

CHAPTER 5

PROSECUTIONS UNDER THE GENERAL CRIMINAL LAW: INDIAN PENAL CODE

5.1. The Indian Penal Code : General Scheme

Chapter 14 (Sections 263-294A) of the Indian Penal Code contains detailed provisions punishing offences affecting the public health, safety, convenience, decency and morals. Quite a large number of these sections are concerned with matters that are directly or indirectly relevant to environmental law. In fact, the importance of these sections in the context of environmental law has not been sufficiently realised. Some of the important provisions in this Chapter of the Penal Code may be mentioned here.

5.2. Section 268, Indian Penal Code : Public Nuisances

The pivotal section in Chapter 14 of the Indian Penal Code is section 268, which (in the first paragraph) defines what is a public nuisance. It is provided that a person is guilty of a public nuisance who does any act or is guilty of any illegal omission which causes any common 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 second paragraph of section 268 of the Indian Penal Code provides that a common nuisance is not excused on the ground that it causes some convenience or advantage.

It will be seen that section 268 emphasises, *inter alia*, the element of injury to the people who dwell in the vicinity. Conduct that causes environmental pollution would fall under the section in most cases.

5.3. Section 269 of the Indian Penal Code : Spreading disease

Besides the generic provision contained in section 268 of the Indian Penal Code, there is a specific provision in Chapter 14 of that Code, which can be pressed into service. For example, section 260 punishes a person who intentionally or negligently does any act which is likely to spread the infection of any disease dangerous to life, if he knows or has reason to believe that it is likely to spread such disease. The same act, if done malignantly, is punishable under section 270.

5.4. Sections 284 to 289, Indian Penal Code: Negligent conduct with respect to certain substances.

(a) In the same Chapter of the Indian Penal Code sections 284 to 289 address themselves to negligent conduct with respect to various types of substances. The substances dealt with, vary from section to section. But the nature of the conduct dealt with, is common to all the sections. The conduct is described in the relevant sections as under :-

- (i) doing (with the particular substance) 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
- (ii) knowingly or negligently omitting to take such order with the substance, in his possession, as is sufficient to guard against any probable danger to human life from such substance.

(b) The substance or activities covered by the relevant provisions are the following :-

- (i) any poisonous substance (section 284),
- (ii) fire or any combustible substance (section 285);
- (iii) any explosive substance (section 286);
- (iv) any machinery (section 287);

- (v) pulling down or repairing any building (section 288);
- (vi) any animal (section 289).

5.5. Section 290, Indian Penal Code (Residuary)

Section 290 of the Indian Penal Code is a kind of residuary provision, punishing any person who commits a public nuisance in any case not otherwise punishable by the Code.

5.6. Section 291, Indian Penal Code : Continuance of nuisance

Section 291 of the Indian Penal Code punishes a person who repeats or continues a public nuisance, after having been enjoined by any public servant, who has lawful authority to issue such injunction, not to repeat or continue such nuisance.