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Avinash Kumar



Avinash Kumar has completed his Ph.D. in International Investment Law from the Dept. of Law & Governance, Central University of South Bihar. His research work is on "International Investment Agreement and State's right to regulate Foreign Investment." He qualified UGC-NET and has been selected for the prestigious ICSSR Doctoral Fellowship. He is an alumnus of the Faculty of Law, University of Delhi. Formerly he has been elected as Students Union President of Law Centre-1, University of Delhi. Moreover, he completed his LL.M. from the University of Delhi (2014-16), dissertation on "Cross-border Merger & Acquisition"; LL.B. from the University of Delhi (2011-14), and B.A. (Hons.) from Maharaja Agrasen College, University of Delhi. He has also obtained P.G. Diploma in IPR from the Indian Society of International Law, New Delhi. He has qualified UGC - NET examination and has been awarded ICSSR - Doctoral Fellowship. He has published six-plus articles and presented 9 plus papers in national and international seminars/conferences. He participated in several workshops on research methodology and teaching and learning.

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EVOLUTION OF CRIMINAL LAW REMEDIES **PERTAINING TO ENVIRONMENT**

AUTHORED BY - TUSHAR CHAUHAN¹

Abstract

The domain of environmental criminal law has undergone a profound metamorphosis, weaving an intricate tapestry of international and domestic legal frameworks. This legal article aims to provide a comprehensive understanding of the evolution of environmental law, from its global roots to the specific nuances within the Indian legal landscape. This study explores pivotal global milestones and the distinct journey undertaken by India. Despite the robust legal framework in place, implementation and enforcement pose formidable obstacles. These challenges range from resource constraints to jurisdictional complexities, underscoring the need for continuous refinement of the legal framework. Ultimately, this study contributes insights crucial for policymakers and advocates, underlining the commitment needed to balance environmental preservation with legal accountability amid evolving challenges.

Keywords: Environment, Criminal Law, Legal, Framework, International, Global, Policy.

Introduction

Amidst the burgeoning environmental challenges that confront the world, the domain of environmental criminal law has undergone a profound metamorphosis, weaving an intricate tapestry of international and domestic legal frameworks. This legal discourse delves into the historical trajectory of environmental criminal law, exploring pivotal global milestones and the distinct journey undertaken by India. The significance of this exploration lies in the imperative to hold individuals and corporations accountable for environmental transgressions, a responsibility that has garnered increasing recognition on both the global and national stages.

Commencing with the formative Conventional Era (1900–1972) and tracing through the Modern (1972–1992) and Post-Modern Periods (1992-2012)², the global landscape witnessed

¹ 3rd year Learner, Symbiosis Law School, NOIDA.

² (Pandey, 2020)

transformative accords, such as the Stockholm Declaration and the Earth Summit in Rio de Janeiro. These milestones laid the foundation for the emergence of international environmental criminal law, with seminal developments culminating in the establishment of the International Criminal Court through the Rome Statute in 1998.

Concurrently, India embarked on its own trajectory, marked by distinct pre- and post-1972 eras. Prior to the Stockholm Conference, the nation relied on limited legal principles to address environmental concerns, but the post-1972 era witnessed a legislative surge with enactments like the Water (Prevention and Control of Pollution) Act, 1974, and the Environment (Protection) Act, 1986³, significantly broadening the scope of environmental criminal law.

However, this discourse transcends mere historical perspectives; it also delves into the contemporary challenges faced at both the international and Indian levels. Despite the robust legal frameworks in place, implementation and enforcement pose formidable obstacles. These challenges range from resource constraints to jurisdictional complexities, underscoring the need for continuous refinement of environmental criminal law frameworks.

The article also casts light on landmark events and judicial rulings that have shaped the course of environmental law, such as the Amoco Cadiz⁴ oil spill and the M.C. Mehta⁵ cases in India. These events serve as pivotal reference points in comprehending the complexities and evolution of environmental criminal law, both globally and within the Indian context.

Furthermore, the exploration extends to a comparative analysis between Western and Indian approaches to environmental criminal law. While shared principles like extended scope, stricter penalties, and the incorporation of corporate liability are evident, distinctions arise in the methods, remedies pursued, and the role of international collaboration.

In essence, this legal article aims to provide a comprehensive understanding of the evolution of environmental criminal law, from its global roots to the specific nuances within the Indian legal landscape. By doing so, it underscores the critical role of legal frameworks in shaping a sustainable and responsible approach towards environmental preservation and accountability.

³ (The Environment (Protection) Act, 1986)

⁴ (AMOCO CADIZ, France, 1978, n.d.)

⁵ (MC Mehta v. Union of India)

Background and Historical Context

The development of environmental criminal law remedies has a historical background that encompasses both global and Indian elements. The necessity of preserving the environment and holding people and businesses responsible for any harm they cause to it has come to be more widely acknowledged over time. This understanding has prompted the creation and advancement of criminal law remedies meant to deal with environmental crimes.

The emergence of environmental-related criminal law remedies worldwide dates to the middle of the twentieth century. A heightened consciousness of the environmental fallout from industrialization and the necessity of global cooperation to tackle these problems emerged in the post-World War II era. The worldwide legal system for environmental protection has been shaped by a number of significant developments, including:

1. **The Conventional Era (1900–1972):** This was the time when the basic principles of international environmental law started to take shape. Conventions addressing particular environmental challenges, such as the International Convention for the Regulation of Whaling (1946) and the Paris Convention for the Protection of Industrial Property (1883), are significant turning points. Comprehensive international environmental accords, however, were still in their infancy.⁶
2. **Modern Period (1972–1992):** The turning point in history was the United Nations Conference on the Human Environment, which took place in Stockholm in 1972. Environmental preservation and sustainable development were highlighted in the Stockholm Declaration. To coordinate global efforts, the United Nations Environment Programme (UNEP) was founded. During this time, the United Nations Framework Convention on Climate Change (1992) and the Convention on Biological Diversity (1992) were two significant agreements.⁷
3. **Post-Modern Period (1992-2012):** The Earth Summit in Rio de Janeiro in 1992 was crucial to the post-modern era (1992–2012). Global environmental governance was established by the Rio Declaration and Agenda 21. The Greenhouse gas emissions were addressed with the Kyoto Protocol (1997). The Stockholm Convention (2004) and the

⁶ (Pandey, 2020)

⁷ (Law of Crimes and Environment, n.d.)

Convention on Persistent Organic Pollutants (2001) both addressed dangerous chemicals. The goal of the 2015 Paris Agreement was to address climate change.⁸

Significant Historical Events:

1. **The Stockholm Conference (1972):** The United Nations Conference on the Human Environment, which took place in Stockholm in 1972, was a pivotal event in the history of environmental policy worldwide. It brought attention to the necessity of international cooperation in addressing environmental concerns and resulted in the creation of the United Nations Environment Programme (UNEP).
2. **The Rio Earth Summit (1992)** The United Nations Framework Convention on Climate Change (UNFCCC) and the Rio Declaration on Environment and Development were adopted as outcomes of the United Nations Conference on Environment and Development, popularly known as the Rio Earth Summit. The significance of addressing climate change and promoting sustainable development were underscored by these accords.
3. **Various Environment Oriented Treaties:** In order to address particular environmental challenges, the international community has also produced a variety of environmental treaties and conventions. The Basel Convention⁹ on the Control of Transboundary Movements of Hazardous Wastes, the Montreal Protocol on Substances that Deplete the Ozone Layer, and the Convention on Biological Diversity are a few examples.

Evolution of Criminal Law Frameworks

International Level:

A steady movement towards increased accountability and enforcement has been observed in the international criminal law framework for environmental protection. The key stages of the gradual shift are:

1. Post-World War II:

In the aftermath of World War II, international environmental law initially concentrated on treaties addressing specific matters, such as whaling or nuclear testing. These early agreements rarely incorporated criminal enforcement mechanisms.

⁸ (Pandey, 2020) (Law of Crimes and Environment, n.d.)

2. The Stockholm Conference (1972):

The Stockholm Conference in 1972 represented a pivotal juncture. This landmark event underscored the necessity for international cooperation in environmental protection and laid the groundwork for the development of a more robust criminal law framework.

3. Emergence of International Environmental Crimes:

As the field evolved, treaties and conventions addressing particular environmental crimes, such as illegal trafficking of hazardous waste or endangered species, began to emerge. These instruments frequently included provisions for extradition and international cooperation in enforcement efforts.

4. The Rome Statute (1998)¹⁰:

The establishment of the International Criminal Court (ICC) through the Rome Statute in 1998 marked a significant advancement. While the ICC's primary mandate focuses on core crimes like genocide and war crimes, the Rome Statute holds the potential for future amendments to encompass serious environmental crimes.

5. Emerging Challenges:

However, enforcing international environmental criminal law remains a complex endeavor. Ongoing challenges, such as state sovereignty, jurisdictional intricacies, and the absence of a centralized enforcement body, continue to pose formidable obstacles.

Indian Level:

There have been two main stages in the development of India's criminal law framework for environmental protection:

1. Pre-1972 Era:

Limited Scope: Prior to the Stockholm Conference, India's approach to environmental issues primarily relied on existing legal principles, such as the concept of nuisance and a patchwork of sectoral laws (e.g., the Forest Act). These laws had limited provisions for criminal enforcement.¹¹ The Indian Penal Code (IPC) 1860: Sections like 268 (public nuisance) and 277 (fouling water) of the Indian Penal Code offered some recourse for environmental harm, but their effectiveness was constrained.

¹⁰ (The Rome Statute, n.d.)

¹¹ (National Biotechnology Development Strategy, 2007, n.d.)

2. Post-1972 Developments

Legislative Surge: Following the Stockholm Conference, India witnessed a surge in environmental legislation. Key enactments during this period include:

- The Water (Prevention and Control of Pollution) Act, 1974.¹²
- The Air (Prevention and Control of Pollution) Act, 1981.¹³
- The Environment (Protection) Act, 1986.¹⁴
- The Wildlife (Protection) Act, 1972.¹⁵

Expanded Scope: These new laws significantly expanded the reach of environmental criminal law. They introduced stricter penalties, criminalized a broader range of activities, and incorporated concepts like strict liability for certain offenses.

Role of Judiciary: The Indian judiciary, particularly the Supreme Court, played a crucial role in interpreting and enforcing environmental laws. Landmark judgments, such as the M.C. Mehta¹⁶ cases, established the principle of "absolute liability" for polluters and emphasized the right to a clean environment as a fundamental right.

Ongoing Developments and Challenges:

Implementation and Enforcement Challenges: Despite the robust legal framework, effective implementation and enforcement remain major challenges. Issues such as resource constraints, bureaucratic hurdles, and political influence pose obstacles.

Need for Continuous Improvement: India's environmental criminal law framework needs to continuously adapt to address emerging environmental threats like climate change and electronic waste management.¹⁷

¹² (The Water (Prevention and Control of Pollution) Act, 1974)

¹³ (The Air (Prevention and Control of Pollution) Act, 1981)

¹⁴ (The Environment (Protection) Act, 1986)

¹⁵ (The Wildlife (Protection) Act, 1972)

¹⁶ (Law of Crimes and Environment, n.d.)

¹⁷ (Policies and Treaties for the Protection of Environment, n.d.)
(National Biotechnology Development Strategy, 2007, n.d.)

Examples

International level:

Enforcing international environmental criminal law can be difficult, as demonstrated by the 1978 "Amoco Cadiz"¹⁸ oil spill. Significant environmental damage resulted from this oil tanker run-ground incident off the coast of France. But because of jurisdictional concerns and difficulties with international cooperation, prosecuting the guilty parties proved difficult.

The 1978 Amoco Cadiz oil spill off the coast of France highlighted major gaps in international environmental criminal law at the time. Despite the massive environmental damage caused by the spill of 223,000 tonnes of oil, holding parties criminally responsible proved extremely difficult due to jurisdictional complexities and a lack of specific international laws addressing such environmental crimes.

The incident underscored the need for an overhaul of the legal framework to allow for criminal accountability in environmental disasters. While it resulted only in civil compensation from the company Amoco, the Amoco Cadiz spill paved the way for subsequent treaties targeting environmental crimes like hazardous waste trafficking. It also emphasized improving enforcement capabilities of flag states.

Ultimately, the Amoco Cadiz disaster served as a turning point, driving the evolution of international environmental criminal law and enforcement mechanisms, despite the challenges faced in criminally prosecuting that particular case. It remains a pivotal reference for addressing the criminal aspects of environmental degradation globally.

Indian Level:

The ruling rendered by the Supreme Court in the 1985 case of "M.C. Mehta v. Union of India" is a perfect illustration of how the judiciary has influenced environmental criminal law in India. The "absolute liability" theory—which holds polluting industries accountable for environmental harm regardless of their intention—was developed by this case.

The "Water (Prevention and Control of Pollution) Act, 1974" serves as an illustration of the legislative measures taken by India to combat environmental crimes. This law makes it illegal to

¹⁸ (National Biotechnology Development Strategy, 2007, n.d.)

do things like release pollutants into waterways above allowable limits and gives authorities the authority to punish violators and implement corrective action.

Concept in the West vs. The Indian Aspect

There are some essential principles of the criminal codes for environmental preservation which are shared by India and the West. These principles are:

- **Extension of Scope:** Both now cover corporate and organizational liability instead of just focusing on individual pollutants. This indicates an understanding of the substantial role that corporations play in harming the environment.
- **Extended Prohibited actions:** In addition to direct pollution, other actions that fall under this category of criminalization are the trafficking of endangered animals, unlawful garbage disposal, and environmental permit violations.
- **Severe Environmental Violations Now Face Stricter Penalties:** Serious environmental violations now face heavier financial fines and felony charges in both zones.
- **Strict liability:** According to many environmental regulations, polluters are criminally liable for any environmental harm they create, regardless of their intention. Deterrence is increased, and enforcement is made easier.¹⁹

There are differences in the criminal justice systems of India and the West with regard to environmental issues. Although environmental infractions are covered by laws and procedures in both jurisdictions, there are significant distinctions in the methods used and the particular remedies that might be pursued.

Western Aspect:

Criminal penalties for environmental crimes are mostly controlled by international accords and national laws in Western nations. The following are some essential components of Western criminal remedies now in use:

Environmental Criminal Laws: There are environmental criminal laws in many Western countries that outline the charges and punishments for actions that cause environmental harm. These laws frequently address a broad range of infractions, including habitat degradation, unlawful waste disposal, pollution, and trafficking in wildlife.

¹⁹ (Pandey, 2020)

Strict Liability: Environmental violations may be prosecuted under strict liability in certain countries, which eliminates the need to demonstrate negligence or malice. This makes it simpler to enforce laws and hold people or businesses responsible for damage done to the environment.

Fines and imprisonment: In the West, there are frequently fines and incarceration associated with criminal charges related to environmental violations. The type and gravity of the offense determine the harshness of the punishments. Businesses may be subject to hefty fines in certain situations, while individuals may go to jail.

International collaboration: To combat transboundary environmental crimes, Western nations also participate in international collaboration. This entails exchanging data, organizing inquiries, and extraditing those responsible for crimes against the environment.²⁰

Indian Aspect:

The National Green Tribunal (NGT) and other administrative organizations, as well as statutory rules and judicial interpretation, control India's existing criminal remedies related to the environment. Several salient features of the extant criminal remedies in India are as follows:

Indian Penal Code (IPC)²¹: Environmental violations are covered by certain of the IPC's sections. Public health, safety, decency, convenience, and morality-related violations are covered under sections 268, 269, 270, 279, 280, 287, 288, 290, 291, and 294. Individuals engaged in environmentally harmful acts may be punished under these regulations.

Criminal Procedure Code (CrPC)²²: Environmental offenses may be subject to the rules of the CrPC regarding the preservation of public order and quiet. District and Sub-Divisional Magistrates are empowered by Section 133 to put an end to pollution and other environmental annoyances.

National Green Tribunal (NGT)²³: Founded in 2010, the NGT is a specialist environmental court. It has the authority to handle criminal and civil complaints and offer compensation for environmental damage. The Indian legal system's understanding of environmental law has been greatly influenced by the NGT.

Judicial Interpretation: The Indian judiciary has been instrumental in the creation of criminal

²⁰ (Saluja, n.d.)

²¹ (Indian Penal Code)

²² (Code of Criminal Procedure, 1973)

²³ (Criminal Law Remedies for the Protection of Environment, 2022)

penalties for violations of the environment. Significant rulings have acknowledged the need of environmental conservation and broadened the reach of criminal culpability for environmental harm.

Landmark NGT Case Laws:

The "**Okhla Landfill Fire Case**" (2023)²⁴ highlights the use of fines and compensation orders to deter environmental.

Based on its estimate of site restoration expenses of Rs 300 per metric tonne of garbage, the tribunal fixed the penalty for the failure to dispose of the waste, which amounted to three crore metric tonnes in all three landfills combined, at Rs 900 crore in the decision.²⁵

The "**E-Waste Management Case**" (2022)²⁶ demonstrates the NGT's focus on addressing emerging environmental threats.

The NGT mandated that all state pollution control boards and committees adhere to the Central Pollution Control Board's (CPCB) findings on electronic waste.²⁷

Conclusion

The comprehensive study conducted an in-depth exploration of the intricate evolution of environmental criminal law, spanning global and Indian perspectives. It meticulously traced pivotal milestones that shaped the trajectory of this domain, including the Stockholm Declaration, the Rio Earth Summit, and the establishment of international entities such as the United Nations Environment Programme (UNEP) and the International Criminal Court (ICC).

In the Indian context, the study illuminated the transformative transition from the limited legal mechanisms that preceded 1972 to the post-1972 era, which witnessed a surge of legislative initiatives, including the enactment of the Water Act and the Environment Protection Act. These legislative developments significantly expanded the scope and reach of environmental criminal law within the nation.

Landmark events, such as the Amoco Cadiz oil spill and the groundbreaking M.C. Mehta cases, underscored the pressing need for stringent accountability frameworks to address environmental

²⁴ (OKHLA LANDFILL FIRE CASE)

²⁵ (NGT Fines Delhi Govt)

²⁶ (E-Waste Management Case)

²⁷ (order-of-the-national-green-tribunal-regarding-electronic-waste)

transgressions effectively. While shared principles, including an extended scope of application, more severe penalties, and the recognition of corporate liability, emerged across various jurisdictions, distinct approaches to enforcement persisted.

Despite the existence of robust legal frameworks, the study highlighted the challenges that continue to hinder the effective implementation of environmental criminal law. These obstacles encompass resource constraints, jurisdictional complexities, and the lack of a centralized enforcement mechanism, all of which impede the seamless application of these legal provisions. The study emphasizes the imperative for continuous improvement and adaptation to address emerging threats within the realm of environmental criminal law. It underscores the crucial role of international collaboration and the judiciary in interpreting and enforcing environmental laws, ensuring their relevance and effectiveness in an ever-evolving landscape.

The study further delved into the intricacies of harmonizing international and domestic legal frameworks, recognizing the inherent complexities that arise from the interplay between global initiatives and national sovereignty. It highlighted the pressing need for a concerted effort to bridge the gaps between policy formulation and practical implementation, emphasizing the role of multi-stakeholder collaboration and public awareness campaigns.

Moreover, the examination underscored the importance of leveraging technological advancements and innovative approaches to enhance monitoring, compliance, and enforcement mechanisms. The integration of cutting-edge tools, such as remote sensing and data analytics, could revolutionize the detection and prosecution of environmental crimes, bolstering the effectiveness of legal interventions.

Ultimately, the study serves as a clarion call for a paradigm shift in our collective approach to environmental preservation, urging policymakers, legal professionals, and global citizens to embrace a holistic and proactive mindset. By fostering a culture of environmental stewardship and accountability, we can pave the way for a more sustainable future, where the intricate balance between human progress and ecological preservation is upheld through robust legal frameworks and unwavering commitment.