighbour meddles with the peaceful satisfaction in the land of proprietor, by creating noises or contamination or whatever other kind of obstruction, then the proprietor of such land who get affected by such obstruction, can assert right to have remedy under the law of nuisance.

In **Bowman VsHumphery**,[36] Justice Weaver clarified the definition of nuisance as "A nuisance is a condition and not an act or failure to act on the part of the person responsible for the condition. If the wrongful condition exists and the person charged therewith is responsible for its existence, he is liable for the resulting damages."

In this way, the presence of nuisance in a circumstance is not measured by its impact but rather by the condition which exists around then. For the most part, nuisance alludes to the obstruction with the enjoyment of other person yet where significantobstruction happens and thus a remedy can be taken even in the absence of what created such nuisance.

As indicated by Winfield, the term nuisance implies, " an unlawful interference with a person's use or enjoyment of land, or some right over, or in connection with it." In addition to it, the conducts that can be referred as nuisance are – commotion, vibrations, noise, smell, vapor, water, heat or illness caused by germs.

5.1 CLASSIFICATION OF NUISANCE: Nuisance, broadly can be categorized into two types of nuisance:-

1) Public Nuisance

2) Private Nuisance

Public Nuisance:- The meaning of Public Nuisance under the conventional notion can be defined as, "an act committed by a person which is not warranted by any law or where he refuses to obey a legal duty imposed upon him, where the effect of such an act will amount to endanger the life, health or property of the person committing

[36]512 U.S. 477, 485-87 (1994).

such an act will be considered guilty of Public Nuisance (also called common nuisance)"

The examples regarding Public Nuisance can be mentioned as follows:-

i) Creating barrier in highway.

ii) creating blasts in the residential areas.

iii) By leasing a property to be utilised as a dumping ground, which amounts to environmental harms.

iv) Polluting a public stream of river.

v) Emission of harmful substances by factories in residential location.

Thus, an act of Public Nuisance results where an individual performs or does not perform, any activity or act, which is not justified by law, and the impact of such activity or the act results into harming the well-being, property, life or convenience of public whereby the rights of public, shared by all, gets interfered with. A Public Nuisance falls under both tort and the essential elements of both remaining the same.

Whether an issue which is complained adequately affect the public rights, thereby creating Public Nuisance, is a question of fact. It is not important to demonstrate that each individual's right from the class or nearby area has been severely influenced; what is enough to demonstrate is that a considerable part of such class or nearby area has been influenced by such act of nuisance. A common harm that influences a segment of the class is enough to show that nuisance is a Public Nuisance.

Chadwick LJ, in the case of "**Wandsworth London Borough Council v. RailtrackPlc"**[37], recognized the three components that are to be shown for arising liability in cases of Public Nuisance, in particular, the knowledge that defendant's act is creating nuisance, there are sufficient means to forestall or lessen it, and there is failure to adopt such sufficient measures within a reasonable period. In the event that the defendant knows about such act, has the way to subside it,but has picked not to adopt such means to lessen the act of nuisance, then liability gets attached to the defendant.

[37] [2001] BLR 160

In the case of "**Jan de Nul (UK) Limited v. NV Royale Belge**", Moore-Bick LJ observed, with respect to the digging operations done nearby the Southampton Water, that brought about silting in area of business wharfs along with oyster bed of claimants, that:

"*Liability in Public Nuisance, however, raises more difficult questions. Although it does sometimes arise for consideration in the context of an interference with the plaintiff's use and enjoyment of land similar to that which would support a claim in private nuisance that is not its essential nature. Perhaps it is most commonly encountered in the context of obstruction of the highway or of a navigable waterway interfering with the public right of passage, but, as the scope of Public Nuisance is wide and the acts and omissions to which it applies are all unlawful. Private nuisance, on the other hand, is only concerned with interference with the use and enjoyment of land and may be committed by doing acts which are not necessarily unlawful in themselves.*"[38]

Once it is demonstrated by the plaintiff that he has endured some immediate and considerable harm far beyond which is endured by general public, the damages can be awarded to him for the injury suffered.

Dyson LJ along with Ward and Smith LJJ observed in a famous case,that:*"The essence of the right that is protected by the crime and the tort of Public Nuisance is the right not to be adversely affected by an unlawful act or omission whose effect is to endanger the life, safety, health etc of the public. Unlike a private nuisance, a Public Nuisance does not necessarily involve interference with use and enjoyment of land. In these circumstances, it is difficult to see why a person whose life, safety or health has been endangered and adversely affected by an unlawful act or omission and who suffers personal injuries as a result should not be able to recover damages.*

The purpose of the law which makes it a crime and a tort to do an unlawful act which endangers the life, safety or health of the public is surely to protect the public against the consequences of acts or omissions which do endanger their lives, safety or health. One obvious consequence of such an act or omission is personal injury. The purpose of this law is not to protect the property interests of the public. It is true that the same

[38] [2000] 2 Lloyd's LR 700

conduct can amount to a private nuisance and a Public Nuisance. But the two torts are distinct and the rights protected by them are different."[39]

In the case of **Leanse v. Egerton,**[40] The offended party, was walking on the expressway and was harmed by glass tumbling from the window of an empty house which belonged to defendant. Due to air raid, the window was broken. The arguments put forward by the defendants was that the office was shut down during weekends and there was trouble of getting labourers in such days and hence no measures was taken in this regard. The proprietor had no genuine information of the condition of the premises.

It was decided that the defendant must be ventured to know about the presence of the nuisance, whereby he had neglected to find a way to convey it to an end, in spite of the fact that he had sufficient time to do as such and therefore, along these lines, he had "proceeded with" the act of nuisance and was liable to pay damages to offended party.

In the case of **Attorney General v. P.Y.A. Quarries**[41], it was decided that the act of nuisance from the vibration creates inconvenience to individuals and adequately fits the arena of Public Nuisance and injunction can be given to plaintiffs against the quarry proprietors to restrain them to carry on business.

Unlike Public Nuisance, private nuisance occurs when an act affect some specific person or individuals as distinct from the public in general. The remedy for such private nuisance is a civil action for seeking an order of injunction or compensation.

Components of Private Nuisance

Private nuisance refers to interference or disturbance which is unlawful in nature, that results into harms to the proprietor of an area or occupier in context of his right to use or enjoy such area..

In this way the components of private nuisance are:

1. Unlawful obstruction or interference;

[39] Re Corby Group Litigation [2009] QB 335
[40] (1943) 1 KB 323,
[41] (1957)1 All ER 894

2. Such act of interference is in respect to the owner's right to use or enjoy such area or in relation to such area; and

3. Act has resulted into damages.

Nuisance might be concerned with property or with individual physical inconvenience.

1. Harm to property:- For the situation of harm to property, any sensible damage will be adequate enough to constitute a case of nuisance. In the case of **St. Helen Smelting Co. v. Tipping**[42], the trees and plants of plaintiff were damaged by the vapour from the respondent's manufacturing plant.. The Court held that such harms constituting damage to property offered a case of nuisance.

In **"Ram Raj Singh v. Babulal"**[43], the offended party was a doctor and he filed a complaint that adequate amount of dust arising from the defendant's brick mill used to enter the clinic and created uneasiness and disadvantage to the offended party and his respective patients.

The Court held that when it is proved that adequate amount of dust from the mill that as established near the doctor's clinic went into that clinic and an flimsy red covering on garments resulted then, it is implied that doctor has demonstrated that specific harm occurred to him and since the dust is a public peril bound to harm the well-being of persons, the claim of doctor can be allowed.

In **Dilaware Ltd. v. Westminister City Council**[44], the defendant was proprietor of a tree that was being grown in the highway's footpath. The adjoining property was cracked due to the roots of the tree. The owner of the property was entitled to claim reasonable expenses due to the continuing nuisance created by the trees.

2. Physical inconvenience

In the event of physical inconvenience there are two crucial conditions to be satisfied:

[42] (1865) 77 HCL 642:,
[43] AIR 1982 All. 285:
[44] (2001) 4 All ER 737 (HL):,

a. The resulted harm has caused injury to the plaintiff's right to use or enjoy the property which has been affected by nuisance. Further, such affected property must be one in which he has interest.

b. Substantially meddling with the ordinary enjoyment right of the person.

Thus, a case of private nuisance is generally claimed in admiration of acts that are directed towards the plaintiff's right to enjoy or use his property without any interference by the other, whereby only the individual having some kind of interest in property might sue. The principle embodiment of this right, which comes under the purview of tort law of private nuisance, is the right to make the most use of own property. This right is not attached with the licensee of such property.

This is most likely that damages for private harm can't be recuperated from a suit of private nuisance. It is on account of the reason that tort of private nuisance rests on the violation of one's private right by the other person. This was similarly applied to the rule laid down in Rylands v. Fletcher, where it was observed by Lord Bingham that "the claim cannot include a claim for death or personal injury, since such a claim does not relate to any right in or enjoyment of land. It must, I think, follow that damages for personal injuries are not recoverable under the rule".

In the case of "**Transco Plc v. Stockport**"[45], it was observed by the House of Lords that the procurement of supply of water to few flats by way of an interfacing channel from the central conduit, although fit for creating harms in the occasion of a break, did not resulted into a special peril that reflects a phenomenal utilization of area; and therefore, the claims of such nuisance fall outside the ambit of the rule.

Nuisance ought to be distinguished from Trespass, Negligence

5.2. NUISANCE AND TRESPASS

Primary differences in the middle of nuisance and trespass are:-

a) If there is immediate obstruction, it adds up to trespass. For instance – when a man plants a tree on another's territory, it is trespass. Where such is substantial, it adds up to nuisance. For instance – where a man plants a tree all alone on his land, however the trees branches and roots reach out to the place that is the property of other person.

[45] [2004] 2 AC 1

b) In trespass, there is obstruction with the individual ownership of land. In nuisance, there is obstruction with peaceful enjoyment of the persons use or property.

c) In trespass, obstruction is constantly brought on by a substantial item or by some material.

d) Trespass can be seen prima facie and action could be taken per se where as in Nuisance, an extraordinary harm must be demonstrated.

5.3 NUISANCE AND NEGLIGENCE

In Nuisance and negligence, intersection does happen, a activity of negligence, likewise, also likely to create nuisance. Like, a case where the water was released from the respondent's property, which created harm to the property of the plaintiff, thereby creating cause of action under both the torts of nuisance and negligence. Although, negligence is not an essential requirement in cases of nuisance but it may lead the act to fall under both.

In another instance, A was doing some development work close-by B's facility. The job comprised of digging and piling work. The wall of clinic of B because of this work got split and cracked. A contended that he took all safety measures required by him to be taken. Court gave compensation by way of damages to B by acknowledging his case. Toward the end, in the appeal, A changed the principle issue stating that the act amounted to negligence and no act of nuisance existed and as such his claim ought to be accepted. The Apex Court decided that negligence do not form an essential to the nuisance. The primary concern which is important here is the verification of exceptional harm done to B by the conduct of A on his territory and hence the appeal was rejected.[46]

One of key distinction in a case of Public Nuisance and of negligence is in respect of burden of proof. With respect to a case of nuisance, once the essential elements of nuisance is said to be proved and it is demonstrated that such act is done by the defendant, the burden of proof shift to him to put forward his defence so as to justify his alleged act of nuisance.

[46] Re Buncefield Litigation, Colour Quest Limited and Others v. Total Downstream UK Plc and Others, [2009] EWHC 540 (Comm)

In the **Corby case**[47], it was addressed by the court that the problem results in determining whether negligence forms a substantial part within the tort law of Public Nuisance, especially in the cases where acts results into private harms. The substance of claim of Public Nuisance lies in the fact in such claims, the resultant Public Nuisance is due to the individual's unlawful omission or activity which causes endangerment of public's well-being or life.
The case related to the emission of hazardous substance and its spreading onto public roadways and expressways which endangers public's well-being and health. Thus, it is not necessary that breach of statutory obligation or negligence might be a part of Public Nuisance, yet, in cases, where the act of breach of statutory obligation or negligence results into endangerment of well-being and life, it gives rise to Public Nuisance.

A case of Public Nuisance can be brought by a private individual in the event he demonstrated that he has endured some "special or specific injury" other than the damages which were endured by the public at large and such injury is immediate and considerable in nature.

In the case of **Anderson et al v. WR Greene and Co**[48], the case of Public Nuisance was brought against the defendant for bringing wrongful demise and agony to the minors' administrators because of the resultant death of the minor due to introduction of polluted water in his body, and thereby dying of leukaemia. The Court decided that the act of polluting the water results into Public Nuisance and the claimant have endured extraordinary or specific harm and thus, their claim for compensation is liable to be succeeded.

It was further observed by the court that harms with respect to an individual's well-being, are itself "exceptional and special injuries" and since it was shown by the plaintiffs that they endured the various diseases due to the polluted water, their claim is to be allowed against the Public Nuisance. The damages awarded for personal harm might be similar to the case for negligence, yet they are entitled to get such insofar that they didn't get two-fold recuperation with respect to any component of harm.

[47] [2009] QB 335
[48] 628 F Supp 1219

In the case of **AB and others v. South West Water Services Limited**[49], around 20 tonnes of aluminium sulphate, was unintentionally exposed to the drinking water supply provided by the defendants at Camelford in Cornwall. The polluted water was drank by the plaintiffs who were around 180 which resulted into enduring different health related diseases by the plaintiffs. Cases under Public Nuisance, breach of statutory duty under Water Act 1945, negligence were filed. It was decided by the Court of Appeal that yet the plaintiffs were qualified for getting the general compensation owing to the harms resulted as an immediate after-effect due to the defendant's breach of statutory duty, they are not entitled for special damages under the tort law of Public Nuisance.

5.4 NUISANCE AND THE RULE OF RYLANDS Vs. FLETCHER,

The Rule of **Rylands Vs. Fletcher**[50] attaches liability in the circumstance where anything that can cause escapes from A's property to B's territory, thereby causes damage . This situation may makes a right in the tort law of nuisance, directly.

The principle contrast between the two is that in Nuisance there exist nonstop obstruction. However in the event of Rule of RylandsVs Fletcher,it was held that a solitary conduct resulting into nuisance is adequate to make a case fall under it.

The Rule of Rylands V Fletcher is applied when there has exists some special utilization of property which caused dangers to the other person's property. This does exclude the damages done to the property of neighbouring owners by the general utilization of one's property. utilization of the area.

Generally, the notion of nuisance under English law existed since Henry III reign. Earlier, there were four sorts of solutions for an offence of nuisance. To start with it, the first was the abatement of nuisance where respondent's activities meddled with the petitioner. Secondly, the property was alienated which was alleged to be in question with respect to nuisance. Thirdly, the remedy of writ of trespass was available and Fourthly, was the remedy available in law of nuisance as it was quicker than alternate actions. Amid seventeenth century, another point of view, was developed in regards to

[49] [1993] QB 507
[50] L.R. 3 H.L. 330 (1868)

the protection of the right to use the claimant property, which compelled the offender to have an obligation to anticipate nuisance, in whatever way imaginable.[51]

Amid twentieth century, the application of the law of nuisance started posing difficulty, which introduced zoning. This depicted what actions are permitted in a given area. For Example – where a plant works in an industrial range, then the general population living in the neighbouring mechanical zone can't make a case under the law of nuisance.

Environmental Nuisance:- The word "environmental nuisance" in the field of ecological science, also incorporates commotion and light pollution. There are few exemptions to this definition which does not mean ecological nuisance in legitimate matters. For instance, overabundance of insects can be referred as "nuisance population" in an ecological manner. In general manner, to create a case of nuisance, the complaint ought to be filed must show material and unreasonable obstruction with respect to nuisance. Various test and standards are laid down by the court in deciding what a reasonable obstruction is.

At the point, when making decision, the trial court ought to remember the conduct of rationality and equalization the variables in respect to harms done and the kind of effect on the affected neighbour. In the case of**Macdonald V. Perry**[52], it was decided that,a grave nuisance in one zone due to the intensity of population may be regarded as legitimate and unobjectionable in another area owing to different factors and situations. The act that creates nuisance by interfering with other person's right to use or enjoy relies on the circumstances and can't be obviously given precise definition.

Ordinarily, the issue with respect to the presence of nuisance in a circumstance, relates to the question that whether it has resulted into injury or not, relies on the judges. In order to hold defendant liable, the offended party must demonstrate that the behaviour of the respondent was irrational. Along these lines, the onus to demonstrate the act of nuisance done by the defendant rests on the plaintiff.

The case of nuisance additionally relies on the progression of the activity in a considerable time frame. However, such continuity does not imply that such an act

[51] Supra note. 42
[52] 74 F.2d 371 (1934)

must be habitual. A single conduct by the defendant that gives rise to the continuing outcomes from such conduct of nuisances can likewise fall under nuisance. For the most part, a nuisance can't be said to be established until there is damage or harm resulting from such activity.

In many cases, it is seen that, the Courts have distinctive perspectives with respect to the components which constitute mischief or harm. In one perspective, to claim remedy for nuisance is, that there must be interference resulting from such alleged conduct of nuisance.[53] Along these lines, the nuisance is taken as annoyance or interference of an individual's right or interest to use or enjoy which might not include a physical interference with the property of the plaintiff. So, the components of nuisance can be summed up as follows: - The obstruction caused by a person should be material to bring a case of nuisance;interference with a person's right to use or enjoy his property must be done.

To figure out what is unreasonable or irrational, the circumstances of every case are to be examined. For instance – smoke and sound which are normally regarded as a nuisance in residential area won't be regarded as act of nuisance in an industrial zone. Considerable inconvenience ought to be characterized in respect of the area. There must be some damage or obstruction. Infringement of standard values alone would not amount to nuisance. The harm done should be such inconvenience which is recognizable. The nuisance must, additionally, be proximate after-effect of the harm. The resultant damage caused under the law of nuisance ought to have been created by the activities of the defendant.

A standout amongst the most vital component of the nuisance is that it must include the continuity of the alleged act. Nuisance does not include temporary disturbance. It is a result of this reason, that natural disaster or unavoidable mishaps are not regarded as nuisance even after they have resulted into great disturbance. The situation must be directly attributed towards the alleged activities of nuisance done by defendant. After it is demonstrated that such situation was created by the alleged activities of defendant, liability can be attached to the defendant regardless of the manner of his acts.

---

[53] William E. McNally, Barbara Cotton,PamelaFischer,*Is The Tort Of Public Nuisance Still A Useful Tool For The Plaintiffs' Personal Injury Bar?* (2005) available at http://bottomlineresearch.ca/articles/articles/pdf/public_nuisance.pdf, (March 13,2016)

5.5 DOCTRINE OF PUBLIC NUISANCE AND PUBLIC TRUST

The source of evolution of the doctrine of Public Trust and Public Nuisance are strikingly different. The law of Public Nuisance is established in tort law framework while the doctrine of Public Trust originates in property law. These doctrines share common characteristics. As of late, scholars and jurists have promoted both these doctrines as mechanism for environmental protection.

The doctrine of Public Trust states that specific natural assets, due to their inherent nature, owned by the general population and for the advantages, have to be managed by the govt. Conventionally, this doctrine of Public Trust was particularly had application to the navigable river and the area underlying them.[54] During the later times, nonetheless, it was observed by Courts, that the area including beaches and park land also lies under the purview of this doctrine.

The doctrine of Public Trust is regarded as a tenet of property law which portrays it as "a type of inalienable easement for specific public purposes" whereby some natural assets comes under the purview of inherent rights of public, regardless of the fact that those assets belong to a private person.[55] The doctrine of Public Trust acts as tool to prevent activities carried out by state or private individuals, where such activities defeat the aims of Public Trust, and the doctrine acts as guard, or works as a shield to safeguard the natural assets whereby compensation can be provided if such assets are improperly utilized for private purpose.

The law of Public Nuisance, on the other hand, safeguard the public against preposterous and considerable obstruction with their rights. Having origin in common law in criminal indictments, it more commonly falls under civil tort.

Public Nuisance is not a common tort, but in any case, the claim under it is generally put forward by the govt. officials which reflect the use of govt authority. While the cases of private nuisance necessitates the element of violation of right to enjoy or use one's property, the law of Public Nuisance secures wide scope of rights ranging from protection of well-being, life ,security where it is not necessary that the rights are attached to some land or specific property.

---

[54] *Rhode Island v. Lead Indus. Ass'n*, 951 A.2d 428, 453 (R.I. 2008)(

[55] Alexandra B. Klass, *Modern Public Trust Principles: Recognizing Rights and Integrating Standards*, 82 NOTRE DAME L. REV. 699, 707-08 (2006).

The rights that are secured by the law of Public Nuisance might cover the rights which are secured by doctrine of Public Trust, for example, blocked conduits, contaminated water, can be regarded to fall under both. Different scholars have described the intersection in different manners. William Rodgers portrayed act of Public Nuisance as an "inland form of Public Trust doctrine."[56] It was recommended by the Allan Kanner and Mary Ziegler, that the doctrine of Public Trust safeguards "environmental assets held for all."[57] These synopsis portrayals, at one hand, acknowledge the key distinctions between these doctrines and on the other identify the end-goal of safeguarding the public interests in the environmental arena, which is common to these doctrines.

5.5.1 PUBLIC TRUST AND PUBLIC NUISANCE DOCTRINES: SIMILARITIES

The doctrines of Public Nuisance and Public Trust share common features under the legal framework. To be specific, these doctrines secure the community interests against private interests which are in excess, acting smoothly as common law barriers to the political disappointments.

It is by no mischance that the term "public" is incorporated in these two doctrines as they reflect the community welfare. These doctrines acts as defences of society's more extensive interests inside of the political and social sphere which enviously ensures private interests. These doctrines specifically embody the principle that private interests cannot be promoted by overriding the community interests whereby such private interests are confined in a civilized community.

The doctrine of Public Trust, fundamentally revolves around "privatization of property and assets, that has gone too far."[58] The key principle in respect of this doctrine is that there are specific assets which are so fundamental to social prosperity that they must not to be used for private interest. Since the ancient times, specifically, guaranteeing the public to make use of seas and water channels has been indispensable to secure trade and commerce. It is obvious that the principle

[56] Carter H. Strickland, Jr., *The Scope of Authority of Natural Resources Trustees*, 20 COLUM. J. ENVTL. L. 301, 315 (1995) (quoting WILLIAM H. RODGERS, JR., ENVIRONMENTAL LAW § 2.16, at 173 (1977)).
[57] Allan Kanner& Mary E. Ziegler, *Understanding and Protecting Natural Resources*, 17 DUKE ENVTL. L. & POL'Y F. 119, 128 (2006).
[58] Barton H. Thompson, *The Public Trust Doctrine: A Conservative Reconstruction &Defense*, 15 SOUTHEASTERN ENVTL. L.J. 47, 59 (2006).

underlying the Public Trust by safeguarding the community rights over specific natural assets strengthen the private interests.

Protecting the water channels that are accessible by the public, for example, encourages exchanges and business which may be inconceivable in framework that is more oriented towards private rights. Indeed, the aims underlying the doctrine of Public Trust are not restricted to promoting the business, it also incorporate recreational and environmental aims. These more extensive aims underlines the key stand that the govt. acts as trustee to these natural assets for the overall population, and as such, it has an obligation to promote the interests of present as well as future generations.

The principle underlying the Public Nuisance, in like manner serves, acts as tool for securing community interests. As opposed to the private nuisance, that is used to determine clashes between private persons and their interests, the law of Public Nuisance specifically administers the actions that abuse the public interests. The rights of public are more than the mere collection of private interests.[59]

"Collective in nature" and "common to all individuals of the general public," the rights of public incorporate the rights underlying the common law such as unimpeded roadways and expressways and uncontaminated water channels, and also the rights guaranteed by an enactment.[60] The doctrine of Public Nuisance restrains people from doing such activity that meddles with right of public.

These doctrines have same objective of protecting the public interests. With the expanding acknowledgment of asset clashes and environment related problems, public interests have come to incorporate the safeguarding of environment and natural assets.

It is noteworthy to point that, both these doctrines provide a thorough answer for ecological challenges. The rights and interests secured by them are completely human-centric and not environment-centric, and essentially include the utilization of ecological resources. Eventually, these two doctrines assume the establishment of solid regimes of private interests and, subsequently, are unrealistic to accelerate the inter-relation between humankind and environment. Still, these two doctrines have

[59] *See* Allan, supra note. 54
[60] *See* Carter, supra note. 50

been vital common law remedies for adjusting the personal and community interest in the context of environmental protection.

5.5.2. PUBLIC TRUST AND PUBLIC NUISANCE DOCTRINES: DIFFERENCES

Despite the fact that the doctrine of Public Trust and the law of Public Nuisance share common significance in the legal framework, theycontrasts with respect to their extent, degree, and capacity, and have different ramifications when it comes to the application of these two doctrines in environmental arena.

Maybe the clearest contrast between these two is in their extension. Generally, doctrine of thePublic Trust revolves around the "property rights in streams, the ocean, and the sea".[61] The key principle underlying this doctrine is that the exercises fixing to these environmental assets (trade, fishing, commerce) are "so characteristically essential to each person" that it justified exceptional acknowledgment and safeguard of such public interests.

In a case, pertaining to Illinois Central[62], the Court decided that the harbour of Chicago is very crucial, andprivatization of it would hinder the trade and commerce. With respect to the geographic extent in the tenet of Public Trust, it has subsequently been extended to envelop forests, public parks and lands, wildlife. Furthermore, Courts have made the application of this doctrine to promote the more extensive scope of purposes, involving amusement and environmental safeguard.

In many contemporary claims, Courts, nonetheless, have kept on making it necessary to apply this doctrine, that the asset being referred to must be associated in some manner to the environmental assets for the public. The Apex court in the Mono Lake case, held that "the centre of the Public Trust principle is the state's power as sovereign to keep a constant supervision and control over the navigable streams of the country and the terrains beneath those streams."[63] This reflects that the ideal administration of specific environmental assets "requires a sort of mix of open access and exclusion rights."

[61] Joseph L. Sax, *The Public Trust Doctrine in Natural Resource Law: Effective Judicial Intervention*, 68 MICH. L. REV. 471, 475 (1970)
[62] Ill. Cent. R.R. v. Illinois, 146 U.S. 387, 452-55 (1892).
[63]658 P.2d at 712.

It was recommended by Joseph Sax that subjection of the procedural and substantive safeguards created, in claims arising under doctrine of Public Trust, might be just as proper as in the issues related to water and air contamination, the using of pesticides, mining activities on private lands.[64]

One trouble that arises in receiving a more extensive comprehension of the doctrine of Public Trust is the absence of ahalting point with respect to its scope. The doctrine of Public Trust has the ability to prompt restrictions on the conduct of each and every person that causes the environmental issue, regardless of the possibility, that the causal connection between such person and the issue is constricted. Nevertheless, the Courts in such situations have mostly denied broad construction of the doctrine.[65]

Conversely, the Public Nuisance tenet does not depend on geographic restrictions, closely resembling those constraints that are attached with doctrine of Public Trust. Public Nuisance includes contamination of water, land and air, to the extent that community interests are explicated, and additionally also includes the extensive variety of obstructions done in respect to protecting the well-being of public.

The essential substantive limit in applying the tenet of Public Nuisance is that there must be a public right that was violated or infringed. Nonetheless, the notion of what constitutes a public right is to some degree, badly characterized. The Wisconsin Apex Court has recommended that the definition of Public Nuisance includes obstruction "with the utilization of a public spot or with the exercises of a whole community."[66]

Notwithstanding the benefits attached to particular claims, the fundamental approach by the Courts have been to apply the tenet of Public Nuisance to wide scope of ecological issues instead of the doctrine of Public Trust. Thus, law of Public Nuisance provides a common law remedy to resolve the problems of contamination, pollution and other related ecological clashes. Whereas the doctrine of Public Trust, interestingly, to a greater extent, acts as semi constitutional imperative on the govt's trust in administrating the smaller subset of natural assets.

[64] *See* Joseph Sax, supra note. 54
[65] Native Vill. of Kivalina v. Exxon Mobil Corp., 663 F. Supp. 2d 863 (N.D. Cal. 2009);
[66] Donald G. Gifford, *Public Nuisance as a Mass Products Liability Tort*, 71 U. CIN. L. REV. 741, 813-30 (2003)

5.6 PUBLIC NUISANCE AND SPECIAL INJURY RULE

In spite of the fact, that the three sorts of nuisance actions have a few similar doctrinal histories and are frequently confounded by the judges and legal thinkers, there are essential contrasts among them. Toward one side of the a spectrum, there exists cases of private nuisance taken up by a private offended party, commonly including clashing contemporaneous and neighbouring property utilization issues, where the offended party has a lawful interest in such property that is by and large antagonistically influenced by the defendant's adjacent nuisance activity. At the flip side of the spectrum, there are cases of Public Nuisance for obstruction with rights of public like well-being, welfare, and comfort, that are filed by the a governmental plaintiff. [67]

For instance, a state may file a case by virtue of its criminal or common statutes or through a civil action (generally referred as "common nuisance"). In the centre, there exists a hybrid tort which is referred as private-Public Nuisance, additionally, for obstruction with rights of public, yet put up by an individual person taking the form of common law action. These private plaintiffs, as indicated by the conventional doctrine, must demonstrate some perceived sort of "unique,""specific," or "special" injury.

A harm is adequately "unique or special" in the event that it is distinctive in-kind and not only distinctive in-degree from the harm caused to the general public. So as to recuperate damages in private and Public Nuisance cases,the claimant must have endured damage of a kind distinct from that damage which is endured by different individuals from the public, exercising the public rights that were violated. The longstanding tripartite reason for the principle of different in-kind is that it safeguards the sovereign's importance in implementing the laws and counteracts the multiplicity of suits, and prevents the cases of trivial nature.

In spite of the fact, that the three sorts of nuisance actions have a few similar doctrinal history and are frequently confounded by the judges and legal thinkers. There are essential contrasts among them. Toward one side of the a spectrum, there exists cases

[67] *See* Denise, Supra note. 9

of private nuisance taken up by a private offended party, commonly including clashing contemporaneous and neighbouring property uses, where the offended party has a lawful interest in such property that is by and large antagonistically influenced by the defendant's adjacent nuisance activity.[68] At the flip side of the spectrum, there are cases of Public Nuisance for obstruction with rights of public like well-being, welfare, and comfort, that are filed by the a governmental plaintiff.

Yet Being vague in meaning, each case of nuisance have certain similar characteristics relating to doctrinal facets which gives exclusive extent in the context of its application to be done by Courts. These aspects are related to: the material interference done, the irrational act of defendant and equitable elasticity.

The principal critical impediment in cases of nuisance activities that the common law inflict is that there must be "substantial", or "considerable" or likely to be "considerable" interference with the plaintiffs right, being public or personal, by the defendant. The benchmark for determining the substantial or "material"obstruction in contrast to the mere disturbance is the test of "community standard". The divide in personal and public right is frequently foggy, and many have extremely condemned the Public Nuisance's messy consideration of what are basically individual damage negligence claims under its wide scope.[69]

The second essential legal constraint with respect to nuisance reflects that the right of public is obstructed by the defendant in a preposterous manner. This component necessitates adjusting the conflicting personal and society interest, utilizing "the well-known procedure of measuring the gravity and likelihood of the danger against the use" of the action..Contrasting to many other torts, wherein the crucial problem is the mental condition of the defendant ,being the centre problem in numerous, if not many, the key problem in private or Public Nuisance claims is the significance or the material obstruction brought on by the intrusion of plaintiff's right, which actually includes "a definitive inquiry ofreasonable use."

This component is frequently exceedingly challenged and the substance of many "insightful discussion." Finally, the standard to check the reasonable conduct permits

[68] Denise E Antolini, *Modernizing Public Nuisance : Solving The Paradox of the Special Injury Rule*, 28 Ecology L.Q. (2010).
[69] Tom Kuhnle, Note, *The Rebirth of Common Law Actions for Addressing Hazardous Waste Contamination*, 15 STAN. ENVTL. L.J. 187, 221-23 (1996)

more broad legal monitoring over the generally exceptionally wide extent of nuisance claims and thereby limiting the extent of the law of nuisance, empowering Courts to determine the specific obstructions with the utilization and enjoyment of the property that are not regarded as actionable .

The third confinement is that, nuisance is likewise unordinary within the purview of common law torts contrast to trespass due to the prospective expansive legal discretion and monitoring of cures that are accessible, which incorporate pecuniary damages and intense fair remedy, for example, the remedy of abatement and injunctive relief. The damages that are recouped in cases of nuisance which incorporate the average scope of losses acknowledged in the common law torts, for example, the losses generated to utilization or enjoyment of property of land, real harvest loss, and injury to the human health.

Damages might likewise incorporate monetary loss. The distinct feature attached to law of nuisance in tort relates to the relief of equitable remedy as an established solution in cases of public and private nuisance. Once it is decided what injunctive remedy is adequate, the Courts explicitly take part in an adjusting of clashing interests of parties and public well-being to decide equitable remedies. Since the damages provided are once in a while satisfactory to cure, the frequently irreversible harms done to public or private interest due to the irrational and material damages done, equitable remedy is appropriate for nuisance claims. As anyone might expect, as indicated by Prosser, the considerable lion's share of nuisance suits have been inequity, and were concerned basically with the avoidance of future damage.[70]Public Nuisance additionally provide for the relief of "abatement."

The Uniqueness Of The Public Nuisance Cause Of Action

Public Nuisance provides the offended parties a few essential key points of interest. Its essential leverage is a more straightforward spotlight on the benefits i.e., the presence of the nuisance, the damage, and the suitable cure, which is accessible in numerous statutory claims, where the attention is frequently on method or infringement of licenses or standards.

[70] Supra note. 54

Additionally, Public Nuisance provides the offended parties the chance to acquire damages along with injunction relief.It is obvious that the statutory and specific statutes related to environment are never prone to frame a consistent web of ecological security and the political changes in the nation can jab tremendous gaps in such a web, reflecting that Public Nuisance would dependably play an essential reasonable part.Likewise, Public Nuisance assumes a vital social part in protecting, so as to vindicate the society standards and values i.e., "the nuts and bolts of human presence (wellbeing, dwelling place, right to live peacefully)."[71]

Public Nuisance can likewise upgrade economic effectiveness by constraining expense internalization. As a cure especially appropriate for "localized" issues, it contributes reliably to provide for a fair determination of neighbourhood ecological clashes.

To put it plainly, the cause of action in cases of Public Nuisance, claimed by private offended party, reflects a hybrid tort that consolidates an accumulation of facets, which is one of a kind in tort law framework, incorporating the substantiality, liability which is error free, adjusting/irrational conduct, recuperation of economic damages, and relief by way of injunction, along with some vital preferences in respect of the remedies provided by environmental statutory laws.Public Nuisance reflects an expansive and adaptable cause of action along with extraordinary remedies as a solution for the injury done to society.

5.6.1. "The Exxon-Valdez Oil Spill"

In Prince William Sound, Alaska during 1989, the occurrence of the enormous 11 million gallon Exxon-Valdez oil spill, tainted a large number of area of Alaskan waters along with shorelines, bringing on untold ecological, financial, and social harm to Alaskan occupants. The biggest oil spill occurrence in the history of North America history provoked the filing of extensive number of cases, in addition to the civil suit put forward by the central govt. and State of Alaska which brought about a perplexing damages order for environmental assets harms that amounted to a total above $1 billion.[72]

[71] *See* Tom, supra note. 58
[72] *In re Exxon Valdez*, 1993 WL 735037

Harms done to the sports fishers, in terms of the harms done to the activities that were of recreational in nature, to that natives of Alaska in respect of harm to their subsistence fishing, in addition to the fishers who depended on fishing for their livelihood, in any case, were excluded specifically from the settlement procured by the govt.inside of the legislature settlement.

Utilizing Public Nuisancelaw and different causes of action, the mentioned groups sought after their cases outside of the legislative suit. With respect to the first case, many persons along with the Alaska Sports Fishing Association filed class action complaint for a case of Public Nuisance affirming that the damages totalled around $31 million to more than 130,000 individuals in the group who utilized the influenced zone for game recreation. The district court in 1993, taking the reference of Exxon Valdez claims reaffirmed the conventional extraordinary harm rule and distinctive in-kind standard test with respect to the claims for the damages and set aside the case of sport fishers cases, since the harm was "common to the general public."

Worried with respect to broadness of the group and the prospective for multiplicity of claims that were officially provided to the govt. by Exxon, the judgment was made by the court resting it on exemplary application of principle of special injury. The court decided that main damages which were not settled by the govt., are for the harms done to people which were distinctive in kind and not only degree in contrast to those that were endured by public at large.It was not affirmed by the sport fishers that special injury had happened to them for example, ruined fishing gear, and, accordingly, the court set aside their case.

After one year, it was similarly decided by the same court, that the conventional rule of special injury and different-in-kind standard is applicable to the cases of natives of Alaska for the harm in respect to the rights related to society and its cultural which were not covered by the civil suits of the govt.[73]

With respect to the "Alaska Natives" claims, the offended parties presented a class action suit with respect to the benefit of 3,455 natives of Alaska for harm caused to the non-monetary "subsistence lifestyle" of theirs, which was one of the result created by oil spill. The court gave its decision in their case, on specific claims with respect to

[73] Marsh Cooper, *Subsistence Living, and the Special Injury Rule*, 28 ENVTL. L. (2001)

the commercial estimation of fishing harms, however, the offended parties had looked for extra remuneration for their loss of cultural rights.

The case for the subsistence rights by the natives of Alaska, in light of statutory maritime legislation, vacillated not on the issue of whether the natives of Alaska had cognizable rights of subsistence fishing along with the assembling rights, but on the complex standing boundary postured by the conventional doctrine.

Furthermore, Exxon also recognized that the offended parties' rights relating to subsistence way of life were lawfully perceived, yet contended that "all Alaskans have the same right," and, hence, with respect to the rule of special injury, the damage was excessively across the board, vanquishing the Alaska Natives' case.

The district court conceded summary decision in the Exxon on the basis that, regardless of social contrasts between the natives of Alaska and other provincial Alaskans,both had endured damage of the similar nature.During 1997, the Ninth Circuit Court of Appeals confirmed the rejection of the case of natives of Alaska. Despite the fact that it was conceded that the oil spill influenced adversely, the mutual existence of Alaska Natives, recognizing that such spill had influenced Alaska Natives more seriously than different individuals from the public. Notwithstanding, the fact, that it was admitted that the harm was conceivably diverse in degree than that endured by different Alaskans, the court in any case discovered it "was not distinctive in kind." The court of Appeals concurred with the finding of the court that rights related to subsistence standard of life were "shared by all Alaskans" and in this manner that harm to those rights did not amounted to a "special injury".[74]

Rather than its rejection of the case of the sports fishers in respect to their recreational rights and the claims put forward by the Alaska Natives, the district court granted a comparative third group of claims put forward by commercial fishers, in spite of the wide common damage, by the application of the"narrow and limited" exception of commercial fishers, that was applied by the Ninth Circuit's to the rule of financial loss.

The court allowed the case of commercial fishers to be put forward before the jury on account of the profits that were lost, on the grounds, of the problem related to sockeye

[74] Alaska Natives Class v. Exxon Corp., 104 F.3d 1196, 1196-97

misfortunes in the River of Kenai, the reduction of prices because of absence of good quality, and for misfortunes because of the oiled territories. However, it rejected claims for reduced license and for misfortunes in regions not polluted or closed.

The unequal use of the conventional rule of special injury and the standard of different-in-kind in the three fishing claims with respect to Exxon Valdez oil spill, reflects the irregularity attached to modern Courts that bars the claims of community harms, by the application of these rule and standards. The court denied the recreational rights attached to fishers and the rights of natives of Alaska, which reflected the real damage that community accrued, from not obtaining the benefits of their cases, for the unexpected reason that the more extensive group was likewise comparably harmed.

With respect to both the claims, the district court provided significant trustworthiness to the merits of the offended parties' cases, and the application of court's strict decision with respect to the rule of special injury in Public Nuisance cases deviated considerably from the Alaska's "extremely liberal standing principles" underlying its own particular state legislation.

Besides, it was also ,the concern of the court, that injustice resulted from creating an exemption of the special injury rule in the claims put forward by the commercial fishers and not in others enduring comparative losses. The decision rendered by the Ninth Circuit's rejection of the claims of the Alaska Natives attracted condemnation from renewed scholars on the rule of special injury, it being 'outdated' and 'arcane'.[75]

The rule was severely criticized for shedding light on the absence of legal access for the people who were in fact harmed by one of the biggest ecological catastrophes of the 20th century. The judgment given by the Ninth Circuit's, basing it on the solid support of the conventional rule of common law, gives new warning to the experts and scholars that the rule of special injury and the standard test of different-in-kind test, would keep on confining the utilization of Public Nuisance by the harmed groups.

[75]Shay S. Scott, *Combining Environmental Citizens Suits and Other Private Theories of Recovery,* 8 J. ENVTL.L. & LITIG. (2000)

Despite the fact that various commentators' consideration has centredon environmental cases of Public Nuisance, many Public Nuisance claims have emerged from circumstances that reflects the dangers to the community interest and misfortunes associated with business.

In the case of **Nebraska Innkeepers, Inc. v. Pittsburgh-Des Moines Corp.**[76], companies of South Sioux City, Nebraska, suffered huge loss in million dollars due to the shutting down of Sioux land Veteran's Memorial Bridge crossing the Missouri River in the middle of Iowa and Nebraska, owing to the development imperfections.

The Apex court of Iowa decided that companies cannot succeed in the case of Public Nuisance, put forward by them, against contractor, since there were no "special" injuries and the economic misfortunes were similar of kind that was suffered by the public at large. Despite the fact that, it was observed by the court that issue "is as a matter of fact one of policy," and that recuperation might be justified at times, and that severe monetary misfortune is generally an exceptional sort of mischief, it applied the conventional doctrine and held that if an entire group endures such misfortune, then it turns into a public wrong and the offended party can't be paid damages.

Focusing on the enigma of standard test of different-in-kind, it was observed by the court that, by portraying the claim to be one of class action in the interest of theirs' and every other proprietor, operator, and workers of correspondingly located hotels, shops, and other retail businesses operating in the influenced sphere, the offended parties, straightforwardly, weakened their capacity to contend that their harms were exceptional, and hence, in this way, rejection of the case of Public Nuisance is apt. In the event that the plaintiffs would have succeeded in the case, if they would had overlooked the more extensive financial misfortunes suffered by the community.

The foundation of environmental equity development rests on the basis that an unjust portion of ecological issues put load, in an undue manner on the poor minority groups. The weight suffered by these minority groups due to the outcome of unjustifiable

[76]345 N.W.2d 124 (Iowa 1984).

socio- economic schemes relating to environment, has prompted different and severe effects to the well-being, security and personal satisfaction of these groups. [77]

On the other hand, law of Public Nuisance gives the widest scope to put forward the cases of environmental equity. However, Because of the present elucidation of rule of special injury in Public Nuisancecases, the level for presenting cases of Public Nuisance has become blurry and most of the original impact has been diluted.

A noteworthy modification in the understanding of rule of special injury, with respect to different-in-kind test in contrast to the difference in degree test, has brought on struggle in application of the law of Public Nuisance in the present period. Still, the Courts have proceeded to overbearingly clutch the present day rule of special injury in order to reduce the variety of cases.

The standard underlying the law of Public Nuisance is the acknowledgment of an inalienable right of public in the common property. Subsidiary to this right of public lies a private interest that emerges from significant utilization of common property in order to derive the private interest.A person might file a private case by means of law of Public Nuisance, in the event that he has endured some personal damage that fulfill the requirements set out by the rule of special injury emerging from the act of Public Nuisance. The standard for deciding that there exist special injury depends on demonstrating that such person has endured an injury which is "different-in-kind" from the one which is endured by the public at large.

The standard of “different-in-kind” differentiates the private and public harms on the premise of a classification, instead of degree. The test for deciding such private case arising from law of Public Nuisance, preceding the test of “different-in-kind” was the test of “different-in-degree”.[78] Before reception of the test of “different-in-kind”, the test of “different-in-degree” was used since the past three centuries.

The test of “different-in-degree” can be followed back to “anonymous” case presented before Kings Bench, in 1535, wherein the notion of private cases by means of law of Public Nuisance was first presented. It was speculated that the rule of special injury emerged as a reaction to the multiplicity of Public Nuisance cases in the

[77] Supra note.59
[78] Sears v. Hull, 961 P.2d 1013, 1018 (2008)

mid 19th century. The Courts therefore, showed favour in adoption of the standards underlying the rule of special injury to confine the extent of private nuisance cases by means of law of Public Nuisance in order to keep a check on variety of suits.

With respect to the cases of environmental equity, the use of conventional doctrines and speculations, for example, the law of Public Nuisance, have truly been restricted. The degree of successful claims put forward by the plaintiff have been very limited since it is hard to demonstrate the constitutional component of unique treatment, for example, evidence of prejudicial intent or discriminatory subjection on the ground of sex, colour, race, religion.

6. ENVIRONMENTAL JURISPRUDENCE AND TORT LOW OF PUBLIC NUISANCE

In the arena of International law, the sources with respect to "hard law" that is legally binding in nature, there is a sphere of principles of "soft law" that do not pose binding obligations. The "soft laws" have played vital part in international environmental law and number of international legal commitments has been made in the context of environmental protection.

The conventional sources of such Int. legal commitments, are also applied in the arena of environment which includes the group of standards and rules that are lawfully binding on the nations. The source of power for these rules is based on Article 38 (1) of the Statute of the ICJ which states as follows:-

" The Court, whose function is to decide in accordance with international law such disputes as are submitted to it, shall apply:

a. international conventions, whether general or particular, establishing rules expressly recognized by the contesting states;

b. international custom, as evidence of a general practice accepted as law;

c. the general principles of law recognized by civilized nations;

d. subject to the provisions of Article 59, judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law."

Thus, the four sources mentioned are: treaties, International custom, general principle of law recognized by civilized nations, and subsidiary sources. The principle "subsidiary sources" includes the judgments of Courts, ruling of tribunals and the writings of legal jurists. [79]

Aside from the ICJ the other universal Courts managing natural issues are the "European Court of Justice, the European Court of Human Rights, GATT Dispute Settlement Panels and the international arbitral tribunals" are the other international Courtsthat addresses the environmental claims aside from ICJ. "National" Courts along with tribunals have frequently deciphered global commitments in context of

[79] UN OHCHR, *Mapping Human Rights Obligations Relating to the Enjoyment of a Safe, Clean, Healthy and Sustainable Environment*, Report No 6, 38–39.(2013)

environmental issues and law of these Courts have been an imperative source in the advancement of int. law relating to environment law.[80]

The treaties, the acts of binding in nature made by int. organizations .the practices and standards adopted by the state, and the standards of soft law, illuminates the general principles underlying the int. environmental law. They are regarded as general because of its application to each and every member of the global community in the context of environmental protection. The key principles and rules that are widely used in practice are :

(1) "The obligation reflected in Principle 21 of the Stockholm Declaration and Principle 2 of the Rio Declaration.

Principle 21 of Stockholm Declaration and Principle 2 of Rio Declaration states the same as follows:- "States have, in accordance with the Charter of the United Nations and the principles of international law, the sovereign right to exploit their own resources pursuant to their own environmental policies, and the responsibility to ensure that activities within their jurisdiction or control do not cause damage to the environment of other States or of areas beyond the limits of national jurisdiction."

(2) The principle of preventive action;

(3) The principle of good neighborliness and international co-operation;

(4) The principle of sustainable development;

(5) The precautionary principle;

(6) The polluter-pays principle; and

(7) The principle of common but differentiated responsibility."

6.1. LEGAL STATUS OF GENERAL INTERNATIONAL ENVIRONMENTAL PRINCIPLES

Without the judicial authority along with the clashing elucidation given by different states, it is often hard to determine the components or the exact int. legitimate status attached with the key rules and principles. The legal outcomes of every such principle or rule in connection to a specific activity or instance must be determined o the basis of the facts and conditions pertaining to every case and by taking into consideration of various components.

[80]Fadnavis, Snehal, *Historical Development of International Human Rights xvi Movement*, 9 Journal of the Institute of Human Rights (2006),

The customary law may be reflected by few key principles and rules; while others might show the rising legitimate commitments and still less legal standard might be illuminated by the others. Principle 21 of Stockholm Declaration and Principle 2 of Rio Declaration and the friendly relations are adequately substantive so as to be appropriate for setting up the premise of int. cause of action, which means to say that an int. customary lawful commitment has been arisen which if violated would result into a lawful remedy. [81]

It is additionally opined by different legal scholars that there do not exist any int. binding instrument that have international application setting out the general commitments and rights attached with the global community in relation to the environmental protection and incidental issues. Other than the Universal Declaration on Human Rights or the International Covenant on Civil and Political Rights or Economic and Social Rights, no instrument has still been adopted by the int. community.

It was anticipated that the environmental law and Human rights are two different circles of rights, operating independently. However, in the quarter of twentieth century, the discernment emerged that the objective of environmental protection could be strengthened and made advanced by placing such in the arena of human rights, that had been condensed by then as a subject matter of worldwide law and practice.[82]

Various human rights instruments underlying International law incorporates the right to healthy environment. They are enumerated as follows:

Universal Declaration of Human Rights was the first principle human rights instrument that was adopted in 1948.

- Article 3 embodies right to life which states as follows:-Everyone has the right to life, liberty and security of person.

[81] Caroline Moser & Andy Norton, *To Claim Our Rights: Livelihood Security, Human Rights And Sustainable Development* (2001), Available at http://www.odi.org.uk/resources/docs/1816.pdf.
[82]Brinchuk, M.M., *Legal Protection of the Environment From Pollution by Dangerous Industrial Wastes*, 5 PACE ENVTL. L. REV. 509-17 (2000)

- Article 25 states as follows:-

1. Everyone has the right to a standard of living adequate for the health and well-being of himself and of his family, including food, clothing, housing and medical care and necessary social services, and the right to security in the event of unemployment, sickness, disability, widowhood, old age or other lack of livelihood in circumstances beyond his control.
2. Motherhood and childhood are entitled to special care and assistance. All children, whether born in or out of wedlock, shall enjoy the same social protection.

International Covenant on Civil and Political Rights was introduced in 1966, where the Article 6(1) states as follows:-
Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life.

International Covenant on Economic, Social and Cultural Rights 1966, also embodies few basic human rights.

- Article 11(1) of it states as follows :-

"The States Parties to the present Covenant recognize the right of everyone to an adequate standard of living for himself and his family, including adequate food, clothing and housing, and to the continuous improvement of living conditions. The States Parties will take appropriate steps to ensure the realization of this right, recognizing to this effect the essential importance of international co-operation based on free consent."

- Article 12(1) says that "right of everyone to the enjoyment of the highest attainable standard of physical and mental health".

- Article 12(2) envisages the following :-The steps to be taken by the States Parties to the present Covenant to achieve the full realization of this right shall include those necessary for:(a) The provision for the reduction of the stillbirth-rate and of infant mortality and for the healthy development of the child;

  (b**) The improvement of all aspects of environmental and industrial hygiene;**

(c) The prevention, treatment and control of epidemic, endemic, occupational and other diseases;

(d) The creation of conditions which would assure to all medical service and medical attention in the event of sickness.

Article 2 (1) of European Convention on Human Rights states as follows:- Everyone's right to life shall be protected by law. No one shall be deprived of his life intentionally save in the execution of a sentence of a court following his conviction of a crime for which this penalty is provided by law. for the right to life protected by law.

Principle 1 of the 1972 Stockholm Declaration states as follows:-

"Man has the fundamental right to freedom, equality and adequate conditions of life, in an environment of a quality that permits a life of dignity and well-being, and he bears a solemn responsibility to protect and improve the environment for present and future generations. In this respect, policies promoting or perpetuating apartheid, racial segregation, discrimination, colonial and other forms of oppression and foreign domination stand condemned and must be eliminated."

Principle 2 states as The natural resources of the earth, including the air, water, land, flora and fauna and especially representative samples of natural ecosystems, must be safeguarded for the benefit of present and future generations through careful planning or management, as appropriate.[83]

Principle 4 states: The man has a special responsibility to safeguard and wisely manage the heritage of wildlife and its habitat, which are now gravely imperiled by a combination of adverse factors. Nature conservation, including wildlife, must therefore receive importance in planning for economic development.

The strength of the mentioned International instruments on Human right to environment is illuminated by the Article 21 of the Constitution of India.

[83] UN Conference on the Human Environment (Stockholm 1972)

The "**Draft Declaration of principles on Human Rights and the Environment**" 1994 embodies provisions in relation to environmental protection. Draft Declaration Of Principles On Human Rights And The Environment also embodies the human right in the context of environmental right. Some of the principles are stated as follows:-

- Principle 1: "Human Rights and ecologically sound environment, sustainable development and peace are inter-dependent and indivisible."

- Principle 2: All persons have the right to secure, healthy and ecologically sound environment. This right and other human rights including civil, cultural, economic, political and social rights are universal interdependent and indivisible.

- Principle 5: "All persons have the right to freedom from pollution, environmental degradation and activities that adversely affect the environment, threaten life, health, livelihood, well-being or sustainable development within, across or outside national boundaries."

Amid the time of 1950 to 1984, the national Courts have embraced a customary dualist outlook whereby unless the national laws have included the particular provisions, the effect of treaty would be null. In the case of, **Jolly George Verghese v. Bank of Cochin**[84], the Apex Court of India adopted this customary dualist outlook and CPC was given an overriding effect above the International Covenant on Civil and Political Rights. The court with respect to this case, attempted to reduce the clashes occurring between the two by giving a limited interpretation to the provision so of CPC.

With respect to the international customary law, amid 1950-84, no legislative activity as such was taken in the context of int. customary law.[85]

The Indian legal methodology identifying with the legitimate status of int. customary law was illuminated in the case of **Gramophone Company of India Ltd. v.**

[84](1980) 2 SCJ 358.
[85]Alam, M. Shah, *Enforcement of International Law by domestic courts: A Theoretical and Practical Study*, 53Netherlands International Law Review 3 (2006)

Birendra Bahadur Pandey.[86]The Supreme Court of India, took English principles and doctrines into consideration and supported the tenet of incorporation. As indicated by this doctrine or tenet, the standards of int. law are consolidated in the domestic law and are regarded as a piece of domestic law unless such consolidation results into conflict with any other Act made by the parliament.

Prior to 1996, not much references were made to int. treaties in the arena of environment, yet in 1990, India was member to many of the multilateral treaties in the arena of environment.

In the case of Asbestos Industries Case, the Apex Court of India, broadly cited numerous int. covenants in particularly the ILO Asbestos Convention of 1986, International Convention of Economic, Social and Cultural Rights of 1966 and Universal Declaration of Human Rights of 1948. The court in this case, addressed the problems identifying with health occupational dangers affecting the labors in asbestos related industries and commercial ventures. The court decided that to work in clean environment is fundamental a principal underlying Article 21 and definite orders and directions were issued by the Courts to authorities.[87] In the case of Calcutta Wetland, the HC of Calcutta, opined that since India is a party to Ramsar Convention on Wetland of 1971, it is undoubtedly bound to safeguard the wetlands.

The Stockholm Declaration of 1972 and the Rio Declaration of 1992 have been regarded as breakthroughs in the advancement of int.law relating to environment. In spite of the fact that these two, have frequently been portrayed as "soft" law yet their effects, at universal and national stage, have been significant. The post-duration of **Bhopal Gas Tragedy(1984),** was an inventive era for development of environmental laws.

Amid this period, in historic case of Doon Valley[88], the Apex Court addressed the effect of mining on the area within the Doon Valley and via its directions, in implied manner, created another essential "right of the people to live in healthy environment with minimal disturbance of ecological balance." Many orders and directions were

[86](1984) 2 SCC 534.
[87]Consumer Education & Research Centre v. Union of India, (1995) 3 SCC 42.
[88]R.L.E.K. Dehradum, v. State of U.P., AIR 1985 SC 652.

issued by the court whereby one of such order acknowledged the fact that the Stockholm Conference is impacting the development of environmental laws.

Once more, in the case relating to Kanpur Tanneries[89],the Apex Court, broadly cited the Stockholm Declarations and promoted the key right to environment guaranteed by Constitution under Article 21. In the mentioned case, the court offered supremacy to "environment" over "vocation" and "income generation" Amid this duration, the Rio Declaration of 1992 was additionally referred to in the case relating to Law Society of India.

Amid the duration of 1985-1995, the court conjured various soft laws so as to reflect a basic point that environmental protection is essential to the humankind. The utilization and importance attached with soft laws was 'auxiliary' as opposed to 'substantive'. The use of standards and principles underlying the soft law were done so as to develop, and advance the environmental jurisprudence and to reinforce the essential rights in Article 21. Truth be told, a very vital role was played by the int. law relating to environment.

6.2. INDIAN ENVIRONMENTAL JURIPRUDENCE AND LAW OF PUBLIC NUISANCE

Historically, the environmental concerns and incidental issues used to be dealt by way of doctrines for instance that of trespass, nuisance, strict liability or negligence in India or other safeguards existing under other statutes like Indian Penal Code or Criminal Procedure Code. The earlier statutes used to address the problems on the basis of typography. For instance, Indian Penal Code penalizes specific kinds of air and water pollution etc. Sanitary codes dealing with the quality of water and particular regulations were occasionally aimed to regulate specific kinds of industrial enterprises. Since the Stockholm Conference in 1972, a new trend in the form of judicial activism has been seen in Indian legal structure. The old laws were started to be constructed in a way so as to promote the awareness about the environmental protection and thereby the Courts emerged as dispenser of environmental justice.

The following table reflects a list of relevant Indian environmental statutes that were enacted having close resemblance to the given international environmental laws.

[89]M.C. Mehta, v. Union of India, AIR 1988 SC 1037.

S.No.	"International Environmental Laws"	"Relevant Indian Environmental Statutes"
1.	"The Stockholm Conference, 1972"	"The Air Act, 1981"
2.	"The Stockholm Conference, 1972"	"The Environmental Protection Act, 1986"
3.	"The Rio Conference, 1992"	"The Public Liability Insurance Act, 1991"
4.	"The Rio Conference, 1992"	"The National Environmental Tribunal Act, 1995"
5.	"Convention of Biological Diversity", 1992.	The Biological Diversity Act, 2002
6.	"Convention of International Trade in Endangered Species of Wild Fauna and Flora, 1973."	"The Wild Life Protection (Amendment) Act, 2002"

As per Section 2(a) of the Environmental Protection Act, 1986, Environment includes-

a) Water, air and land

b) The inter-relationship which exists among and between,

i) water, air, land, and

ii) human beings, other living creatures, plants, microorganisms and property.

6.3 CONSTITUTIONAL PROVISIONS

The thought of keeping the environment as subject matter in the Constitution was not proposed during the earlier enactment of the original provisions of Constitution. Nonetheless, the state and centre govt. can make laws with respect to environmental protection according to the distributed subject matter provided in the lists.

For instance, the general wellbeing, sanitation, land, water and agriculture are the subjects that fall inside of the state list whereby only state can formulate laws in this regard. The union list mentions matters like inter-state rivers, oil fields and assets, nuclear energy, whereby only Parliament can formulate such laws.

The Preamble of the Constitution reflects that socio-economic equity and justice was the brick of the Constitution. The Indian Constitution embodies the fundamental rights that are provided to every citizen. These fundamental rights, overrides every other general law of land and inculcates the equality before the law ,right to life, freedom of speech and expression, right to settle in any part of India, and freedom of religion.

Chapter III of the Constitution embodies the fundamental rights. The six fundamental rights guaranteed to the all citizens are listed in Articles 14-32 of the Indian Constitution, such as right to freedom of speech and expression, right against exploitation, cultural and educational rights, right to freedom of religion and right to Constitutional remedies.

The legal understandings of these different fundamental rights by the judiciary have enlarged their scope and have demonstrated powerful in accomplishing ecological equity in India. Article 14, Right to equality, provides that the state shall not deny to any person equality before law and equal protection of laws within the territory of India. It demonstrates that any activity of the State identifying with environment must not encroach upon the right to equality as cherished in Article 14 of the Constitution.

The equality principle in environmental matters is also acknowledged in The Stockholm Declaration, 1972 where Principle 1 of the Declaration states, "man has the fundamental right to freedom, equality and adequate conditions of life, in environment of a quality that permits a life of dignity and well being…"[90] On different events, the Indian Supreme Court has struck down the discretionary authority which was arbitrary in nature with respect to environmental cases on the premise that such was infringing Article 14.

[90]BasavaRaju C, *Environmental Protection – A Constitutional Mandate*, 28 Indian Bar Review 1 (2001)

The contamination of the surrounding is for the most part comes from industries, trade, and businesses. For instance tanneries, corrosive manufacturing plants, acid factories and other like industries, refineries, adds to the environmental contamination.

The fundamental rights, likewise, aims to overturn the imbalances of previous social traditions and practices, for example, "untouchability"' is abolished and various laws have been enacted to prohibit discriminations on the basis of sex, colour, religion. The rising issue of adjusting the right to have clean environment and right to development often tends to clash with each other. Article 19 (1) (g) of the Indian Constitution gives citizens to carry any trade and commerce subject to the reasonable limitations imposed. A percentage of the commercial ventures or exchanges are conveyed in a manner that imperils vegetation spread, creatures, amphibian life and human wellbeing.

On numerous occasions, it has been unambiguously stated by the Supreme Court that restrictions can be imposed on freedom of trade. Any business or exchange which is hostile to widely varied vegetation or individuals can't be allowed to be carried on for the sake of fundamental right. Any action which dirties the earth and makes it undesirable, risky to human wellbeing and greenery, is infringing individual's right to wholesome and clean environment which is guaranteed in Article 21 of the Constitution.

In **Abhilash Textiles v. Rajkot Municipal Corporation**[91], the High Court of Gujarat addressed the question whether releasing grimy water from the manufacturing plant on a road accessible by public without cleansing the same that creates harm to the general wellbeing can be permitted under Article 19 (1) (g) of the Constitution whereby it guarantees right to carry on any trade or commerce. The Court was of the view that reasonable imitations can be imposed on such right on the ground of public interest as mentioned in Article 19 (1) (g) .

In this way, nobody has a right to have any trade that creates nuisance to the public at large. So also, the business can't be conveyed in the way by which the business action would turn into a well-being risk to the whole society. The court decide that the

[91] AIR 1988 Guj 57

petitioners thereby can't be allowed to procure benefits at the expense of the general wellbeing as they had no right to have any trade or business without following the prerequisite of the law. This case reflects a decent light on the constitutional right guaranteed to citizen to carry on business versus its effect on the general wellbeing which is a vital part of environment insurance

To safeguard the fundamental rights, Article 32 provides for constitutional remedies so as to safeguard the enforcement of fundamental rights. It is important to note that there are four constitutional stipulations that are especially significant to environment with respect to fundamental rights.

By virtue of Article 13, the Supreme Court is empowered to review the laws judicially, in order to make laws *void ab initio*, which are not in consistent with fundamental rights. Furthermore, Article 32 provides individual citizen to invoke the court's original jurisdiction so as to enforce the fundamental rights guaranteed to them. By virtue of this article, this procurement, people have filed numerous cases to the court so as to enforce fundamental rights.

Article 32 and 226 under Indian Constitution likewise allow broad remedies to the Supreme and High Courts in cases that are constitutional in nature. In particular, Article 32 empowers the SC to issue orders or directions or writs for the purpose of enforcing fundamental rights. By virtue of Article 226 of the Constitution, The High court can be approached by any citizen where there has been violation of fundamental rights and likewise, the High Courts have jurisdiction to issue writs or orders to enforce the fundamental rights of such citizen.[92]

Under Article 226 of Indian, High Courts might be summoned not just for the enforcement of any fundamental right yet for some other reason also. By virtue of Article 226, the High Courts have the authority to review any legislation, administrative laws, for example, execution of guidelines and standards relating to environment. At last by virtue of Article 136, the Supreme Court has discretion to give special leave to appeal in any legal order, decision rendered, giving another course to judicial review.

[92]*See* Basava, Supra note 88

The Directive principles of State Policy, is another component of the Constitution of India,which provides the State's duty towards its subjects. Despite the fact that the Directive Principles are fundamental in the administration of the nation, such are not lawfully enforceable. Instead, they provide for the state's constitutional duties to promote the application of such standards and principles,and rules and objectives that helps in achieving justice, equality, liberty and fraternity as articulated in the Preamble of the Constitution..

6.4 DIRECTIVE PRINCIPLES OF STATE POLICY AND ENVIRONMENT

The Directive Principles of State Policy is addressed by The Part IV of the Indian Constitution. Some of the duties particularly address the different features of human well-being and environment. At times, the Directive Principles are to be enforced along with fundamental rights because of their nature being complementary to the latter. Every one of these articles are not specifically identified with protection of environment aside from Article 48 A which was introduced via 42nd Amendment Act, in 1976, in the Constitution for environmental protection.

Article 39 of the Constitution provides for the dispersion and management of significant assets which incorporates natural as well as man-made assets in such a way, to the point that it would not lead to monopoly over their utilization which might create environmental imbalances and danger to human health.

For securing just and humane conditions of work along with maternity relief, the state is empowered to make legislations by virtue of Article 42 of Indian Constitution. The State is coordinated to safeguard fair and just conditions for work that can be accomplished in a clean and sound environment.

Article 47 stipulates that the essential duties of State is to raise the level of nutrition and improve the human health along with the standard of life and specifically, it should attempts to prohibit drinks that are intoxicating in kind and drugs consumptions which pose danger to human health, except in cases where such are used for medical purposes of inebriating beverages and of By virtue of this article, the State is compelled by a sense of duty to enhance the general well-being. This Constitutional obligation can only be satisfied in clean and sound atmosphere.

Article 48 stipulates the safety measures to be taken with respect to cows and other cattle so as to balance the scales of environment.

Article 49 states that it would be the state's duty to safeguard each and every monument or any object having historical interest, as provided or declared by or under any legislation, that Parliament makes in this regard. Such objects of national significance are to be protected from spoliation, disfigurement, destruction, removal, disposal or export.

6.5 CIVIL PROCEDURE CODE

The remedy against Public Nuisance gets its support by means of section 91 of CPC that sets out the process for start of a civil suit in cases of Public Nuisance. As it is absolutely procedural in nature, the section gives the adaptability of looking for parallel cures in criminal legislation or harms in law of torts. The marginal note in this section 91 peruses: "Public Nuisance and other wrongful acts affecting the public" in addition to the Public Nuisance which enlarges the extent of this section to fuse different circumstances which in spite of the fact they that don't fall under the acknowledged straitjacket meanings of nuisance, still are a reason for distress and burden to the public.

Like for example, Courts have perused butchering of cows on a public road or creating hindrance to the use of a public road by development of structures as lawful cause of action to initiate the proceedings in cases of Public Nuisance because of such being an act that is wrongful against the public right.

Section 91 of CPC states the following:

(1) In the case of a Public Nuisance the Advocate General or two or more persons having obtained the consent in writing of the Advocate General, may institute a suit, though no special damage has been caused, for a declaration and injunction or for such other relief as may be appropriate to the circumstances of the case.

(2) Nothing in this section shall be deemed to limit or otherwise affect any right of suit which may exist independently of its provisions.

It could be seen that the section is procedural in nature. It doesn't imply to make any new right, nor does it imply to deny anyone of any right got by virtue of general law

of land. Therefore, the representative suits under Order I, Rule 8 doesn't depend on it and nor it changes the right to sue by virtue of other separated provisions.

In this manner, such representative suit filed by specific group of community rather than the public at large, i.e., for assertion of its entitlement to take out a parade along a specific course and for evacuation of specific obstacles did not previously, required the previous assent of the Advocate-General or the leave of the court.

According to the General Clauses Act 1897, the meaning of nuisance with the end goal of section 91, CPC must be obtained from section 268 IPC. The meaning of nuisance rejects from its purview the occurrences of legitimized nuisance.

Authorized or legitimized nuisance cases are situations when the nuisance created is statutorily endorsed and are in light of a legitimate concern for more prominent public interest and social good. For example, the service of railway and or foundation of the yard, regardless of being a factor of nuisance, is not valid reason under IPC or for filing suit under Section 91.

It is supposed that to provide a safety mechanism to limit the nuisance's wide meaning, and the prejudice attached with the 'wrongful acts against the public', the Advocate general was made the initiator for filing suits under sec 91. Later on, via amendment of 1976, the provision contemplating that the assent of Advocate general in cases of Public Nuisance is necessary in suits filed by two or more persons, was added. Such dynamic contribution of the Advocate General in Public Nuisance suits was to guarantee that suits are not started with malevolent expectations, with the sole motivation behind making hindrances for the individual party alleged to create nuisance.[93] This tenet however does not reach out to the representative suits as already mentioned. In such representative suits to be filed, there is no necessity to get of the court. Indeed, even in situations when certain rights are given to the whole group, however prompt harm by the nuisance happens to a person, leave of court is not compulsory.

Proviso 2 of Section 91 licenses the filing of a parallel suit in criminal cases by way of PIL or as a civil suit for private cases, having same cause of action. It likewise

[93]Rajkumar Deepak Singh,*Response of Indian Judiciary to Environmental Protection: Some Reflections*, 39 Indian Journal of International Law, (2009)

permits a person aggrieved to file a suit for claiming damages. This is essentially so since section 91 completely does not make any rights or deny anybody of their current rights. It simply expresses the procedural rules for establishing a civil suit where there exists cause of action in cases of Public Nuisance. Likewise, an individual from the public can file suit so as to eliminate a hindrance from public road, without showing special injury, even if only his right was violated.

6.6. PUBLIC NUISANCE AND INDIAN PENAL CODE, 1860

It was after the tragedy of Bhopal Gas Leak case that the society opened its eyes towards the threats of development and so the necessity was felt to frame special laws. Environment Protection Act of 1986 was one such legislation that was enacted with the aim of prevention.. This does not mean that prior to its coming, there was no law in that regard. There were various distinct laws made during the British rule which were enacted in this regard. One such legislation was Indian Penal Code of 1860 that is still prevalent in India. It lists out various provisions that deal with pollution whereby many acts harming the environment have been rendered as offences. IPC is one such mechanism that aims to prevent pollution by its various provisions.

The Wild Life (Protection) Act, 1972, the Water (Prevention and Control of Pollution) Act, 1974, the Forest (Conservation) Act, 1980, the Air (Prevention and Control of Pollution) Act, 1981, the Environment (Protection) Act, 1986, the National Environment Tribunals Act, 1995, the National Environmental Appellate Authority Act, 1997, the Biodiversity Act, 2002 etc., and the various rules and regulations made under these enactments have given regulatory provisions. These particular enactments have acted as supplement to the provisions of Indian Penal Code, 1860 in Chapter XIV of offences affecting the public health, safety, convenience, decency and morals; the Criminal Procedure Code 1973; the Easements Act; the Civil Procedure Code and other such antiquated legislations.

Under chapter XIV, it is not essential that the disturbance should harm to every individual of the society within the area of operation, the provisions will be attracted even if such nuisance affects the individuals residing in the vicinity.

Pollution in a wider sense is genus of nuisances. Thus, Pollution is said to be atmospheric nuisance, therefore,in that sense, it is covered by the larger notion of nuisance.

In "Bamford v Turnley", Pollock C.B. was of the view that the word 'nuisance' can not be precisely defined. He observed as follows :-

"*I do not think that the 'nuisance' for which an action will lie is capable of any legal definition, which will be applicable to all actions and useful in deciding them. Speaking generally, nuisance is the unlawful interference with a person's use or enjoyment of land or some right over, or in connection with it". Nuisance may however, be distinguished from negligence or trespass. However, the pollution claims in India can have both the elements of nuisance and trespass."*[94]

The arena of the 'Public Nuisance' in the IPC ranges to various offences, out of which, most can be regarded as genus of nuisances. Out of the various offences that are regarded as nuisances, those offenses that fall under the purview of pollution can be related to Section 268,269,277, 278, 284, 290 and 291

Public Nuisance has been defined in **Section 268, I.P.C**. It can be observed from the general layout of IPC that the Code does not define a term in abstract manner, rather it defines such term with subject to the doer. The section states as follows:-

Public Nuisance:- A person is guilty of a Public Nuisance who does not 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.

The description of Public Nuisance prescribed in the section attempts to entail all the instances of Public Nuisance. Section 268 is associated with Section 290 which provides penalties for Public Nuisances instances that is not otherwise particularly prescribed for in the Code. The elements of the definition of Public Nuisance provided in Section 268 is also relevant to the procedural provisions provided in the Criminal Procedure Code(1973).

[94] (1860) 3 B & S 62

Section 290 provides for the punishment for Public Nuisance in instances which is not otherwise given for. In such cases, the guilty is to be punished with fine which may extend to two hundred Rupees.

Section 290 works as a residual provision as the other sections prescribes for the different particular nuisances. Section 268 gives a wider sphere for the effective implementation than the other particular provisions.

Section 269 of I.P.C. could also be taken as recourse against a person who pollutes water bodies. The section states as follows:-"whoever unlawfully or negligently does any act which is, and which he knows or has reason to believe to be, likely to spread the infection of any disease dangerous to life, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine, or with both."

There are two particular provisions that could be used against the prepetarators of water and air pollution. These sections deals with fouling water of public spring(Section 277) and making the atmosphere noxious to health (Section 278) . These sections states as follows:-

Section 277- 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.

Section 278-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 neighbourhood or passing along a public way, shall be punished with fine which may extend to five hundred rupees.

These two sections adopt penal strategy to prevent and mitigate air and water pollution, owing to the direct impact on environmental protection. But with passage of time, the effective implementation of the aim embodied in the provisions has become doubtful because of the technicalities involved. The Indian criminal law requires that the ingredients of the offence as provided in penal provisions are completely compiled and satisfied with.

The Indian Penal Code of 1860 contains detailed provisions that governs the crime dealing with Public Nuisance in its various facets and cases and provides for penalties.

For instance, the wording of Section 277 requires evidence of voluntary corruption of water, that such fouling of water must be of the public reservoir or spring and that such corruption has rendered water less fit for the significant purpose it was earlier used. Such technicalities to prove, not only puts burden on the prosecution to satisfy the elements of the offence but also gives enough grounds to accused to look his way out. These provisions does not simplify criminal justice system from the complications of common law system that stipulate for elaborate proof for miscellaneous cases as well as technical analysis of obvious matters.

This can be well illustrated by the case of **Queen v VittiChokkan**, where it was held that the word 'reservoir' and 'public spring' did not embodied in itself 'a river' under Section277. Thus, in 1881, the conviction of VittiChokkan, who was to be punished for 'dirtying the drinking waters of Varaga river', was quashed by Madras High Court because of the strict interpretation of the provisions.[95]

The Bombay High Court in 1904 took recourse to the residual provision provided in Section 290 of IPC for punishing the perpetrators of fouling river waters rather than taking recourse to Section 277. This was the case of **Emperor vs. Nama Rama**[96]. The trial court had convicted the accused persons under Section 277 for fouling the river water which made it unfit for consumption. However, on appeal the Bombay High Court took different view. The Court observed earlier similar cases and held-

Though the fouling of river water in a continuous stream may not be an offence under Section 277 of IPC, it may be regarded as nuisance under Section 290 of IPC, if there exists evidence that such conduct caused common injury and was danger to the public.

Section 291- 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

[95] (1889) I.L.R. 4 Mad 229
[96] (1904) 6 Bom LR 52 44

nuisance, shall be punished with imprisonment for a term which may extend to six months, or with fine, or with both.

Section 425, IPC can also be attracted in cases of water pollution owing to the mischief caused. Sec 425 stated that:- 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".

Explanation 1.—It is not essential to the offence of mischief that the offender should intend to cause loss or damage to the owner of the property injured or destroyed. It is sufficient if he intends to cause, or knows that he is likely to cause, wrong-ful loss or 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.

Even under Section 511 of IPC, the water polluter can be punished if his conduct creates a wrongful injury or loss to the public or to an individual owing to such act.

Section 511 states as follows :- Punishment for attempting to commit offences punishable with imprisonment for life or other imprisonment.—Whoever attempts to commit an offence punishable by this Code with imprisonment for life or imprisonment, or to cause such an offence to be commit-ted, and in such attempt does any act towards the commission of the offence, shall, where no express provision is made by this Code for the punishment of such attempt, be punished with imprisonment of any description provided for the offence, for a term which may extend to one-half of the imprisonment for life or, as the case may be, one-half of the longest term of imprison-ment provided for that offence, or with such fine as is provided for the offence, or with both.

Punishment can also be given for the negligent act done in relation to explosive or harzardous substances. In addition to it, the punishments for such negligent acts in relation to poisonous substance and acts done negligently in relation to combustible matter under Sections 284 and 285 respectively.

Sec 284 states as follows:-Whoever does, with any poisonous substance, any act in a manner so rash or negligent as to endanger human life, or to be likely to cause hurt or injury to any person, Or knowingly or negligently omits to take such order with any poisonous substance in his possession as is sufficient to guard against any probable danger to human life from such poisonous substance, shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

Sec 285 states-Whoever does, with fire or any combustible matter, any act so rashly or negligently as to endanger human life, or to be likely to cause hurt or injury to any other person, or knowingly or negligently omits to take such order with any fire or any combustible matter in his possession as is sufficient to guard against any probable danger to human life from such fire or combustible matter shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

The weakness underlying these provisions lies in the fact that the punishment provided for the offences mentioned above are insufficient with respect to the growing concerns in relation to environmental injury and pollution. It is necessitated that modifications should be done by means of enhancing both the duration of imprisonment and fine.

6.7 CRIMINAL PROCEDURE CODE

The most speedy and effective means to control and limit nuisances that revolves around air, noise and water pollution, is by means of Section 133 -144 under the Cr.P.C. The main objective underlying Section 133, Cr.p.c.is predominantly to keep check on the instances of Public Nuisances in cases of criticalness.

The provisions underlying the Cr.P.C. in the Chapter X gives successful, expedient and preventive solutions with respect to Public Nuisances disputes involving unhygienic situations, noise, air and water contamination. It enlists various provisions for implementation of different provisions underlying the substantive law.

The main goal of Chapter X in the Code is to promote tranquillity and maintain the public order. Provisions of Section 133-143 deal with the law that govern instances of Public Nuisances. Consequently, the power to give punishment to the offenders lies

with the District Magistrate. **Sec 133 under the Criminal Procedure Code** provide the Magistrate's power to eliminate the act of nuisance. The Section reads as follows:

(1) wherever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in the 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…

(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 …

(f) that any dangerous animal should be destroyed, confined or otherwise disposed off, such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance,...or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order, --

(i) to remove such obstruction or nuisance, or (iii) to prevent or stop the construction of such building, or to alter the disposal of such substance; or … (vi) to destroy, confine or dispose off such dangerous animal in the manner provided in the said order; or if he objects to do so, to appear before him 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.

(2) No order duly made by a Magistrate under this Section shall be called in question in any Civil Court.

For the purpose of this section "a 'Public Place' includes also property belonging to the State, camping grounds and grounds left unoccupied by sanitary or for recreation purposes."

It could be seen that this section thereby gives wide powers to the Magistrate to punish the offenders with respect to environment pollution. The process with respect

to the safeguarding of public right is provided in section 137 of the Criminal Procedure Code. It states as follows:-

(1) where an order is made under Section 133 for the purpose of preventing obstruction, nuisance or danger to the public in the use of any way, river, channel or place, the Magistrate shall, on the appearance before him of the person against whom the order was made, question him as to whether he denies the existence of any public right in respect of the way, river, channel or place and, if he does so, the Magistrate shall before proceeding under Section 138, inquire into the matter.

(2) If in such inquiry, the Magistrate finds that there is any reliable evidence in support of such denial he shall stay the proceedings, until the matter of the existence of such right has been decided by a competent court; and if he finds that there is no such evidence, he shall proceed as laid down in Section 138.

(3) A person, on being questioned by the Magistrate under Sub-section (1) fail to deny the existence of a public right of the nature therein referred to or who, having made such denial has failed to adduce reliable evidence in support thereof, shall not in the subsequent proceedings be permitted to make any such denial.

Furthermore, Chapter III in the Environment Act, Chapter VII in the Water Act, and Chapter VI of the Air Act, also makes environmental contamination to fall under the ambit of criminal liability. The polluters are to be deal as per the provisions of these acts in the context of the normative outlook adopted by SC.

Thus, Section 133 in Criminal Procedure Code mentions that a DM or SDM or the delegated executive magistrate with such delegation given by the State govt. Can make order subject to restrictions or conditions so as to eliminate nuisance, and in the event objection is given by the offender then such order made would be rendered as final in nature.

No civil court would be having any kind of jurisdiction over the order which is duly given by the Tribunal. Either by virtue of receipt of report made by the police officer, or any other incidental data, The magistrate can initiate on its own and thereby can ask for any proof which he thinks appropriately.

The definition of nuisance is refereed in very moderate words and encompasses building of structures, disposing off the matter, act of trade or business.

Under Sec 188, I.P.C., it is stated as follows-: whoever knowing that, by an order promulgated by a public servant lawfully empowered to promulgate such order, he is directed to abstain from a certain act, or to take certain order with certain property in his possession or under his management, disobeys such direction and if such disobedience causes or tends to cause danger to human life, health or safety, or causes or tends to cause a riot or affray, shall be punished with imprisonment for six months or fine which may extend to one thousand rupees or with both. Thus, In the event of not compiling with the orders, Punishment in the way of the penalties can be given by virtue of Sec.188 of IPC, 1860.

An executive magistrate has been given powers by virtue of **Section 144, Cr.P.C.** to manage the urgent circumstances by putting limitations on the individual's liberties, or in particular town in circumstances where such has capacity to create danger or disturbances to peace in that location.

Sec. 144 states as follows:- Power to issue order in urgent cases of nuisance of apprehended danger.

"(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 facts 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 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, of 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 any order made by it under the proviso to sub-section (4).

(7) Where an application under sub- section (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."

An absolute direction or order can be issued in urgency situations or in instances of nuisances under Section 144 or where there is apprehension of such. When there is a reasonable basis to proceed under this section and there is necessity of controlling such instances of nuisance or there is need of immediate solution, the magistrate can give orders in this respect where he deems fit. The order to be issued under this section is of anticipatory nature.

Thus, directions can be given under this section in order to prevent specific instances of nuisance before it actually happens. Such limitations are given mostly in instances

of urgency, when there is an apprehension of danger to the peace of an area by means of any acts of nuisances.

Thus the summary of the orders under s.144 is the urgent need to remedy a situation of danger which may be likely to be happened so as to prevent the damages that might occur. Conservation of harmony in public and serenity is the essential aim of the Government and the aforementioned authority is given to the Executive judge empowering him to do that purpose adequately amid the crisis circumstances.

This provision is legitimate in situation when it is prone to keep any of the accompanying occasions from happening

1. Disturbance

2. Harm to individuals life

3. Disruption of public peace

4. The said order can't be issued so as to offer benefit to single party.

In this way the provision underlying section 144 is most appropriate for removing apprehended instances of nuisance and thereby safeguarding the environment. The Judiciary has constructed diverse provisions (of which some are related in a roundabout way to environment) under IPC, 1860 and Cr.P.C., in such a way so as to promote the goal of environment conservation.

LEGAL INTERPRETATION AND SCOPE OF SEC 133:-

In spite of the various provisions that criminalize occurrences of contamination which would result in Public Nuisance, the adequacy of plan of action to them is exceptionally constrained. This is because of two main reasons[97]. First of all, subsequent to the filing of complaint to a judge by virtue of section 190 of the I.P.C., the proceeding initiated will need to result a sufficient confirmation of the standard required for such criminal proceedings and such must be initiated keeping in mind the end goal to provide sentence which might result in long duration of time. Besides, and maybe all the more significantly, the maximum penalty in way of punishment

[97] M.K Ramesh, *Environmental Justice: Courts and Beyond*, 3 Indian Journal of Environmental law 20 (2008)

(regarding fine and detainment where it is given) is much low, practically defeating the prosecution taken by virtue of this provision.

Instead of the I.P.C., the Cr. P.C. gives a far superior alternative in forestalling natural harm where it results in Public Nuisance. Section 133 of the Code provides wide authority and power to the executive magistrate to put up a stop to instances of Public Nuisance.

Despite the fact that the section utilizes the term 'may', such has been upheld to be compulsory in the situations where its utilization exist. The cure provided under section 133, Cr. P.C. has a few points of interest that ought to prompt its decision for the purpose of forestalling the environmental injuries.[98] Any individual can just file complaint to the executive magistrate to initiate the proceeding under Sec 133 taking into the compulsory nature of such section.

It is additionally nearly faster and where the proof is taken in accordance with section 138, such has to be received in summary way as in the case where trial is done in a summons case. Moreover s. 144of Cr. P.C accommodates circumstances of crisis where there is no need to provide notice and as such ex-parte orders can also be issued. Thus, the executive magistrate has been given vast powers by virtue of s.133 to put an end or uproot the nuisance and also can issue orders to the public authorities to do their necessary functions and things provided in the order.

Really, the genuine significance, extension and convenience of cure provided in the Sections 133-144 have been enunciated by the legal elucidation of these provisions for providing the advantages to individuals and to prevent ecological harm.[99] The different judgments given on the same matter demonstrate this.

The court observed in**RamachandraMalohiraoBhonsle v. RasikbhaiGovardhanbhaiRaiyani**[100]; The case was connected with Installation and utilization of electric engine for lifting water to supply it to different flat in a building. The petitioner who had bought flat before establishment of the engine was subjected to nuisance. The case was accounted for to Sub-Divisional magistrate. Sub-Divisional

[98] *Id.*,
[99] Shubhankar Dam ,VivekTewary, *Polluting Environment, Polluting Constitution: Is a 'Polluted' Constitution Worse than a Polluting Environment?*, 17 J Envtl Law 386 (2005)
[100] (2001) GLR 25

Magistrate ordered that the respondent ought to evacuate the electric engine introduced beneath the flat to dispose of commotion caused by noise and electric engine pump ought to be moved and introduced inside of the premises with the goal that it doesn't creates noise pollution.

The respondent objected on the premise that by virtue of sec. 133 of the Criminal Procedure Code, the Executive Magistrate can exercise his power only with respect to Public Nuisance and not in regard to private nuisance. Furthermore, in light of the request made to the issued order by Magistrate, if such leads to the interference with public right with respect to the disputed place or formation of nuisance in such public place then procedure underlying sec. 137 of the Code of Criminal Procedure is bound to be exercised by the Executive Magistrate. It shall be enquired by the Executive Magistrate that there has been formation of nuisance at such public area or place or there has been denial of exercising public right over such place.

The High Court of Gujarat held that The Executive Magistrate ought to have remembered that until the nuisance occurred at a public place, no action could be taken under section 133. There might be occurrences where nuisance is made at a public place at the same time, individuals or persons having a place in that area might approach to file an application under sec. 133,Cr.P.C.[101]

In the said scenario, even a single individual who is distressed because of such instance of Public Nuisance occurring at public place might report such instance to the Executive Magistrate, and subsequently on such reporting, the Executive Magistrate can continue to proceed as per sec. 133(1) of the Criminal Procedure Code. Section 133(1), Cr.P.C. states as, The Executive Magistrate can proceed under this section on receiving the report of Police Officer or other information." The term "other information" incorporates such information provided by any individual who is wronged by such instance of Public Nuisance.

In this way, by virtue of sec. 133, nuisance must occur at pubic place. The explanation to sub-section (2) of sec. 133 gives the definition of public place which is, "A public place includes also property belonging to the State, camping grounds and grounds left unoccupied for sanitary or re-creative purposes." Determining the subject of

[101]GeetanjoySahu, *Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence*, 4 Law, Environment and Development Journal (2008)

appropriateness of section 133 of Cr.P.C. it is unambiguous that it is material only when there is an infringement of public right.

The judiciary has broadly deciphered the significance of public right. It is unmistakably seen from the perception of the Kerala High Court in **Augusthy v. Varkey**[102]**,** wherein it was held: "The particular terms 'public place' and 'any way' obviously outline, that the provision might be legitimately utilized by the public. Legitimate utilization by the public of "any way" would bring it inside the purview of this section. The public can use a private place and it might turn into a public place for the time it is utilized. Thus, the term “public place”, is not limited to a spot devoted to public.The terms “public” or “public place” has been comprehended in a bigger manner. In the event that public have entry to a spot by right, consent or utilization of it, it is a public spot or place, regardless of the possibility that it might not be public property. One way of determining this fact would be to observe whether there is a privilege vested in such huge number of people rendering them unascertainable so as to further render them a section unascertainable not by limitlessness of numbers, instead by character of such section".

The High Court of Rajasthan in **Achalachand v. SurajRaj**,[103] observed that whenever there exists peril to the general population living in neighbour or in family or bystanders, the implementation of section 133 becomes possibly the most important factor.

In the event, that there is exists a wall between two residences and if the developments on this wall which is common, are hazardous which might bring about tumbling down of such wall and thereby harming the neighbours amounts to Public Nuisance and the role of section 133 of Cr. P.C. becomes eminent.

Obviously, Section 133 does not think about any activity by a Magistrate when the peril is just to the detainees of the house or building which is said to be in a perilous condition… Whenever risk starts appearing to a neighbour likewise, and the ingredients of Section 133,Cr.P.C. are also satisfied then said unsafe structure can be referred as Public Nuisance.'

[102] AIR 1964 Ker 149
[103] 1959 CriLJ 235

The actions to be taken by the Magistrate under this section empower the Magistrate to manage the instances of crisis and are not proposed to resolve private cases of distinctive individuals from the public. They shouldn't be utilized as a alternative for civil suits with a specific end goal to reconcile a private question and if a private right exists, which the man wants to be upheld, the remedy is to take the case before the civil Courts.

The nuisance, where the public is not affected at large but rather some person of a specific towns got affected, then Section 133 Cr. PC cannot comes into play.

The Court has ensured on the misuse of force under section 133. The order of the Court is clear. Where the action is taken under Section 133, Cr. P.C., and there is denial by the other party, the presence of a public right in appreciation of the area being referred to, an inquiry must be held by the Magistrate by virtue of Section 139-A with a perspective to discover whether there exists sufficient reliable proof in such support or in dissent with respect to the other party, and such reasons are to be recorded clearly before taking any action further.No absolute action or order can be made unless there is recording of reasons by virtue of Sec 139-A.

7. JUDICIAL APPROACH IN ENVIRONMENTAL JURIPRUDENCE

During the past two decades, the environmental protection of India has been one of the prime agenda whereby the Supreme Court of India has played an important role in its development. Traditionally, the two wings off the state, the executive and legislature, plays significant par in the governance, but observing the Indian scenario, it has been seen that a very vital role was played by the Indian Courts, in the context of environmental protection.

In spite of the fact, that it is not surprising for The Courts of Western countries to assume a dynamic part in environmental safeguard, the manner, the Indian Apex Court has deciphered and introduced changes in the sphere of environmental protection is remarkable by itself.[104] Various new principles and doctrines have been set down to safeguard environment from the nuisance of pollution and contamination, beside its function of elucidation and adjudication.

It has developed various new principles and doctrines and increased the authority of the present ones by means of various enlightening orders and decisions. The orders and directions made by the Apex Court in respect to ecological problems, were not only confined to the question of law, but extended to the technical inquiries that are involved in such cases of environment. The Apex Court has acted as pioneer, not only as far as setting down new standards and doctrines but furthermore in the utilization of such, so as to provide corrective justice.

Amid the late years, new dimensions were added to the remedies of Public Nuisance by the judiciary for its broad development to empower subjects to file complaints against the public authorities so as to make them efficient in their working and promoting the protection of environment.

The Galstaun case[105], might be said to be the first case dealing with environmental pollution. The court observed that no private individual can assert the right to pollute a common channel by releasing into it, what it is not planned to be disposed off and

[104] *See* Supra note 86

[105] J.C. Galstaun v. DuniaLal Seal, (1905) 9 CWN 612

afterward toss the blame on municipality to change the channel with a specific end goal to cure the nuisance.

Gobind Singh v. Shanti Swaroop, is the primary case where the Supreme Court analyzed the extent of Section 133,Cr.P.C. to upheld the order given by executive magistarte to destruct the oven and the fireplace of a baker which created air pollution. The Supreme Court expressed as stated:-

"*It is clear from the judgment of the learned Sub-Divisional Magistrate that the evidence disclosed that the smoke emitted by the chimney constructed by the appellant was 'injurious to the health and physical comfort of the people living or working in the proximity' of the appellant's bakery and that there was no justification on the part of the appellant for discharging the smoke from the chimney. Considering the nature of this construction and the volume of smoke emitted by it the learned Magistrate concluded that the chimney was not only an encroachment upon a public place but its construction led to a graver consequence. Allowing the use of the oven and the chimney was, according to the Magistrate, 'virtually playing with the health of the people*.'"[106]

The case happened during the period when contamination free equipments were not famous in the nation. In present day times, when there exists eco-friendly equipments, which are accessible in bounty, the perception of the court turns out to be extremely pertinent in spite of the way, that the removal of the oven and the chimney lead to the end of the baker's occupation.

Judicial activism in the eighties had its effect felt in the territory of environmental arena through the milestone judgment given in **Municipal Council, Ratlam v. Vardhichand.**[107]The Supreme Court distinguished the obligations of municipal authorities to protect environment and extend the scope of Public Nuisance in the Cr.P.C. as an intense tool for the purpose of enforcing the municipality duties towards the environment protection.

[106] AIR 1979 SC 143
[107] AIR 1980 SC 1622

The occupants inside Ratlam district were experiencing foul smell from the open channel of drains for long period of time. The smell created by public discharge in ghettos and the fluids streaming on to the road from the industries compelled the general population to approach the executive magistrate for relief. The order to remove the drain channels and construct public toilets and proper drainage, was made, which was to be complied within six months time.

But rather then complying with it, the municipality objected it on the basis of its financial capability to carry out the order. At this point, the case went to the Supreme Court, where Justice V.R. Krishna Iyer, in his supreme style decided that The municipal board is established for the sole reason of safeguarding public well-being and giving better funds, and thereby, it can't flee from its important obligation on the basis of financial constraint. Decency and respect are non-debatable aspects of human rights and also stands true in the cases of municipalities.
Essentially, constructing a proper drainage frameworks fit and adequate to address the issues of the general population can't be sidestepped if the municipalities has to legitimize its presence. Therefore, the decision of the Supreme Court in Ratlam Municipality, is significant in the historical backdrop of legal activism in maintaining the social equity facet of the law by affixing liability to the statutory bodies to perform their lawful commitment to the general population in lessening Public Nuisance and promoting the principle of environmental pollution regardless of the fact that there are budgetary limitations.

Subsequent to the judgment in case of Ratlam, orders and guidelines were issued by the Courts to the statutory and local bodies to get rid of wasteful substances and make the cities clean. By endowing them straightforwardly with the obligation of contemplating the environmental condition such as recognizing the dangerous factories, and soliciting them to give notice for closing such industries or to shift their commercial ventures, Courts have made the statutory authorities independent in safeguarding the environment.

7.1 JUDICIAL ACTIVISM IN THE SPHERE OF TORT LAW:-

The Indian judiciary has assumed a momentous importance in executing standards of tort law in ecological problems. The commendable work done by the Supreme Court in constructing the old features of the tort law framework providing more extensive scope so as to incorporate the new difficulties arising in the environmental injuries. The Supreme Court has developed new standards of tort and given a modified form to the tortious liability in context of environmental damage.

In India, to promote the advancement of environmental jurisprudence, the judiciary have embraced different common law standards and different international doctrines and combined them with the Indian principles of environmental law. Such are as stated:

Doctrines And Principles Adopted By The Court:-

1. **Doctrine of Sustainable Development**

Sustainable development has come to be acknowledged as a practical principle to eliminate poverty and enhance the standard of life, living along, with the carrying ability that supports the environment. 'Sustainable Development' as characterized by the Brundtland Report signifies "Development that meets the needs of the present without compromising the ability of the future generations to meet their own needs." Sustainable Development acts as balance between the idea of development and environmental protection and as such has been acknowledged as specie of the Customary International Law. However its significant particular elements have yet to be carved out by the International Law Jurists.[108]

2. **Doctrine of Absolute Liability**

The doctrine of absolute liability was developed in **M.C. Mehta v. Shri Ram Foods**[109] and Fertilizer Industries. This case was instituted for moving of caustic

[108] Justice V.R. Krishna Iyer, *Environmental Justice Through Judicial Process: From Ratlam to Ramakrishnan*,2002. Available at:http://www.esgindia.org/projects/kja2002/docs/RATLAM%20TO%20RAMAKRISHNAN%20J%20Krishna%20Iyer.htm ,(March 15,2016)

[109] AIR 1987 SC 965

chlorine chlorine and sulphuric acid factories plants situated in a densely populated territory in Delhi. The factory used to emit oleum gas which created disturbance and annoyance among the nearby occupants The court held that in cases where the enterprise carries or engages in hazardous or inherently hazardous endeavour and damage is caused by virtue of a mishap in the operation of such hazardous or inherently hazardous activity, then such enterprise would be strictly and absolutely be held liable to compensate to every one of the individuals who got affected by such mishap and such liability cannot be escaped on the exceptions given in the rule of Rylands vs. Fletcher.

3. **Polluter Pays Principle**

This principle was evolved by the court in **Indian Council for Enviro-Legal Action v. Union of India[110].** This principle stated that where the activity carried on is of hazardous or inherently hazardous in nature then the polluter who is carrying on such activity would be liable to compensate the loss that occurred to any affected person on account of the polluter's action regardless of the reality, whether the polluter took reasonable safeguards to prevent such alleged action.

The Court has expressed in this case that the 'Polluter Pays Principle' implies that the absolute or supreme liability for damage to environment stretches out not just to repay damages to victims but it includes the expenses of restoring the ecological harms done due to such activity. Along these lines, 'Polluter Pays Principle' the Court has perceived it as a basic goal of governmental scheme to anticipate and control the environmental pollution.

4. **Preparatory Principle**:

This rule was propounded by the court in **VelloreCitizens Welfare Forum v. Union of India[111].** It imposes a duty on each industry, legislative organization, developer, factories, to take measures of anticipation, prevention and thereby to counteract the reasons for ecological degradation. The Court additionally held that if there are dangers of genuine and irreversible harm then absence of scientific certainty cannot be taken as factor to defer from the precautionary steps taken for environmental

[110] AIR 1996 SC 1446
[111] AIR 1996 SC 2715

harms. Ultimately, the Court underlined that onus of evidence would be on the polluter or industrialists to demonstrate that their activity is ecologically friendly.

5. **Doctrine ofPublic Trust:**

This principle has been alluded to, by the court in **M.C. Mehta v. Kamal Nath.**[112] This doctrine engulfs all the natural assets, for example, river, stream, forests, air and so on., with the end goal of safeguarding the ecological framework. The State owns these natural assets in the form of a trustee and can't do breach of trust. Beas River by the govt. was set aside and the company that was granted such lease was ordered to compensate the expense of restoring the environmental balance.

Tortious Liability of Hazardous Industries

The Bhopal Catastrophe has been demonstrated significant in the development of environmental laws. The legislature and the judiciary began pondering new ways and method for anticipating comparable tragedies in future. Compensation provided to the victims of Bhopal gas disaster brought a riddle in Indian torts law. There was scarcity of case in the field of torts. The postponement of the cases, over the top court-fees, confounded technique adopted by the bench and recording proof, lack of specialized lawyers are expressed to be the factors behind such cause.

It is additionally contended that the claimed scarcity is myth and not reality, as a large number of cases are settled out of court through transactions and bargains and the unreported judgments given by subordinate Courts. It is not debated that Indian Courts don't recompense harms in civil cases to prevent the wrongful conduct. The judiciary has interpreted various late patterns in the Indian torts law as tool for protection against ecological risks.

During December 1984, One of the hazardous man-made cataclysms occurred in Bhopal, by the industry under the Union Carbide India Limited. Methyl Isocyanate, an exceptionally harmful gas spilled out and it caused death on large scale where most of the victims were the hutment-inhabitants living in the close region of the

[112] (1997) 1 SCC 388

processing plant.[113] The air conveyed the fatal harmful gas to the thickly populated regions and around two lakhs individuals endured harmful injuries.

The Union Carbide India Limited was the company by Americans that was operating in India. The Bhopal Gas Disaster was a significant catalyst in the arena of environmental protection. Subsequently, the Environment (Protection) Act, 1986 was passed by the Indian Legislature. The Environment Protection Act enables the Central Government to undertake safeguards to secure and enhance the ecology. Guidelines were additionally encircled for enforcing the provisions underlying the Act.

In **Ganga river pollution case**[114],The Ganga river got dirtied because of release of mechanical squanders, toxic substances, human wastages into the water. Additionally, various dead bodies were being tossed into Kashiriver with the conviction that the dead persons would go to paradise straightforwardly since they consider Kashi as blessed spot and the river as pure. Advocate M.C. Mehta, petitioned a P.I.L. under Article 32 of Indian Constitution to the Supreme Court against the Union of India, Kanpur Municipal Corporation and the responsible bodies for the purpose of removing Public Nuisance created due to contaminated Ganga water. Allowing the petition, the SC ordered the responsible bodies to undertake steps so as to remove the Public Nuisance and furthermore, acknowledged the petitioner for his inventiveness.

In **Vineet Kumar Mathur v. Union of India**[115], the court interfered to deter contamination of Gomti river in U.P. due to release of pollutants from the refinery of Mohan Meakins Ltd. The court ordered to set up an efficient treatment plant and also imposed Rs. 5 lakhs as penalty.

Another important case is the **Taj Trapezium (TTZ) case**[116], filed for protecting the TajMahal, the historic monument of India from emissions from carbon and coke based industries in the TTZ zone. The Court ruled that industries, identified by the Pollution Control Board as potential polluters, had to change over to natural gas as an industrial fuel and those that were not in a position to obtain gas connections for any

[113] Union Carbide Corporation vs Union Of India, 1989 SCC (2) 540
[114]M.C. Mehta v. Union of India,AIR 1988 SC 1115
[115] (1996) 7 SCC 714
[116] [1984] 2 SCR 67;

reason should stop functioning in TTZ and relocate themselves in alternative plots outside the demarcated area within the stipulated time.

International treaties, agreements, conventions and decisions taken at international conferences have to be incorporated into the law of the land by parliamentary legislation. The Taj decision is an instance of judicial strategy of applying a norm formulated at the international level into the facts of the case and accepting it as part of the legal system.

The directives of the Apex Court went to the extent of spreading environmental awareness and literacy as well as the launching of environmental education programs.

7.1.1 PUBLIC INTEREST LITIGATION

The acknowledgment and development of Public Interest Litigation has turned into an impetus for ecological equity. In opposition to the past standards, an individual acting bona fide and having adequate interest can go to Courts to remedy a public harm, for making authorities to do their public obligation, ensuring the social and aggregate interests and promoting public interest.[117]

During the eighties and nineties, there has been an influx of environmental cases. The vast majority of the cases were in the form of PIL and class actions, clearly in light of the fact that ecological issues relate more excessively to the diffuse interests than to ascertainable harm to particular individuals.

The mechanism of class action is epitomized in the Code of Civil Procedure 1908, where if various persons share common interests, one or more than a person can file the case. Bhopal Tragedy litigation was an example of class action. A single person or group of individuals or an executive magistratessuomoto can file the P.I.L.

This provision has turned out to be a powerful weapon for administrative measures and also for governmental policy to take actions against agencies and bodies responsible for the environmental protection.

[117] Jamie Cassel's, *Judicial Activism and Public Interest Litigation in India: Attempting the Impossible?*, 3 The American Journal of Comparative Law (2007)

The capacity to summon the original jurisdiction of the Supreme Court and the High Court's by virtue of Arts 32 and 226 of the Constitution is a momentous stride forward in ensuring environmental protection. Courts have broadened the scope of the substantive rights related to well-being and a clean environment. Much of the time, this advancement was made with the mechanism of PIL.[118]

In this way, keeping in mind the end goal to profit from substantive ecological rights, the Courts have opened a way of procedural equity with no dependency on the lengthy procedural requirements.

In the case of **Tarun Bharat Singh Alwar v Union of India**[119], the objection was made by a social action group against the validity of a mining lease granted inthe ensured region which was part of reserved forest. The Supreme Court held that the case presented ought not to be dealt with, as the typical adversarial litigation. The Petitioners acted in for a reason which is high on the priority list of national agenda. The issue of environmental and wildlife protection ought to be shared by the administration.

The perception of the Court is vital as it underlines the justification of PIL in ecological cases. It is the obligation of the State to safeguard the environment, where such duty is prescribed by the Directive Principles and Fundamental Duties as modified by the 42nd amendment of the Constitution.

Any individual who brings an environmental problem, it being a single or group of individuals or organization is equally concerned with the problem. The scope of issues has been exceptionally wide. It stretches out from empathy towards creatures and benefits given to tribal individuals, to the ecological system of Himalayas and woodlands, and absolving free of eco-malady of town.

The promotion of environmental protection was taken up by way of PIL by a wide range of individuals in the public arena. Lawyers, group of lawyers, NGOs have

[118]Paramnand Singh, *Protection of Human Rights through Public Interest Litigation in India*, 42 Journal of Indian Law Institute,(2010)
[119]1993 SCR (3) 21

committed themselves towards the protection of environment, welfare discussions including those for tribal welfare, social orders enrolled under the Societies Registration Act and buyer research groups have effectively presented ecological issues before Courts.[120]Social activists group, the activists of a general public for protection of animals, executives of rural groups and occupants of lodging provinces were likewise included in supporting natural issues. While at times letters were regarded as writ petitions, in some others, paper reports accounts for legal action.

In this manner, the judiciary has done its best in guaranteeing ecological security. Constitutional Courts have likewise effectively taken care of this zone of perplexing, confused and quickly developing and changing techno sciences and multidiscipline.[121] Judicial activism has brought about numerous advancements and has given vital crucial substance for structuring a far reaching Indian environmental jurisprudence.

Within the arena of promoting environmental equity, not only the constitutional Courts have established the highest foundation with respect to the wings of the 'State', which are legislature and executive, but also have stood highest in front of its different counterparts in both developinig and developed nations.

The Supreme court gave numerous infamous judgments which have demonstrated valuable in the long duration. Legal directions in context of contamination of the sacred rivers like the Ganges and the Yamuna, contamination of underground water, and choking of different metros because of air contamination, safeguarding the national historical landmarks such as the TajMahal, have contributed towards development of to humankind.

Still,the law implementation has yet to make up for lost time with these endeavours. Law can't reach where implementation can't be effectively done. In the absence of proper implementation of laws, the orders and directions given by the court would not have the capacity to accomplish the effective outcomes.

---

[120] Surya Deva, *Public Interest Litigation in India: A Critical Overview*, 28 Civil Justice Quarterly, (2009)

[121]MahajanNiyati, *Judicial Activism for Environment Protection in India*, 4 International Research Journal of Social Sciences,(2015)

7.1.2 CONSTITUION OF GREEN BENCHES

National Green Tribunal or the Environmental Court is not another notion. Distinctive Courts in the nation have prescribed for the foundation of Environmental Court to deal with cases identified with ecological disturbance. In **M.C Mehta versus Union of India,**[122] the apex court was of the perspective that ecological cases include evaluation of scientific information. Establishing the environmental Courts on territorial premise would need proficient judges and specialists, keeping in perspective, the mastery required for such determination of environmental cases.

In another case, **Indian Council for Enviro-Legal Action versus Union of India**[123], the Apex Court was of the perspective that Environmental Courts must be established to address the problems related to environment whereby these Courts would hace civil and criminal jurisdiction so as to resolve the problems in quicker way.

The Apex Court in **A.P. Pollution Control Board versus M.V. Nayudu**[124], observed that there is necessity for setting up Environmental Courts that would be having the advantage of expert guidance from ecological researchers and technically qualified persons, which would be a segment of the legal procedure, subsequent to the intricate deliberations of different opinions legal specialists of different nations.

In **Vellore Citizen's Welfare Forum v. Union of India**[125], in the wake of giving different orders for closing and shifting of the tanneries that were causing pollution in Tamil Nadu, SC endowed the duty of keeping check on the such pollutants so as to promote environmental pollution, with the High court of Madras. This prominent "request" made to High Court of Madras led to the establishment of "Green Benches", a special forum to address the problems related with environment and other ecological matters, as was set up in Calcutta, and in other High Courts.

The court additionally ordered the Central Government to establish a body under Section 3(3) of Environment (Protection) Act, 1986, to keep check on the execution of the establishment of treatment plants, closing the commercial enterprises that did not established such plants, and imposing penalties on the industries that delayed in

[122] *M.C. Mehta v. Union of India*, AIR 1988 SC 1115
[123] AIR 1996 SC 1446
[124] [1999] 2 SCC 718
[125] AIR 1996 SC 2715

the establishment of such treatment machineries and establishing an " Environment protection fund" for the purpose of providing damages to the victims.It additionally affirmed the guidelines for 'total dissolve of solids' suggested by NEERI (National Environmental Engineering Research Institute).

Following the years of discussions, the National Green Tribunal Bill was presented in the Indian Parliament on July 29, 2009. The bill accommodated the foundation of a Green Tribunal, which was to offer successful and quick redressal of environmental cases and protection of environmental assets.

The National Green Tribunal Act was enforced on 18th October 2010. The scope of the Act is wide and empowers institutional advancement for governing the national environmental issues. The National Green Tribunal Act was viewed as an important step capacity progression, in light of the fact, that the Act supports the structure of Global Environmental Governance.

However, the Courts are yet overburdened with claims of environmental issues, which includes the Green Benches also, that were particularly set up for expedient dispersing of claims of environmental problems.[126] The National Green Tribunal Act was sanctioned to fill the holes in the current adjudicatory structure. Criminal arraignment and constitutional cures are deficient to deal with the complexities of environmental cases. Difficulties additionally exist due to the fact that the compliance structures fails to force discouragement and also do not impose high costs.Furthermore, sufficient compensation for individual or property harms, caused by environmental damages, is not provided by these remedies.

Therefore, it could be observed that, though, many principles and doctrines were adopted by the courts, the objectives of environmental protection have yet not been achieved owing to the various loopholes in the laws and inefficient implementation and enforcement of the court’s orders and directives.

[126]ChintanChandrachud, *The Supreme Courts Practice of Referring cases to longer Benches: A need for Review*, 17 J Envtl Law 386 (2012)

8. RECOMMENDATIONS AND CONCLUSION

With respect to India, Tort law appreciates the questionable distinction of remaining the single un-codified law under the legal framework. Based on the pre-independent British legal structure, it stays in an incipient and at immature stage of development. The tort law has still to cross its essential limits, for example, elucidating the stable standards underlying the compensation system or broadening the scope of nuisance. Courts keep on awarding damages on general premises basing fundamentally, on the extent of the harm suffered by the victims or on much more oversimplified details of nuisance.

The tort framework has generally neglected the issue of ecological harmful damage, in spite of mounting confirmation that introduction to regular toxic substances causes noteworthy nuisance. In a nation such as India which has 72nd position in the rundown of 180 most corrupt nations, the achievement of penal framework against guilty parties in instances of environment contamination is defaced by the latches in the legal procedure to give appropriate punishment the wrongdoer.[127]

As an underlying subject, Courts by and large tend to apply the standards of negligence as opposed to a strict liability tests to normal activities which are economic in nature. Only in cases, where the alleged person is occupied with abnormally perilous acts, the standards or test of strict liability is put into application by the Courts. Besides, parties offended in ecological tort, must also conquer the high obstacles of causation and latency of injury or damage.

Additionally, the usage of the penal framework is either postponed or waived because of political contemplations. It is additionally unrealistic for the Court to look after the punishment of each guilty party. Pecuniary liability guarantees prompt submission of fine by the guilty party and is submissive to a more proficient method of hindering him from doing such wrongful acts.

The tort law framework of Public nuisance is based on the premise that offended parties are repaid by the polluter by way of compensation, without it going in the hands of the government authorities.

[127] L. M. Walker, Dale E. Cottingham, *An Abridged Primer on the Law of Public Nuisance*, 30 Tulsa L. J. 355 (1994).

This however, is not achieved efficiently owing to the low damages given to the victims in various cases. Thus, The tort framework, be that as it may, is unrealistic to remedy its inability to remunerate harmed ecological tort plaintiffs. It is impossible that the tort framework would someday internalize the expenses to human well-being of these ecological harmful wounds.

In the course of time, Public Nuisance has been utilized by govt. authorities to put an end to acts that were viewed as semi-criminal in nature, on the grounds that, in spite of the fact that not entirely unlawful, it was esteemed as unreasonable in perspective of its probability to harm somebody in the general population.

Conventionally, significant unreasonable acts included the hindering of a public road, the disposal of wastes and sewage into a public stream. To put an end to this type of unreasonable conduct, governments looked for directives either charging the act that created the nuisance or requiring the alleged party to subside the act of nuisance.

Our legal framework is comparably ready to handle exemplary strict liability cases, for example, an explosive blast, a sudden surge from a supply, or even the disastrous Bhopal mishap. In these type of instances, causes and end results are promptly identifiable. The plaintiff of an environmental tort, nonetheless, regularly confronts much more impressive issues of evidence and its verification.

If at any point there was a nation with a convincing case for an exhaustive and comprehensive tort law, it would be India. The loss of human lives in the Bhopal disaster created by the episode is cataclysmic.particularly, the disastrous effect of it which left eras unhealthy and diseased. However, what exacerbates this misfortune, in a most hostile and belittling manner is the compensation that was 'recompensed'.

As a consequence of a framework that did not have the mastery to face what might at last turn into the most complicated suit, the Government introduced the Processing of Claims Act, embodying the principle of Parens Patria to make representations on behalf of the victims.[128] This step by itself was loaded with insufficiencies related to the casualty profiling and a clearly oversimplified grading of the victims.

[128] C.M. Abraham &Sushila Abraham, *The Bhopal Case and the Development of Environmental Law in India*, 40 The International and Comparative Law Quarterly,(1991)

Numerous have contended that the Supreme Court has decided the granting of compensation in superficial manner. This is accepted to a limited extent by the way that the plan of compensation and the knowledge behind the judgment had to be clarified by the Government of India in an authority statement.

Since India had not managed such mishaps over long period of time, the laws transnational enterprises to a great extent un-administered and uncontrolled. The Bhopal gas catastrophe demonstrated two facts. First of all, without a composed law a class action (even in the existence of legislative backing) would not be allowed to be made as an outsider case in America which is primarily based on precedents.

The second thing reflects the unequal negotiating capacity of developing nations in respect to the enterprises that works in developed nations. These both loopholes can be remedied if there was a comprehensive tort law framework. One main factor of setting up business of Union Carbide in India was on the grounds that India's legitimate framework did not have a framework embodying corporate responsibility.

An essential element of efficient tort law frameworkis that it ought to urge the victims to approach and prosecute. It does as such by guaranteeing them of fiscal remunerates and satisfactory remedies in the future. The current framework experiences a sickness that is restricted to remedy the past wrongs, payments of damages subject to discretion, combined with no insurance against the culpable activity being done again.

The next issue is concerning Public Interest Litigation (PIL) which basically permits class suits or actions against conduct injurious to interest of the public. A standout amongst the most regular situations in which this cure has been summoned is in claims of environmental injury. Lamentably, regardless of the fact that the alleged polluter company is said o be liable, compensation are constrained to repairing the damage done or repaying the influenced parties. At the end of the day, the liability is summoned to correct the wrongful acts.

With respect to the claims of global warming initiated by Attorney Generals (AGs) of the state , the issue of global warming falls under the purview of Public Nuisance, and the alleviation looked for, is the cut back of the greenhouse gases that are emitted from big industries and compensation in form of damages are sought from the owners

for the State's endeavours to reduce such emissions and thereby face the issue of worldwide warming.[129]

The claims of global warming have likewise also filed cases of global warming, looking for less (yet at the same time significant) remedy, that also include the suit brought to relocate the Alaskan Inuit town that is submerging into ocean because of ice thinning.[130] These claims try to utilize Public Nuisance to review what the greatest obstacle in environmental arena is undeniably, this nation or world has ever confronted.

Public Nuisance suits generally have been filed by govt. authorities of a nation, and specifically the AGs of thatnations[131]. Private suits brought by individuals, notwithstanding, are allowed to file cases of Public Nuisance claim if such persons have endured "exceptional damage or special injury " aside from the harm endured by the public as an after-effect form such act of Public Nuisance.

Not only the country but also private plaintiffs must build up the essential necessities of bringing up suits of Public Nuisance, for example, actual damage done and its redress ability. The unique harm principle keeps on being the best obstacle confronting a private offended party who files Public Nuisance claims for harms since plaintiffs who can sue, for the most part wins if the damage endured is associated with the respondent's activities.

In overcoming the obstacles posed by the rule of special injury and different-in-kind test, two alternative approaches can be considered. To begin with, the now-overlooked twin of the conventional test of "different-in-kind" i.e., "different-in-degree" test can be considered alternatively.

It would be a more flexible methodology in the cases of private actions with respect to Public Nuisance, to provide for damages insofar as the offended party's damage and the suffered inconvenience was significant, immediate, and proximate, provided

[129] Jeffrey N. Stedman, *Climate Change and Public Nuisance Law: AEP v. Connecticut and Its Implications for State Common Law Actions*, 36 Wm. & Mary Envtl. L. &Pol'y Rev. 865 (2012),
[130]David Rose, *Global Climate Change: A Nuisance to the Public Without a Public Nuisance Remedy*, UNIV. S. CAR. ENVTL ADVOCACY SEM. (2006)
[131]*See* Victor E. Schwartz , *Why Trial Courts Have Been Quick to Cool "Global Warming" Suits*, 77 TENN. L. REV. 803 (2010).

that it is not essentially varying in nature. Such recovery would incorporate every individual harm and real monetary loss, including the loss that is suffered on account of insignificant postponement and the discomfort suffered, if it was "specific" to him, i.e., surpassed in degree what was endured by public at large.[132]

[133] In spite of the fact that, it introduces to a lesser degree of problem, the "different-in-degree" test, in any case, endures the same weakness of tolerating the incomprehensible reason that the injury endured by private plaintiff ought to be different with respect to the public, regardless of the possibility that it was in terms of degree. Along these lines, despite the fact that the degree test appears to be verifiable legitimate and doctrinally solid, it additionally accentuates personal harms over public values.

The second approach is the adoption of standard of "actual community injury" which is based on the modernized variant of Smith's "actual damages" with two critical refinements. To begin with, it would not confine perceived harms to monetary loss but instead would incorporate the harms perceived in every separate state's environmental statutes. Second, the harms suffered by the public rather than to individual would be concentrated upon.

This test attempts to resolve the incongruity attached with the rule of special injury by re-arranging this rule to perceive unequivocally, that Public Nuisance results into a public action;an action presented by a private person to eliminate Public Nuisance so as to absolve the public interest in the implementation of public commitments. If Public Nuisance is really about shielding the public from dangers inflicted on well-being, security, and health, then such individuals who try to absolve these interests ought to share as opposed to stand aloof from these interests. Hence, It should be demonstrated by the plaintiff that the injury is endured by him and such harm is common to the community and not one of a kind. or exclusively person. Thus, with this, Courts can guarantee a more genuine arrangement with the key aim underlying the law of Public Nuisance.

---

[132]Denise E Antolini, *Modernizing Public Nuisance : Solving The Paradox of the Special Injury Rule*, 28 Ecology L.Q. (2010).

[133] Showalter, Stephanie, *Climate Change: Public Nuisance Cases Clear Preliminary Hurdles* , 8 SandBar 4 (2010).

The troubles of demonstrating causation in these claims bewilder ecological tort plaintiffs. Supposing that the offended parties are even cautious about them being harmed, they must overcome the loopholes in apprehension attached with respect to causation, hazard, and injury to get damages for their harms.

The attributes of an environmental toxic harms convolute productive liability cases. These harms have a tendency to include an extensive range of people who get exposed to major, yet low, dangers. A long dormancy duration in the middle of such exposure and ailment and numerous substitute reasons for such ailment worsen the issue of causation.[134] These challenges, joined with the expenses of suit, amounts to under-compensation of the persons who are affect by such casualties and the principle of deterrence is not efficiently achieved.

One guarantee of the advanced age, be that as it may, is a significantly improved capacity to trace natural contamination at sensible cost. Soon, it might be conceivable to trace the contaminated substances from the source of its discharge into the surrounding to the receptor that at last, assimilates it. The advances that could empower such a framework incorporate little remote wireless sensors that could screen micro-environments and modern PC systems that can trace the development and course of toxic substances. Also, improvements in toxic genomics, which relates to the analysis of the impacts of introduction of a harmful matter, on genes, would expand the capacity to examine the impacts of chemical matters on human wellbeing.

The development in technology might alter the safeguards related to health of humans and the ecology expounding the otherwise obscure causal connections in the middle of toxic substances and human ailment. Therefore, society might have the capacity to remunerate ecological tort casualties in sufficient manner and further, resolve the neglected externalities. These innovative advances would try to lower or remove obstructions attached to the internalization of the payments—whether by tort, or contractual mechanism.

Imagine, for instance, a circumstance in which individuals from a group could predict their normal exposure to toxic substances transmitted by another manufacturing plant,

[134] Mark Latham &Victo E Schwartz, *The Intersection of Tort And Environmental Law : Where The Twains Should Meet And Depart*, 80 Fordham Law Review (2005)

and also the incremental danger with respect to environmental ailment. Furnished with this data, group of individuals might have the capacity to arrange compensation for their expanded danger of harm because of the operation of manufacturing plant. These businesses of contractual nature gives the possibility of internalizing the expenses to the group, however, these are fit for just a modest bunch of environmental circumstances. Exchange expenses are generally high, with every individual's required damage liable to be little. People would have just a constrained longing to exhaust natural assets to bargain the compensation agreement with the persons involved in such environmental harms that might have an effect on them.

The troubles of overcoming inactivity and demonstrating causation undermine the tort framework'sof Public Nuisance is the capacity to meet its central targets. The tort framework of Public Nuisance is believed to have three essential targets: (1) compensation, (2) prevention or deterrence, and (3) corrective justice.[135] Compensation is given to victims who can exhibit the injury suffered by them due to the conduct of others. The tort framework of Public Nuisance basically acts as mechanism of social protection by spreading the expenses of mishaps to hazard makers and their customers. Deterrence is accomplished by means of imposing the pecuniary liability, where such polluters are compelled to consider the effects of their exercises on others.

Defenders of effectual deterrence contend that laws relating to liability ought to be fashioned in a way so as to impel proficient levels of action and care. Defenders of corrective justice argues that the persons who are accountable for abusing other individual’s autonomy must restore these individual to their original position as it was before the occurrence of Public Nuisance. The plaintiffs of environmental tort regularly confront constrained prospects for getting damages.

The possibility of an offended party's fruitful recuperation is further disintegrated by the lawful remoteness of harms, the trouble of esteeming subjective misfortunes, and the trouble of representing the expanded danger of latent harms. Damages are frequently paid years after a casualty has been done. Thus, along these lines, the

[135] Mandy Garrells, *Raising Environmental Justice claims through the Law of Public Nuisance*, 20 Envtl. L.J. 163 (2009).

recuperation might be of little use to the affected persons. Frequently, the families of the affected parties get the advantage of any recuperation.

Besides, the tort law of Public Nuisance's lack of failure to notice and management amounts to the disparities—disparate grants are frequent to the correspondingly situated affected parties. Finally, in the event that the pollutant gets insolvent, then the remaining victims would not be able to obtain damage by way of compensation. Under-compensation, along these lines, gives off an impression, of being the standard rule. One may contend, nonetheless, that the victims that have exhibited the liability is, often, overcompensated.

The damages given for disastrous environmental injuries done to the victims, very rarely, crosses Rs. 100,00. The exemplary damages, i.e., the Punitive damages, in India are only notionally offered, while it is practically unavailable. The congestion of numerous pending cases in the Courts and long delay for their determination adds to the misery of ineffective tort law system.

The third target of the tort framework of Public Nuisanceis to give remedial equity, which has been characterized as "the defendant's commitment to make up for damage that he has created wrongfully or infringing upon the offended party's rights."

In the context of ecological toxic damages done, the tort framework neglects to give corrective justice to the victims because of various factors where it neglects to accomplish the adequate compensation and prevention of further nuisances. Once more, the determination of causation becomes crucial.

Numerous commentators regard causation as a vital target of corrective justice because of it building up key nexus between parties by attaching a particular victim to the harmful acts done by the polluter.[136]

Regardless of the fact, that better information relating to harm and causation are present, the tort framework of Public Nuisance would in any case be inefficient to deal with environmental toxic harms.[137] Finally, what adds more obstacles to the

[136]Weinrib, Ernest J. , *The Gains and Losses of Corrective Justice*, 44 Duke Law Journal, (2010)
[137] Henry N. Butler, Todd J. Zywicki, *Expansion of Liability under Public Nuisance*, 18 Supreme Court Economic Review, (2010)

efficiency of such framework is the high cost of litigation and inconvenient to deal with diffuse ecological dangers and the subsequent harms.

Thus, in principle, the tort framework of Public Nuisance can acts as mechanism for prevention, compensation, and remedial equity objectives in the arena of environmental injuries, but because of the traditional aspects attached with the framework, such has posed difficulty in achieving the very aims of environmental protection. Hence, it could be observed that the current tort framework fails to remedy the injury done to environment and is not effective in providing adequate compensation to the injured parties.

9. BIBLIOGRAPHY

- **BOOKS AND ARTICLES:-**

- Donald G Gifford, Public Nuisance as a Mass Products Liabilty Tort, 71 Cin. L. Rev. (2003)
- David R. Hodas, *Private Actions for Public nuisance : Common Law Citizen Suits for Relief From Environmental Harm*, 16 Ecology Law Quarterly (1989)
- Henry N. Butler, Todd J. Zywicki, *Expansion of Liability under Public Nuisance,* 18 Supreme Court Economic Review, (2010)
- Tseming Yang, *Environmental Regulation, Tort Law and Environmental Justice : What Could Have Been*, 41 Washburn Law Journal (2002)
- James A. Sevinsky, Public Nuisance: A Common-Law Remedy Among the Statutes, 5 Natural Resources & Environment (1990)
- J. R. Spencer, *Public Nuisance : A Critical Examination*, 48 The Cambridge Law Journal,(1989)
- Mark Latham &Victo E Schwartz,*The Intersection of Tort And Environmental Law : Where The Twains Should Meet And Depart*, 80 Fordham Law Review (2005)
- Richard O. Faulk, *Uncommon Law: Ruminations on Public Nuisance*, 18 MO. ENVTL. L. & POL'Y REV (2010)
- Michael Anderson, *Public Nuisance and Private purpose: Policed Environments in British India, 1860-1947*, SOAS Law Research Paper (1992)
- Mandy Garrells, *Raising Environmental Justice claims through the Law of Public Nuisance*, 20 Envtl. L.J. 163 (2009).
- Albert C. Lin, *Public Trust and Public Nuisance: Common law Peas in a Pod?*,45Dav. L. Rev. (2012)
- Denise E Antolini, *Modernizing Public Nuisance : Solving The Paradox of the Special Injury Rule*, 28 Ecology L.Q. (2001).
- C.M. Abraham, Environmental Juriprudence in India (2nd ed.1999)

- A. Rosencranz, M. Jackson, *The Delhi Pollution Case: The Supreme Court of India and the Limits of Judicial Power*, 28 Colum. J. Envtl L. 223 (2003).
- William L. Prosser, *Private Action for Public Nuisance*, 52 Virginia Law Review (1966)
- David A. Dana , *The Mismatch Between Public Nuisance Law And Global Warming*, 18 Supreme Court Economic Review, (2010)
- David Rose, *Global Climate Change: A Nuisance to the Public Without a Public Nuisance Remedy*, UNIV. S. CAR. ENVTL ADVOCACY SEM. (2006)
- Henry N. Butler & Todd J. Zywicki, *Expansion of Liability under Public Nuisance*, 18 Supreme Court Economic Review, (2010)
- Madhuri Parekh, *Tortious Liability For Environmental Harm: A Tale of Judicial Craftmanship*, 2 Nirma University Law Journal, (2013)
- Ratanlal and Dhirajlal, The Law of Torts, (24thed 2004)
- Jesse Elvin, *The Law of Nuisance and the Human Rights Act, 62 Cambridge Law Journal*,(2003)
- Paramnand Singh, *Protection of Human Rights through Public Interest Litigation in India*, 42 Journal of Indian Law Institute, (2010)
- Randall S Abate, *Nuisance and Legislative Authorization*, 52 Columbia Law Review, (1952)
- Keith N. Hylton, *The Economics of Public Nuisance Law and the New Enforcement Actions*, 188 Supreme Court Economic Review,(2010)
- MahajanNiyati, *Judicial Activism for Environment Protection in India, 4 International Research Journal of Social Sciences*,(2015)
- C.M. Abraham, Environmental Jurisprudence in India (2nd ed., Kluwer Law International,(1999)
- GeetanjoySahu, *Implications of Indian Supreme Court's Innovations for Environmental Jurisprudence*, 41 Law Environment and Development Journal (2008)
- Sara C. Aminzadeh, *A Moral Imperative: The Human Rights Implications of Climate Change*, 30 HASTINGS INT'L & COMP. L. REV. 231 (2007).

- Surya Deva, *Public Interest Litigation in India: A Critical Overview*, 28 Civil Justice Quarterly, (2009)
- Victor E. Schwartz ,*Why Trial Courts Have Been Quick to Cool "Global Warming" Suits*, 77 TENN. L. REV. 803 (2010).
-

WEBSITES/ONLINE REFERENCES:-

- **Jethmal Jain, Nuisance, Available at: http://blogs.siliconindia.com/jethmal/NUISANCEbid-utO9LBH680530813.html(March 05, 2016)**
- **Thomas W. Merrill, Is Public Nuisance a Tort ?, Available at: http://www.law.harvard.edu/programs/about/privatelaw/is.pub.nuisance.tort.merrill.pdf, (March 05, 2016)**
- **Ravi Kant, Judicial Activism and the Role of Green Benches in India. Available at: http://indialawyers.wordpress.com/2009/05/24/judicial-activism-and-the-role-of-greenbenches-in-india/,(March 09, 2016)**
- **Jill D. Jacobson & Rebecca S. Herbig, Public Nuisance Law : Resistance to Expansive New Theories, Available at : http://www.bowmanandbrooke.com/insights/~/media/Documents/Insights/News/2009/09/Public%20Nuisance%20Law%20Resistance%20to%20Expansive%20New%20__/Files/MassTorts%20-,%20Fall%202009/FileAttachment/Public%20Nuisance%20Law, (March 11, 2016)**
- **N.R. MadhavaMenon, Legal Aspects of Environmental Protection. Available at: http://ismenvis.nic.in/lecture2002.pdf, (Feb 29, 2016)**
- **ArpitaSaha, Judicial Activism in India : A Necessary Evil, Available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1156979,(Feb 29, 2016)**
- **Jonathan Zasloff, The Judicial Carbon Tax : Reconstructing Public Nuisance and Climate Change, Available at :http://www.uclalawreview.org/pdf/55-6-9.pdf, (March 15, 2016)**
- **JW Neyers, The Moral Basis of Public Nuisance, Available at : http://archive.legalscholars.ac.uk/edinburgh/restricted/download.cfm?id=198(Jan 15, 2016)**

- **Sunil Ambwani, J., Environmental Justice: Scope and Access. Available at http://districtcourtallahabad.up.nic.in/articles/environmental.pdf(March 03, 2016)**
- **Stephanie Showalter, Climate Change : Public Nuisance Cases Clear Prelimminary Hurdles, Available at http://nsglc.olemiss.edu/SandBar/SandBar8/8.4climate.htm(March 16, 2016)**
- **Kamaluddin Khan, Public Interest Litigation and Judicial Activism. Available at:http://www.twocircles.net/legal_circle/public_interests_litigation_and_judicial_activism_kamaluddin_khan.html(March 16, 2016)**
- **Christine Meisner Rosen , 'Knowing' Industrial Pollution: Nuisance Law and the Power of Tradition in a Time of Rapid Economic Change, 1840-1864, Available at:http://www.haas.berkeley.edu/groups/online_marketing/facultyCV/papers/rosen_pollution.pdf(Feb 27,2016)**
- **Thomas W. Merrill, Global Warming as a Public Nuisance, Available at : http://web.law.columbia.edu/sites/default/files/microsites/attorneys-general/files/Global_Warming_as_a_Public_Nuisance.pdf,(March 15, 2016)**
- **Kamla Raj, Ecological Destruction vis-à-vis Environmental Jurisprudence in India: A Survey, Available at : http://www.krepublishers.com/02-Journals/JHE/JHE-27-0-000-09-Web/JHE-27-3-000-09-Abst-PDF/JHE-27-03-207-09-1960-Chauhan-S-S/JHE-27-03-207-09-1960-Chauhan-S-S-Tt.pdf(Jan 11, 2016)**
- **Joseph H. Guth, A Law To Protect The Earth: The Tort of Ecological Degradation, Available at:**http://sehn.org/wp-content/uploads/2013/01/ALawToProtectTheEarth.pdf**(Feb 11, 2016)**