

EXPLORING HORIZONS : ADVANCEMENTS IN CRIMINAL LAW

ENVIRONMENTAL CRIMES AND LEGAL RESPONSES

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Abstract

Environment is the combination of conditions and surroundings where we live in, along with animals and plants. Every individual has the right to live in a pollution free healthy environment.

Environmental protection has become one of the core issues that need to be addressed to maintain sustainable living. Though the concept of 'Protecting the Environment' is not new because the same was already prevailed in good olden days. Characterizing the trees, animals, birds as gods were not based on superstition but they found it as a way of protecting the environment from human exploitation. The term 'Environmental Crimes' is generally an illegal act which directly harms the environment and it is up to individual interpretation. We have rainbow of legislations which have been enacted to protect environment against environmental crimes. The broad spectrum of legislations provide punishments, compensation for victims and it also imposes fines for environmental violations. This paper makes an attempt to explain the term "Environmental Crimes" in various perspectives along with a close emphasis with law. This research would be helpful to understand the legal standings, government initiatives, polices in order to control the environmental crimes.

Key words: Environment, Crimes, Protection, legislations, Government.

I. INTRODUCTION :

Environment is the amalgamation of circumstances and conditions where we live in. It is the composition of all living or biotic elements like animals, plants, forests, fisheries and birds, non- living or abiotic elements like water, land, sunlight, rocks and air. The environment provides the very foundation of sustainable development, human development, economy as well as food security. It becomes necessary to protect the environment as it is the very basic for living. In the early days of environmentalism, people thought that setting aside the areas of natural wealth would be the best to protect it from human exploitation. Also they thought of characterising the environment as goddesses would be helpful in protecting the environment. Even though

environmentalists work hard to protect the environment, environmental crimes are still in existence. Environmental crime is generally an illegal act which directly harms the environment. International and National governments are working hard to eradicate the environmental crimes. And in turn they were successful in many ways by establishing International conferences, National frameworks, enacting laws and regulations.

II. THE CONCEPT OF ENVIRONMENTAL CRIMES :

The term 'environmental crime' has various definitions and in most instances, the definition is based on the convenience of interpretation. The deteriorious act or omission which is done by the "Environmental Criminals" in violation of environmental law is said to be the

environmental crime. Environmental Crimes are the gamut of activities that breach environmental legislation and causes significant harm or risk to the environment, human health and living conditions. It is of illicit activities, including wildlife illegal trade, smuggling of ozone-depleting substances, illicit trade of hazardous waste, illegal, unregulated and unreported fishing, and illegal logging and trade in timber, according to the United Nations Crime and Justice Research Institute⁵⁷⁰.

III. SOME SERIOUS ENVIRONMENTAL CRIMES⁵⁷¹:

A. Wild life trade :

The wild animal trafficking is the third-largest illegal business in the world after drug and arms trafficking. Wild animal traffic pose a great threat to the world's biodiversity survival. Illegal wildlife trade is devastating the wildlife species around the world as poachers, traffickers and highly-organised criminal syndicates ruthlessly pursue profit at any cost to meet consumer demand. The most requested species are tropical birds (parrots, macaws, etc), arachnids (some types of tarantulas), monkeys (capuchins, chimpanzees, lemurs) and also it includes the sale of an elephant or rhinoceros ivory on the black market used to enrich things or potentially in conventional medications.

B. Indiscriminate Logging :

The unauthorized act of cutting down trees, transporting them or utilizing their products, such as timber, root for economic gain. Logging is indulged by using corrupt ways to reach the forests or protected areas there by harvesting the trees without proper approval and selling them in black markets or elsewhere. It is the main cause of deforestation. Various causes of Illegal Logging includes rural poverty, selling cheaper products in black market, illegal charcoal, furniture and timber trade, weakness and laxity in forest governance.

C. Electronic Waste Mismatchment :

The UN defines e-waste as any discarded product with a battery or plug, and features toxic and hazardous substances such as mercury, which can create a severe risk to human and environmental health. Each person on the planet produced on average 7.6 kg of e-waste as per the UN report in 2021. Developed countries generate up to 50 million tonnes of electronic waste every year (computers, TV sets, mobile phones, appliances, etc) and up to 75% of all these are estimated to illegally exported to Africa, China or India.

D. Finning :

Shark finning is unsustainable. Not only do humans decimate shark populations, though sharks have low reproductive rates, which makes repopulation difficult. Sharks are thrown back into the oceans after being finned die in agony from suffocation, blood loss or predation.

E. Dumping In Rivers and Aquifers:

These types of environmental crime is caused by companies, factories and Public Administrations. Toxic waste that coming from factories is usually dumped in a controlled way, but this is not always the case. The matter of fact is that waste is uncontrollably released into the environment, while at the same time polluting rivers, lakes, aquifers etc. This not only pose a serious threat to local wildlife to die or get ill but also, as a result of the water leaking into the soil, it finds its way to pollute the surrounding flora as well there by affecting the food chain.

IV. INTERNATIONAL ENVIRONMENTAL LAW STANDARDS :

In 1972, United nations conference on human environment and development was held at Stockholm which resulted in the adoption of Stockholm declaration. The Stockholm declaration is considered as the magna carta of environmental protection. Principle 3 of the declaration says that earth's capacity to produce vital renewable resources should be preserved and whatever practical, restored.

⁵⁷⁰ United nations crime and justice research institute, <https://unicri.it> (last visited date oct 20, 2023).

⁵⁷¹ Ankitasingh, Environmental Crimes : A Serious Threat to Our Future, Legal Service India, (1-2), (2021).

Principle 5 of the declaration states that non-renewable resources should be used in such a way that they are protected against the danger of future exhaustion. Apart from this there were number of other conventions, treaties, agreements and united nations commission reports on environment and development as : Bruntland commission⁵⁷² report : our common future defined the concept of 'Sustainable Development'. The UNED also known as earth summit was held with the view to provide principles of economic and environmental behaviour for individuals. And we have Rio Declaration and agenda 21 intended to provide an agenda for local, national and global action in 21st century. And we have INTERPOL (International Criminal Police Organisation) in 2016 which stated that the environmental crime worldwide has accelerated at a phenomenon rate. The Rome statute of ICC (International Criminal Court) sets out the international crimes. The environmental crime is referred in article 8(2)(B)(iv) of the Rome statute. The international standards has evolved swiftly though there a long way to go.

V. LEGAL FRAME WORK ON ENVIRONMENTAL CRIMES REMARKABLE JUDGEMENTS IN INDIA :

The National Crime Record Bureau (NCRB)'s latest report has shown that India's overall crime cases increased by 28% in 2020, in comparison to the previous year. Though we have rainbow of legislations and provisions which have been enacted by Indian government in the field of environmental protection, due to lack of stringent punishments environmental crimes are getting serious and deep and may take the shape of even an organised crime. The law commission of India should recommend that the liberal punishment regarding environmental crimes must be amended to stricter punishments.

VI. PRINCIPLES OF ENVIRONMENTAL LAW :

A. The Doctrine of Absolute Liability

Absolute Liability means liability without fault.

The word 'Absolute' signifies complete or unconditional liability without any exceptions. The Supreme Court of India established the doctrine of absolute liability in the landmark case of *Union Carbide Corporation v. Union of India*⁵⁷³. The court held that when an enterprise engages in inherently dangerous or hazardous activities, if any harm caused in result of it then the company is strictly and absolutely liable. The liability has no exemptions, meaning the enterprise must compensate all those affected by the accident. It sets a new precedent, introducing the concept of absolute liability in environmental cases.

B. Polluter pays principle

The polluter pays principle has been indicated earlier by the National Environmental Policy, 2006. It simply states that polluter is liable for the damage caused to the environment. This principle mandates that the polluter not only has to compensate the victims of the pollution but also to compensate for restoring the environmental degradation that has already been caused. This principle was adopted by many courts, to move away from the criminal penalty mechanism and adopt a stringent civil liability mechanism. The case of *Vellore Citizen's Welfare Forum v. Union of India*⁵⁷⁴ is a landmark judgement by Supreme court of India. This ruling was a significant step in emphasizing the concept of 'polluter pays principle' as an integral part of sustainable development. The court ordered the tanneries to cease operations until they install the necessary pollution control equipment. Even after its installations it has to acquire permission from Tamil Nadu Pollution Board to resume the operations.

C. Precautionary principle

It is evident from the name itself this promotes the implementation of preventive measures in situations that could cause serious threat or irreversible damage despite the absence of any scientific certainty. The role of the Supreme

⁵⁷³ *Union carbide corporation vs union of india*, 1992 AIR 248.

⁵⁷⁴ *Vellore citizen welfare forum vs union of india*, 1996 5 SCR 241, 1996 AIR 2715.

⁵⁷² Academic Impact, <https://www.un.org>. (last visited oct 21, 2023).

Court of India in recognising this principle as an essential feature of sustainable development and a part of customary international law promoted its derivatives as it is a constitutional mandate Articles 21, 48A⁵⁷⁵ and 51(g)⁵⁷⁶. In 1996, Kuldip Singh J in *Vellore Citizen Welfare Forum vs Union of India*, declared that the principle involves 3 conditions:

- a. State government and statutory authorities must prevent and attack the cause of environmental degradation;
- b. When there is a serious threat or irreversible damage to the environment and lack of scientific certainty should not be the reason for postponing measures to prevent environmental degradation;
- c. The 'onus of proof' lies upon the actor or developer or industrialist to show the actions are environmentally benign.

D. Public trust doctrine

The public trust doctrine imposes greater responsibility on the state to protect the natural resources from destruction or depletion and hold it for the public uses. It is first applied in the case of *M.C. Mehta vs Kamal Nath & Ors, 1996*⁵⁷⁷, the Supreme Court held that the Public Trust Doctrine is an inherent part of the law of the land. It promotes the idea that no one single person owns the natural resources and it is upon the government and the regulatory authorities to act as a trustee and hold the resources for free and unobstructed use of these resources by the general public.

E. Doctrine of Sustainable Development

The concept of sustainable development was highlighted by the World Commission on Environment and Development (WCED) in its report, commonly known as the Brundtland Report : 'Our Common Future'. Sustainable development refers to development that meets the present needs without compromising the

ability of future generations to meet their own needs. The court emphasised that natural resources are permanent assets of humankind and should not be depleted within one generation in the case of *Rural Litigation and Entitlement Kendra v. State of UP*⁵⁷⁸, The courts play a vital role in striking a balance between development and environmental protection.

VII. CONSTITUTION AND JUDICIAL INTERVENTION :

India works towards the national commitment for environmental protection through the fundamental duties and directive principles of state policy (DPSP). Article 21 of the India Constitution which recognizes the fundamental substantive right to have a healthy and pollution free environment. Further the word environment was introduced in the 42nd amendment under Article 48A and Article 51A.

The court stated that it is not only the duty of the state but also of its citizens to protect the environment as per the Article 51A(g) in the case of *Rural Litigation and Entitlement Kendra vs the state of UP (1985)*. Subsequently in the case of *L.K.Koolwal vs the state of Rajasthan and ors (1988)*⁵⁷⁹, the court recognised the scope of Article 51A. Recently in the case of *AIIMS Students' Union vs AIIMS and ors, (2001)*⁵⁸⁰ the Supreme court stated that states cannot run from their obligation to give effect to fundamental duties and directive principles of state policy and that interpretation of provisions are significantly guided by these duties though they are not enforceable.

INDIAN PENAL CODE, 1860 :

Under section 277 of the IPC, any one voluntarily corrupt or foul the water of any public spring or reservoir is an offence and the person held liable would be punished with imprisonment for may extend to 3 months, or with fine which may be extended upto 500 rupees, or with both.

Voluntarily vitiates the atmosphere and makes it

⁵⁷⁵ INDIA CONST.art. 48A, amended by The Constitution (42nd Amendment) Act, 1976.

⁵⁷⁶ *ibid*

⁵⁷⁷ *M C Mehta vs Kamal Nath & ors, 1997 1 SCC 388.*

⁵⁷⁸ *Rural litigation & entitlement Kendra vs state of UP, 1989 AIR 594, 1989 SCC suppl.*

⁵⁷⁹ *L K Koolwal vs state of Rajasthan and ors, AIR 1988 Raj 2, 1987 WLN 134.*

⁵⁸⁰ *AIIMS students union vs AIIMS and ors, AIR 2001 SC 3262.*

noxious to the health is punishable under the IPC under 278 and to be punished with fine which may be extended upto 500 rupees.

The Kerala court held that smoking in public places causes public nuisance and is punishable under IPC under *K Ramakrishnan vs the state of Kerala (1999)*, again in the case of *Murli S. Deora vs Union of India (2001)*, the Supreme court held that smoking in public place is a violation of fundamental right gurated under article 21 of the Constitution of India.

VIII. THE CODE OF CRIMINAL PROCEDURE, 1973

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Chapter X of the said deals with the "maintenance of public order and tranquillity", provides preventive and mitigating measures for public nuisance cases pretaining to water, soil, air and unhygienic conditions. Part B and Part C provides provisions relating to Public Nuisance and urgent cases of nuisance and apprehended danger respectively. Section 133 (Part B) provides for the remedy to the environmental pollution and it empowers the District Magistrate and Sub- Divisional Magistrate to prohibit the nuisance by passing restrictive order for the expulsion of the nuisance on a report by the police or based on any other information after considering the evidence.

The term nuisance was defined in the case of *Govind Singh vs Shanti Sarup (1978)*, it gives a liberal interperatation and states that the nuisance includes the disposal of substances, the construction of structures, the conduct of occupation and trade and confinement or dispsal of any dangerous animal into its meaning.

Other Acts :

1. The Wildlife Protection Act, 1972,
2. The Environmental (protection) Act, 1986,
3. The Water (Prevention And Control Of Pollution) Act, 1974,
4. The Forest (Conservation) Act, 1980,

5. The Air (Prevention And Control Of Pollution) Act, 1981, The Wildlife Protection Act, 1972

The Wildlife Protection Act, 1972 provides for the comprehensive set of rules and regulations regard to the protection of wildlife in India. It sets out the arrangements for the setting up of public parks, wildlife sanctuaries, and so on. Under Sec 51(1) of the Act states that any person who contravenes any provision of this Act or order made thereunder shall be punishable with imprisonment for a term which may extend to 3 years or with a fine which may extend to 25 thousand rupees or both.

The Water (Prevention And Control Of Pollution) Act, 1974

The Water (Prevention and Control of Pollution) Act, 1974 was enacted to control and prevent the cause of water pollution by assessing pollution levels. It established the Central and State Board to carry out the objective of the Act. Sec 42 of the Water Act, 1974 provides penalties and fines for certain acts including pulling down pillars, prohibiting or obstructing any person from exercising his function acting under the orders or directions of the board, damaging any work or property belonging to the board, knowingly or willfully make a false statement in giving any information or for the purpose of obtaining any consent, shall be punishable with imprisonment of maximum three months or with fine of maximum ten thousand rupees or with both.

The Forest (Conservation) Act, 1980

The Forest (Conservation) Act, 1980 , the objective of the act is to maintain the ecosystem and to protect the forest area across our country .The objective of the act is to regenerate the forest by planting trees and increasing the forest growth in our country. Sec 2 of the act puts some restrictions on the state government and other authorities to make decisions on some matters without the prior permission of the Central Government. If Sec 2 is violated punishment is provided as per Sec 3A of the same act which was added by the

amendment made in 1988. Punished with simple imprisonment for term which may be extended up to 15 days. The Air (Prevention And Control Of Pollution) Act, 1981

The Air (Prevention and Control of Pollution) Act of 1981, was enacted by the Parliament of India to control the air pollution and prevent the harmful effects of air pollution in India and also to establish the Central and State Pollution Control Board. The boards were empowered to implement the said act.

The Environmental Protection Act, 1986

The Environmental Protection Act, of 1986 covers all forms of pollution in the air, water, soil, and noise. It provides the safety standards for the presence of various pollutants in the environment and it restricts the use of hazardous material except if earlier authorization is taken from the Central Government. Sec 15(1)⁵⁸¹ provides a penalty for contravention of the provisions of the Act and the rules, orders, and directions issued thereunder with imprisonment for a term which may extend to five years or with a fine which may extend to one lakh.

IX. NATIONAL GREEN TRIBUNAL⁵⁸² :

It is a specialised statutory body and is established under National Green Tribunal Act (2010), for effective and expeditious disposal of cases relating to environmental protection. In October 2001, the Supreme Court declared that NGT is a unique forum and endowed with suo moto powers to take of environmental cases across the country. The NGT deals with the civil cases under seven laws :

1. The Public Liability Insurance Act, 1991
2. The Biological Diversity Act, 2002
3. The Wildlife Protection Act, 1972,
4. The Environmental (protection) Act, 1986,
5. The Water (Prevention And Control Of Pollution) Act, 1974,

6. The Forest (Conservation) Act, 1980,

7. The Air (Prevention And Control Of Pollution) Act, 1981,

The appeals from NGT goes to Supreme Court of India and it has to be filed within 90 days from its order of decision.

X. CONCLUSION :

International and National frame works has significantly evolved the environmental laws. Though we have numerous legislations regarding the environmental protection due to the lack of stringent laws it paves the way for the growth of environmental crimes. Environmental Crimes are not only in border crimes it is also a transboundary environmental crimes. The system needs to be changed according to the current needs of the society. The legal system has to resolve its lacunae in order to fight with the up coming challenges in environmental protection. Establishment of NGT was a greater initiative of India to deal the environmental cases separately and ensure the speedy disposal of the same. It is the most consistent and progressive environmental authority.

⁵⁸¹ The environmental protection act, 1986, s 15 (1), Act of Parliament, 1986 (India).

⁵⁸² Shyam.sunder, Environmental Criminality, legal service India, (pg.8)