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ENVIRONMENTAL CRIMES AND PROTECTION **UNDER LAWS IN INDIA**

AUTHORED BY: THANMAI SREE THATHA

CHAPTER I

INTRODUCTION

Since there is no agreed-upon meaning for the term "Environmental Crimes," it is frequently construed according to its broadest possible application. Such a concept may have originated as a result of the damaging actions or inactions that result in environmental law violations. "An unlawful act or omission that breaches the law and is therefore subject to criminal prosecution and criminal consequence" is what Y. Situ and D. Emmons define as an environmental crime. The United Nations Crime and Justice Research Institute states that ecological crimes "include a wide range of illicit activities, such as illegal wildlife trade, smuggling of ozone-depleting substances, illicit trade of hazardous waste, illegal, unregulated, and unethical behaviour," and unreported fishing, as well as illegal logging and timber trade.

"An act or omission must":

- a) Cause Direct/Indirect Environmental Damage; And B) Be Prohibited By Law

In order to be termed "Environmental Crime."

Even though they are objective, these interpretive definitions are not enough by themselves. There are a few issues with the proposed selection of reports that can be seen: First, the lack of an agreed-upon definition makes it difficult to agree on what constitutes an environmental crime. Second, there is no clear list of the kinds of activities that would fall under the definition. Third, there are jurisdictional and geographic restrictions; what is illegal in one country might not be illegal in another.

Environmental crime is on the rise and jeopardising all ecosystems, including flora, fauna, and wildlife, as well as human health, sustainable livelihoods, and even government revenue sources. The idea of protecting the environment is as old as India itself.¹ Environmental crimes and green-collar crimes are often used interchangeably. Environmental crimes are those that break the laws

¹ P. Pandey History of Environmental Law July 28, 2021 Law Times Journal. In/history-of-environmental-law Aug 17, 2021 3:45 PM IST

intended to safeguard the environment and public health from the dangers of environmental pollution.² Environmental crimes include a wide range of corporate crimes in the forestry industry, as well as illicit mining, fishing, trafficking in hazardous waste, and unnatural resource exploitation.³ Environmental crime, or "green crime," is a type of organised crime (nature). This phrase can relate to an actual crime, meaning that the act is against the law of the nation, or a moral crime that might not be against the law.⁴ Green Collar Crimes are classified as part of the global organised criminal activities and are the fourth-largest category of organised crime worldwide.⁵ Green collar crimes vary widely in their interpretation; there is no single term for them. According to the United Nations Crime and Justice Research Institute, illegal activities that are considered environmental crimes include smuggling of ozone-depleting substances, illegal trade in hazardous waste, illegal, unreported fishing, illegal logging, and trade in timber, among other illegal activities.⁶ Any criminal behaviour affecting the environment or eco system can be classified as "Environmental Crime," to put it succinctly. Environmental laws control and ensure the effectiveness of environmental protection organisations.⁷ Laws pertaining to the environment are referred to as environment jurisprudence. Its greatest accomplishment is the formulation of a shift in ethics and the acknowledgement of the dual accountability of the person and the government with regard to the natural environment.⁸ Environmental crimes should be addressed seriously since they have the potential to endanger national security and sustainable development, according to the United Nations.⁹

STATEMENT OF PROBLEMS

The statement of the problem in this research paper is to understand the relationship between the environment and the law which governs the safety of the environment. This paper widely explores how Indian laws provide protection against environmental crimes.

² Impact Law www.impactlaw.com

³ The Rise of Environmental Crime – A Growing Threat to Natural Resources Peace, Development and Security. A UNEP INTERPOL Rapid Response Assessment. United Environment Crimes 2016 Pdf. P-7

⁴ Green-Collar Crime: Definition, Examples, & Punishment. (2017, October 22) As accessed from study.com/academy/lesson/green-collar-crime-definition-examples-punishment.html.

⁵ R. Baghel Green Collar Crimes – A Crime against Environment and Wild life The International Journal of Law Management & Humanities Volume IV, Issue I, 2021 Doi. one/10.1732/IJLMH.25861

⁶ A. Singh, Environmental criminal law: Is it the need of the hour in India? July 29, 2021

⁷ Verma RK. Environmental Jurisprudence in India (Is People's Attitude under Its Purview?). Indian Journal of Public Administration. 2019; 65(4):916-929. doi:10.1177/0019556119889210

⁸ K.A.Emina Overview of Environmental Jurisprudence within Environmental Ethics Journal Pemikiran Ilmiah dan Pendelikon Administrasi Perkantoran Vol. 6, No. 1, January-June 2020, Page 53

⁹ Blog by DTE Staff State of India's environment: Environmental crime cases piling up, disposal slow Over 50,000 environment-related cases pending trial. To clear the backlog, courts will have to dispose of 137 cases every day February 24 2021 www.downtoearth.org

OBJECTIVES OF THE STUDY

1. To examine environmental crimes with a strong emphasis on law.
2. To analyse the relationship between law and the environment.
3. To find human activities that harm the Environment.
4. To understand the legislative measures taken to preserve and safeguard the human environment.
5. To critically analyse the legal framework under other laws for environmental protection.

HYPOTHESIS

This research paper focuses on environmental crimes with a strong emphasis on law in order to better understand the relationship between law and the environment, particularly when environmental harm is produced by human activities that are similar to self-harm. Environmental crimes are among the most lucrative types of international criminal activities, according to several experts. The prevalence of environmental crimes calls for increased measures to prevent them. The one of the most important worldwide issues of the twenty-first century is environmental protection. Many people have found comfort as a result of economic and technological improvement, yet there are many ways in which they are detrimental to our ecosystem. Thus, this paper explores the ongoing environmental crimes and protection provided under the Indian laws for the same.

RESEARCH QUESTIONS

1. What are environmental crimes and its emphasis on law?
2. What is the relationship between law and environment?
3. How do human activities effect the environment?
4. Whether legislative measures taken to preserve and safeguard the human environment are effective?
5. What are the legal frameworks under other laws for environmental protection?

RESEARCH METHODOLOGY

The methodology used for this paper is non-doctrinal research, also known as social-legal research, which is **research that employs methods taken from other disciplines to generate empirical data that answers research questions**. It can be a problem, policy, or a reform of the existing law. Non-doctrinal research takes a multi-disciplinary approach towards legal research. It employs methods and information available from other disciplines to make a comprehensive

approach towards law. The methodology adopted is that of empirical research, i.e. different modes of experimentation and observation.

SCOPE OF THE STUDY

This paper talks about different laws related to environment, its protection and the legislative measures taken nationally to safeguard the environment for a healthy future and safe future. It also talks the legal framework under other laws, the judicial approach, and guiding principles for environmental protection.

LIMITATIONS OF THE STUDY

This paper doesn't include international legislations and international laws related to safeguarding environment. It doesn't talk about penalties and criminalization of environmental pollution in international point of view, it only talks about the Indian laws protecting and penalizing environmental pollution.

NATURE OF THE OFFENCES

Environmental offences are not all the same. They have been acknowledged as a class unto themselves, possessing a wide host of Independent traits. Most environmental infractions that are committed by a person, group, or institution are of a regulatory character. Both criminal penalties and administrative proceedings are used to enforce them. They differ from conventional crimes in a number of ways. They might not meet all the criteria for committing a crime. The following components make up a typical crime:

- Certain external consequences (harm)
- which are legally forbidden
- conduct: mens rea
- a causal' relationship between the legally forbidden harms and the voluntary misconduct and
- punishment

Some of the aforementioned principles have been violated or altered in cases of environmental crimes. As regulatory offences, environmental offences are less clearly defined than other offences. The cause-and-effect relationship is also not well suited to environmental contamination. It is incredibly challenging for legislators to predict what the true impact will be, when it will

actually happen, who will be the victim, and what the "damage" will actually look like. Multiple injuries to several victims, both people and non-human things, may result from a single environmental breach. The injury could not manifest right away but still have an effect.

TYPES OF GREEN COLLAR CRIMES

Green Collar Crimes are those crimes which are committed against the Environment and wildlife.¹⁰ Environmental crimes include air pollution, water pollution, deforestation, species declination of species and hazardous waste dumping.¹¹ The acts damaging the environment and wildlife are called as green collar crimes¹² and they include:

- Poaching
- Illegal trade of wildlife
- Wild life illegal trade
- Unreported fishing
- Illegal logging
- Air Pollution
- Water Pollution
- Noise Pollution
- Environment Pollution
- Illegal mining
- Hazardous waste dumping
- E-Waste dumping

Every human being is responsible for maintaining a healthy environment, and even if they are unable to decrease pollution, they should at the very least refrain from doing so. A healthy environment is necessary to maintain ecological equilibrium. People don't take responsibility for their actions and believe that the state is solely responsible for them. They are also too busy trying to make ends meet by working for a living, and there is no leadership to raise awareness of the problems facing ordinary people. The problem of green collar crimes¹³ has not been addressed by

¹⁰ Ibid

¹¹ Dr. M. L. Kalicharan Environmental Crimes - Problems and Solution AIR 2012

¹² Akkhana, Crime Against Environment and Wildlife- A Crime against Humanity as accessed from www.legalserviceindia.com on Aug 26,2021 10:41 AM IST

¹³ Verma RK. Environmental Jurisprudence in India (Is People's Attitude under Its Purview?). Indian Journal of Public Administration. 2019;65 (4):916-929. doi:10.1177/0019556119889210

Indian environmental law. Due to technology advancements, where trading is now conducted online rather than offline, there is an increase in wild animal trafficking and other associated crimes.¹⁴

According to a survey conducted in 2017, there had been a huge increase in incidents in India against the environment and wildlife, which had been almost 790% from that in 2016. These crimes are on the rise. Despite indicating that fewer crimes were committed in 2016 compared to 2015, the NCRB report showed an increase in some other types of environmental crimes. According to a 2021 media estimate, there are currently over 50,000 environmental cases going to trial. Prior to now, the government has made numerous measures to encourage the reporting of instances due to the increased public awareness of environmental crimes and animals. With adequate law enforcement, this has also caused a surge in the activist movement across the nation to introduce animal rights to India. This movement aims to speak for those who cannot speak for themselves—nature and the environment in which we live. To achieve good results, however, much work must be done in the framing and implementation phases. Both positive and negative repercussions of the current laws point to the need for new laws to be passed.

¹⁴ The World Wildlife Crime Report 2020

CHAPTER II

ENVIRONMENTAL POLLUTION

Despite being four to five decades old, environmental criminal law in India has not yet gained traction in the legal community or in academia. If we pay attention, trial court decisions seldom make it to the High Court or the Supreme Court, which means that these courts are rarely given the chance to comment on any legal issue that may otherwise have led to the development of environmental criminal law jurisprudence.¹⁵ The Supreme Court has created environmental law precedent while merely using its civil jurisdiction. Environmental criminal law encompasses both procedural and penal law, and it deals with acts that are defined as crimes under any environmental law laws. Environmental crime is defined as "crimes that encompass a broad list of illicit activities, including illegal trade in wildlife, smuggling of ozone-depleting substances, illicit trade of hazardous waste, illegal unregulated and unreported fishing, and illegal logging and trade in timber"¹⁶ by United Nations InterRegional Crime & Justice Research Institute, a leading organisation working in the field of environmental crime. These offences not only degrade the quality of life and damage the ecological balance, but they also raise concerns about how the "rule of law" is actually applied in each state.

There is another aspect to the aforementioned fact, namely, what will constitute criminal liability for a person who violates a victim's "right to life" who is either speechless, like an animal, or unknown, or a secondary victim, or a victim who lacks a face but still lacks "right to life," like water bodies or glaciers? In terms of environmental crime, it becomes challenging to identify a victim in real time, particularly given the fact that sometimes it can take years before an act's consequences become apparent, leading to a form of intergenerational victimisation. One illustration of such a crime is breaking the law about air pollution. Before we could understand the health risks of the dirty air that factories generate, it took years. Even though air pollution claims the lives of thousands of people every year¹⁷, environmental crime is frequently seen as a victimless crime. Since they are seen as "victimless" and low on the priority list, these crimes

¹⁵ Moti Lal v. Central Bureau of Investigation, AIR 2002 SC 1691; Sansar Chand v. State of Rajasthan, (2010) 10 SCC 604; Manoj Kumar Upadhyaya v. State of Andhra Pradesh, Cr. Appeal No. 1316/2008.

¹⁶ UNICRI, Environmental Crimes, available at – <http://www.unicri.it/topics/environmental> (last visited on Mar. 11, 2021).

¹⁷ Bindu Shajan Perappadan, 1.7 million deaths were attributable to air pollution in India in 2019, THE HINDU (Dec. 22, 2020) available at <https://www.thehindu.com/news/national/17-million-deaths-in-india-wereattributable-to-air-pollution-in-2019>

frequently fail to elicit the necessary response from authorities.¹⁸ In light of this, this research investigates how much consideration Indian law enforcement agencies give to environmental offences. The groundwork for environmental criminal law jurisprudence in India is also laid forth; only wildlife offences are considered in this regard.

When a wildlife offence is committed, the victim is rendered voiceless and cannot be defended unless an animal lover takes up the case. Such crimes as the illegal trade in birds and animals frequently involve international organised gangs. An overview of these cases published on the website of the Wild Life Crime Control Bureau, also known as the WCCB, reveals that individuals from Bangladesh and Myanmar were heavily involved in the cross-border smuggling of animals and their body parts. Huge financial gain and low likelihood of being found out and jailed are the main incentives for potential offenders to commit such crimes.

Several government and non-government organisations, including WCCB, EIA, and UNEP (United Nations Environment Programme), have been working in the area of environmental criminal law. Other organisations, such as WTI (Wildlife Trust of India), PETA (People for Ethical Treatment of Animals), and WWF (World Wide Fund), have been working to protect and conserve wildlife, which is work that is more civil in "nature." Although these two groups of agencies may employ various strategies, their shared goal—ensuring the delivery of environmental justice for all—remains the same. "The pursuit of equal justice and equal protection under the law for all environmental statutes and regulations without discrimination based on race, ethnicity, and/or socioeconomic status"¹⁹ is how environmental justice is defined. Regarding the creation, adoption, and enforcement of environmental laws, regulations, and policies²⁰, it is regarded as "fair treatment and meaningful involvement of all people regardless of race, colour, national origin, or income."

Around the world, environmental contamination is a grave problem. Water, air, soil, thermal, food, and other forms of pollution are all included. The unprecedented expansion of India's industry is the single biggest cause of environmental pollution.

¹⁸ Environmental Impact Agency, ENVIRONMENTAL CRIME: A THREAT TO FUTURE (2008) available at – https://www.unodc.org/documents/NGO/EIA_Ecocrime_report_0908_final_draft_low.pdf (last visited on Mar. 11, 2021).

¹⁹ Richard Hofrichter, Introduction in TOXIC STRUGGLES: THE THEORY AND PRACTICE OF ENVIRONMENTAL JUSTICE, 9 (1993).

²⁰ First National People of Color Environmental Leadership Summit, Principles of Environmental Justice (1991), available at – <http://www.ejnet.org/ej/principles.pdf>.

CHAPTER III

LEGISLATIVE MEASURES

Perhaps the first significant international effort to preserve and safeguard the human environment was the Stockholm Declaration of 1972. As a result of this Declaration, the States were obligated to adopt measures to safeguard and enhance the environment. As a result, the Indian Parliament added two Articles, 48A and 51A, to the Indian Constitution in 1976. Article 48A of the Constitution correctly requires the State to work to conserve and promote the environment as well as preserve the nation's forests and animals. Similar to this, Article 51A's clause (g) requires all Indian citizens to have compassion for all living things and to safeguard and improve the natural environment, including forests, lakes, rivers, and animals. Articles 48A and 51A (g) together seem to have the effect of placing a constitutional duty on both the "State" and the "people" to preserve, perceive, protect, and enhance the environment. Every generation has a responsibility to best utilise and preserve the nation's natural resources for all following generations.²¹

There are many laws on the subject, in addition to the constitutional mandate to preserve and improve the environment. However, for our purposes, the Water (Prevention and Control of Pollution) Act of 1974, the Water (Prevention and Control of Pollution) Cess Act of 1977, the Air (Prevention and Control of Pollution) Act of 1981, the Environment (Protection) Act of 1986, the Public Liability Insurance Act of 1991, and the National Environment Tribunal A are more pertinent laws.

The Water Act establishes measures for preventing and controlling water pollution as well as preserving or restoring the water's purity. The Act forbids the introduction of any noxious, toxic, or contaminating material into any stream or well. The Act stipulates the establishment of the State Pollution Control Board and the Central Pollution Control Board. Before dumping any trade effluent or sewage into water bodies, new industries must first acquire the Boards' prior consent. Nobody may utilise a new or modified outlet for the discharge of sewage or trade effluent into a stream, well, sewer, or on land without the prior authorization of the Boards. The Supreme Court ruled in the Ganga Water Pollution case²² that the tanneries' financial capability should be disregarded while compelling them to build basic treatment units. The State Pollution Control Board-approved primary treatment plants must be set up before these tanneries can be operated.

²¹ State of Tamil Nadu v. Hind Store, AIR 1981 SC 711; see also Rural Litigation and Entitle Ji: at Kendra v. State of Uttar Pordesh, AIR 1987 SC 359

²² M.C.Mehta v. Union of India, AIR 1988 SC 1037. See also Bhavani River v. Sakthi Sugar Limited AIR 1998 SC 2059

The purpose of the Air Act is to reduce, control, and prevent air pollution. The primary causes of air pollution include factories, vehicles, house fires, etc. The effects of air pollution on the heart, lungs, and blood's haemoglobin are negative. According to the definition of an air pollutant in the Air Act, it is any "solid, liquid, or gaseous substance present in the atmosphere in such concentration as may be or tend to be harmful to humans or other living creatures or plants, or to property or environment." This definition includes noise. The Act states that no industrial plant may be established or run in an area subject to air pollution management without the State Board's prior approval. In Delhi, the public transport system including buses and taxis are operating on a single fuel CNG mode on the directions given by the Supreme Court.²³

The Environment (Protection) Act of 1986 was passed to establish provisions for environmental protection, enhancement of environmental quality, and prevention, control, and mitigation of environmental contamination. The Bhopal Gas Tragedy served as a primary impetus for the creation of the Act. The definition of "environment" includes water, air, and land as well as the relationships that occur between these elements and with people, other living things, plants, microorganisms, and property. The term is broad enough to cover all living things, including plants, microorganisms, and their interactions with the environment (land, water, and air).

The Public Liability Insurance Act, 1991 was passed by the Parliament to establish public liability insurance in order to provide timely assistance to anyone impacted by accidents that occur when handling any hazardous chemical and for problems related thereto. The Act requires facilities handling any hazardous product to have public liability insurance in order to offer workers and victims of accidents with at least some redress. Such insurance will be founded on the idea of "no fault" responsibility because it only covers small-scale relief.

To establish strict culpability for damages resulting from any accident occurring when handling any hazardous substance, the National Environment Tribunal Act, 1995 was passed. The Act calls for the creation of a National Environment Tribunal to handle cases resulting from such accidents in an efficient and timely manner. It makes business owners responsible for paying damages in the event that an accident results in a person's death, serious injury, or damage to property or the environment. The mishap had to happen while handling a dangerous substance. In addition, a claimant may ask the Tribunal for the remedy specified in the Public Liability Insurance Act of 1991.

²³ M.C. Mehta v. Union of India, AIR 1998 SC 2963

The Environment (Protection) Act of 1986 places restrictions on the areas in which certain industries, operations, or processes may be conducted or may be conducted with certain safeguards. To that end, the National Environment Appellate Authority Act of 1997 was passed to establish a National Environment Appellate Authority to hear appeals. No Civil Court or other authority will have the authority to hear an appeal on matters where the Authority is so enabled by the Act after the Authority is established. It is clear that the goal of this Act was to deliver prompt justice in environmental cases.

In order to ensure the protection of wild animals, birds, and plants, the Wild Life (Protection) Act, 1972, was passed. According to the schedules, the Act forbids hunting of the animals and birds listed. The Act forbids the removal of any designated plant from any forest, including by picking, uprooting, harming, destroying, etc. The State Wildlife Advisory Board is mandated by the Act to provide advice to the State Government about the formulation of policies for the protection and conservation of wildlife and designated plants, as well as the choice of places to be designated as sanctuaries, national parks, etc. A Chief Wildlife Warden, along with other Wardens and their staff, and a Director of Wildlife Preservation with Assistant Directors, oversee the administration of the Act.

The Forest (Conservation) Act of 1986 was created with the intention of halting forest deforestation. According to the Act, no forest destruction or use of forest land for non-forest uses is allowed without prior Central Government clearance. Reforestation is a component of forest conservation, in addition to the preservation and protection of already-existing forests. The diminishing woodlands should be replaced by reforestation. It is an ongoing, integral process.²⁴ The Act's admirable goal must be preserved, and it must be properly enforced for the benefit of the general public.

²⁴ Anupama Minerals V. Union of India & Others, AIR 1986 A.P. 225

CHAPTER IV

LEGAL FRAMEWORK UNDER OTHER LAWS

1. Environment Protection under Common Laws

In addition, the common law remedies provide environmental preservation. The Code of Civil Procedure and Specific Relief Act give courts the authority to impose both interim and permanent injunctions for the purpose of reducing and regulating pollution. The following are a few of the treatments:

- Nuisance

This relates to unlawful interference with one's enjoyment of land and any resulting rights, which, depending on the parties involved, may be categorised as either a private or a public nuisance. However, the 1973 Criminal Procedure Code's Section 91 is the only provision that addresses public disturbance (CrPC). It requires bringing a lawsuit in order to get a temporary restraining order or other remedies that is likely to annoy the public. A magistrate may also take necessary action by restricting someone committing a public disturbance under Section 133 of the CrPC. The Punjab and Haryana Court noted in the case of Ramlal v. Mustafabad Oil and Oil Ginning Factory (1968) that noise from a legal operation that is beyond the required threshold is not a defence against being held liable for public nuisance. Public annoyance is covered under the Indian Penal Code, 1860, which will be examined later.

- Trespass

There are two main elements that must be proven in order to prove trespass, which is an illegal intrusion on one's possession of the property. One of these is directly invading or interfering with another person's property.

- Negligence

By demonstrating a direct link between the negligence and the harm caused, a negligence action may be launched. The respondent must also demonstrate that reasonable measures were made to prevent the public nuisance as required by law. The Naresh Dutt Tyagi v. State of Uttar Pradesh (1993) case, which involved blatant carelessness, provides a better explanation. Here, three toddlers and a foetus in a pregnant mother died as a result of fumes from pesticides that escaped into the area through ventilators.

- Strict Liability and Absolute Liability

The Rylands v. Fletcher (1868) case established this principle by holding that anyone who brings

something onto their property for personal use, gathers it there, and keeps it there should do so at their own risk; if it escapes and causes trouble, they will be presumed to be responsible for all damage that results from its escape. In the 1986 oil gas leak case *M C Mehta v. Union of India*, which established strict liability and expanded it into absolute liability taking into account the seriousness of the damage inflicted, this idea was also found in the Indian legal system. Strict responsibility is not applicable in cases involving acts of God, plaintiff negligence, acts by third parties, actions taken with the plaintiff's express or implicit consent, and situations in which a defendant uses land naturally.

However, the *M. C. Mehta* decision, which established the strict liability rule and held that obligation would attach to the defendant for the harm inflicted without taking into account the strict liability rule's limitations, also gave rise to the idea of absolute liability. According to this rule, anyone who engages in an activity that is inherently risky and causes harm as a result of an accident that occurred while they were doing it shall be held entirely responsible.

2. Environment Protection under Penal Laws

- Indian Penal Code

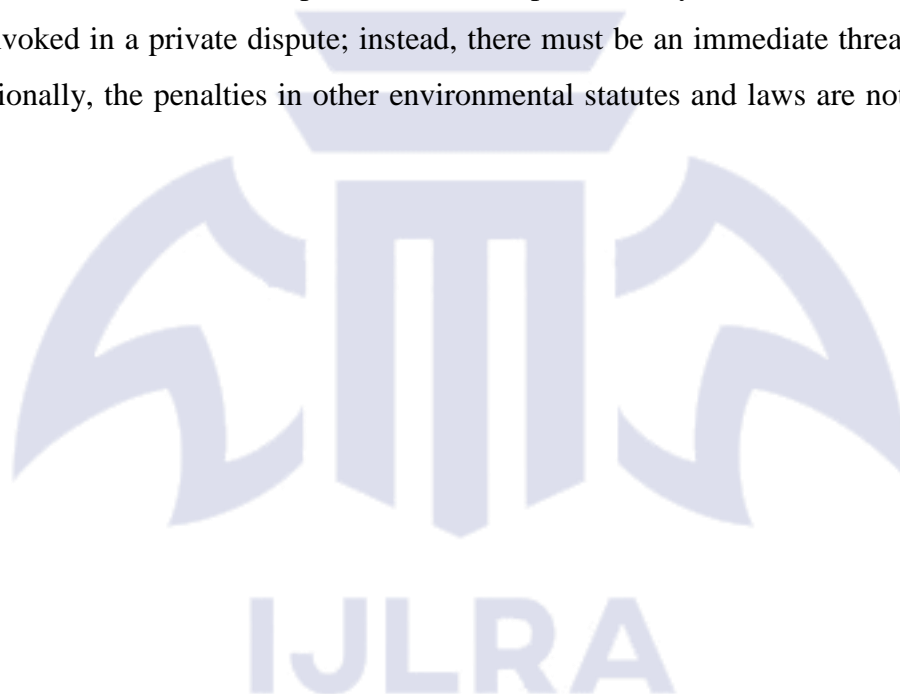
The Indian Penal Code, 1860, and the Criminal Procedure Code, 1973, both contain a number of penal provisions. The IPC addresses offences involving public health and safety under Chapter XIV. First off, Section 268 designates environmental offences as public nuisances, and Section 290 punishes the offence by imposing a fine of up to Rs 200. Therefore, those who act or fail to act in a way that causes harm to others through environmental contamination may be prosecuted. It was determined, as it was in the case of *K. Ramakrishnan v. the State of Kerala* (1999) that smoking in public places produces public annoyance and is therefore unlawful under IPC. Again, the Supreme Court ruled in *Murli S. Deora v. Union of India* (2001) that smoking in public places violates those who choose not to smoke's basic right under Article 21.

Water pollution is prohibited by Section 277, which carries a penalty of up to three months in prison, a fine of up to Rs. 500, or both. The phrase "public spring" or "reservoir" is used in the clause, but the courts have given it a very narrow construction that excludes rushing water from rivers, streams, and canals. Similar to this, Section 278 imposes a fine of up to Rs 500 on anyone who voluntarily degrades the environment by making it unhealthy for anyone's health in a general home, while conducting business in the neighbourhood, or while passing by on a public pathway. In addition to this, IPC Sections 426, 430, 431, and 432 punish any pollution brought on by

mischief.

- Criminal Procedure Code

Similar preventive and mitigating methods are offered for public nuisance cases involving water, air, soil, and unsanitary/unhygienic circumstances under Chapter X of the Indian Criminal Procedure Code of 1973. The remedy for environmental pollution in general is provided under Section 133, which gives a District Magistrate and Sub-Divisional Magistrate the authority to put an end to the annoyance. Any order issued in accordance with this clause may not be challenged in a civil court. The court gave a fairly broad definition of what constitutes a nuisance in the case of *Govind Singh v. Shanti Sarup* (1978), including the construction of structures, the conduct of occupations and trades, and the imprisonment or disposal of any harmful animals. This clause cannot be invoked in a private dispute; instead, there must be an immediate threat to the public good. Additionally, the penalties in other environmental statutes and laws are not applicable to this clause.



CHAPTER V

JUDICIAL APPROACH

The fundamental law of the land recognises a person's right to a pollution-free environment. An essential right to life and personal freedom is guaranteed under Article 21 of the Indian Constitution. The right to a healthy environment has been defined by the Supreme Court to include the rights to life and personal liberty.²⁵ The Court has determined through its numerous rulings that the mandate of the right to life encompasses the right to a clean environment, access to safe drinking water, and a pollution-free environment.

In the Taj Mahal case²⁶, the Supreme Court gave instructions that companies in Taj Trapezium (TTZ) relying on coal and coke that were harming Taj should either switch to natural gas or be transferred outside TTZ. Once more, the Supreme Court commanded the Forest Department to preserve the vegetation it had planted around Taj.²⁷

In the Dehradun Valley case²⁸, careless and risky limestone quarrying in the Mussorie Hill range of the Himalaya caused havoc with the hydrological system of the valley by using mines to blast out the hills with dynamite and harvest limestone from thousands of acres. The Supreme Court mandated that the hills' limestone quarrying be shut down.

The smoking of tobacco in public places was outlawed in India in 2001 by the Supreme Court.²⁹ Smoking is bad for smokers, but it's also bad for non-smokers who have to breathe secondhand smoke. In India, smoking tobacco, including cigarettes and bidis, results in more than 3 million deaths yearly. Smoking causes lung cancer in 1 lakh people in India each year. Indeed, 95% of people who have lung cancer pass away. Because of this, the Supreme Court's decision has enormous social importance.

In *Almitra H. Patel v. Union of India*³⁰, the Supreme Court reaffirmed the conclusions drawn in *Wadehra's case*³¹. The capital of India and oldest city, Delhi, is one of the most polluted places on earth. Residents of Delhi are unable to live in a clean and healthy environment thanks to the failure

²⁵ *Rural Litigation and Entitlement Kendra, Dehradun V. State of U.P.*, AIR 1988 SC 1037

²⁶ *M.C.Mehta v. Union of India*, AIR 1997 SC 734; see also *M.C.Mehta v. Union of India*, AIR 1999 S.C. 3192.

²⁷ *M.C.Mehta v. Union of India*, (2001), 9 SCC 520

²⁸ *Rural Litigation & Entitlement Kendra v. Slate of U.P.*, AIR 1985 SC 652; see also AIR 1988 SC

²⁹ *Murli S. Deora v. Union of India* (2001) 3 SCC 765

³⁰ AIR 2000 SC 1256

³¹ *Dr. B.L Wadehra v. Union of India*, AIR 1996 SC 2969

of the agencies in charge of pollution control and environmental protection. The court ordered the government to act quickly to reduce pollution and safeguard the environment.

In the Sri Ram Food and Fertilizer case³², numerous people were impacted by a significant Oleum Gas leak, including both the general public and workers. The Supreme Court ruled that an enterprise is strictly and absolutely liable to compensate all those who are affected by an accident if it engages in a hazardous or inherently dangerous activity and causes harm to anyone as a result of an accident during the operation of such a hazardous or inherently dangerous activity that results in the escape of toxic gas. This liability is not subject to any exceptions.

In *Subba Rao v. State of Himachal Pradesh*³³, the Supreme Court mandated the closure of a bone factory that was aggravating people's lives and contaminating the environment with its offensive odour. The public's health cannot be compromised for business purposes. The Supreme Court ordered a two-kilometer radius around the tourist resorts of Badkhal and Suraj Kund to be free of mining activity in order to protect the environment and reduce pollution.³⁴ In *Municipal Council, Ratlam v. Vardhichand & Others*³⁵, the Supreme Court ruled that the pitiful slum-dwellers are forced to relieve themselves in the streets, first covertly for a while and then openly after that, because under the pressure of nature, modesty becomes a luxury and dignity a difficult art. A responsible municipal council established to protect the public's health cannot avoid its responsibility by claiming financial incapacity.

In the case of *Indian Council for Environmental-Legal Action v. Union of India*³⁶, the court applied the polluters pay principle to rule that even when someone takes reasonable safeguards at the time of doing an activity, they are nevertheless responsible for any losses they may cause to others. The court recommended the creation of environmental courts to make sure that environmental issues were continuously and appropriately considered in accordance with the necessity of the hour.

³² M.C. Mehta v. Union of India, AIR 1987 SC 1086

³³ AIR 1989 SC 171

³⁴ M.C. Mehta v. Union of India 1996 (4) SCC 351

³⁵ AIR 1980 SC 1622

³⁶ WRIT PETITION (C) No. 967 of 1989 1996 AIR 1446

CHAPTER VI

GUIDING PRINCIPLES

India's whole environmental legal system is built on the following four guiding concepts. These include public trust doctrine, polluter pays, precautionary principle, and sustainable development.

- Sustainable Development

This idea strives to meet peoples' immediate needs while preserving future generations' access to the same resources. The Vellore Citizens' Welfare Forum v. Union of India decision from 1996 can be used to summarise the Indian Supreme Court's definition of the principle; however, a critical analysis of the Narmada judgement from 1999 demonstrates how the Supreme Court "instrumentally harnessed the inherent vagueness of the principle."

- Polluter Pays

It merely holds the polluter accountable for any environmental harm they may have caused. In addition to compensating the victims of the pollution, the polluter must also pay to restore any environmental degradation already done. The National Environmental Policy of 2006 noted the necessity to abandon the criminal penalty system and establish a strict civil responsibility system based on the polluter pays concept because of the extensive usage of this principle by the courts. The inadequacy of the current legal standards and their application, however, has been adequately demonstrated by the way in which times have changed.

The Supreme Court has put this theory into practise by breaking the topic down into five questions. These include who is the polluter, how and when the principle is used, how to calculate the damage and receive compensation, what the polluter must pay, and finally, what the principle's limitations are. However, courts' methods for putting this idea into practise have been inconsistent.

- Precautionary Principle

Despite the lack of any scientific assurance, this principle encourages the execution of preventive steps in situations that could pose a major threat or result in irreparable harm. The Vellore ruling's application of the principle, however, conflicts with how the Apex Court defined it. The Court's treatment of the principle lacks clarity and blurs the distinctions between precaution and prevention, two separate legal principles. It can be useful in reaching environmentally friendly court decisions, but it is not encouraging for the emergence of a distinct body of law.

- Public Trust Doctrine

The concept that no one single person owns the natural resources and that the government and regulatory authorities must act as trustees and hold the resources for the free and unrestricted use of these resources by the general public was first applied in the environmental law of India in the case of M.C. Mehta vs. Kamal Nath & Ors, 1996. It is, however, somewhat difficult to understand how the theory could make decisions on public trust properties more predictable after it has been used. It is necessary to make the theory more applicable and consider how it may better preserve natural resources held in trust.



CHAPTER VII

CONCLUSION AND SUGGESTIONS

The urgent need to criminalise environmental crimes has been discussed throughout the entire text, yet it still needs a separate heading for clarity. The current state of affairs effectively demonstrates the insufficiency of the institutional framework of sanctions that is in place, which has shown to be less effective as a deterrent. Additionally, academics have argued that where there is a significant damage on the environment, administrative fines would be insufficient; in these cases, punitive provisions are used. While there are many issues with the current laws, a few of them include: having less than necessary regulatory/enforcing manpower in regulatory agencies compared to the ever-increasing number of industries, the lack of adequate technical knowledge/skills required for enforcement of regulations, the prevalence of resistance to change/attitudinal problems, a general lack of financial resources, giving emphasis to only specific types of pollution, lack of an independent regulators. At the very least, having a criminal statute in existence would make individuals fear breaking environmental laws and their associated prohibitions. A step in the right direction would be to base these fines on the actual harm done rather than the quantity of sections broken. They may issue light fines or penalties or severe fines and criminal consequences, depending on the severity. It might have its own challenges, including figuring out the threshold for criminalising conduct, but those can be better handled by the wisdom of the politicians.

However, there are three basic models that can be used to identify such infractions. These are the significant environmental contamination model, the model of concrete endangerment, and the model of abstract endangerment. In all these models, there are 2 main issues that are discussed: whether criminalization occurs as a result of legal violations or whether it should occur because legal violations have a significant negative impact on the general public. Criminal responsibility may develop even if a provision is broken inadvertently and not just when serious harm is done. Based on Michael M. O'Hear's model of "minimal culpability," this was created.

The notion that should be kept in mind, though, is that the clause should be written in a way that would either directly or indirectly have a deterrent effect. Clear parameters for the crime's punishment would also be advantageous. In order to expose the impact of their crimes and receive lighter penalties, the organisation might develop a form of self-policing process. Another thing to keep in mind is that having harsh penalties and punishments would force the organisation to use expensive preventative measures, which would automatically increase their operating costs and,

ultimately, the price of their products for consumers. This does not seem like a wise course of action.

As a result, it has been noted that there are far too many laws in place that make an effort to address environmental difficulties. However, this has only increased their implementation's ambiguity and difficulties. What we require is a solid integrated system that would offer a comprehensive united strategy and productive outcomes. Despite all the set guidelines, the judicial implementation processes have had varying degrees of success. In addition to complicated external issues, entrenched internal flaws also play a role in the implementation process, such as the courts' inconsistent use of implementation procedures, the necessity for stronger legal justification in their orders, and their poor regulatory framework integration. Criminal culpability can be introduced to effectively handle all of these problems, saving the court's time while also having a deterrent effect. It is time for the nation to enact harsh criminal penalties that anyone who violate the laws about environmental degradation would have to bear.

Criminal penalties for environmental infractions have been shown to be ineffective. Environmental laws take into account the deterrent effect of punishing offenders. The complexity of prosecuting such offenders and the flaws in the definitions of environmental offences have prompted the pollution boards to focus on prevention rather than prosecution. But the danger of penalty has diminished due to weak enforcement. Although there has been a noticeable increase in the penalties, simply increasing the severity of the punishment will not produce the desired results. The laws that mandate coercive punishment are not consistently or firmly enforced. Since there is no longer a perceived threat, criminal activity tends to grow.

However, criminal courts have traditionally marshalled scientific evidence in other criminal offences. It is true that the courts find it challenging to deal effectively with the scientifically complicated issues involved in environmental laws. The courts must have the will to carry out the genuine intents embodied in environmental legislation in order to promote constitutional principles through the practise of criminal sterilisation. The criminal penalties included in environmental laws have drawn criticism.

CHAPTER VIII

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