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# **ENVIRONMENTAL JUSTICE THROUGH THE CRIMINOLOGICAL LENSES-INDIAN PERSPECTIVE**

AUTHORED BY - URBEE GHOSH<sup>1</sup>

## **ABSTRACT**

A study of environmental crime and harm affecting humans and non-humans' life, the ecosystem, and the biosphere is known to be Green Criminology. In the 1990s Green Criminology was introduced as a new branch of Criminology and alongside, owing to the requirements under the International Stockholm Conference in 1972, India introduced a bundle of legislations on environmental laws. Amongst them, the Environment (Protection) Act, 1986 is the umbrella legislation dealing with the plausible harms on land, water, air, and biodiversity as a whole. However, despite the positive efforts, in India, environmental crime is on the triumph. According to the National Crime Records Bureau (hereinafter, NCRB) reports, the rate of crime against the environment is increasing by 4.4% (approx.) per year. For example, in the year 2020-21, 61,767 cases of environmental crimes were registered, which raised to 64,471 within a span of 12 months. It is argued that amongst other things, the lack of elasticity in legislation, weak enforcement, poor monitoring, absence of effective punitive measures, and scarcity of funds is the primary issues behind a sudden spur in the crime rate. Under this scenario, the present review paper unfolds itself by analyzing the interconnection between green crimes and the protection of biodiversity in the Indian context. The authors situate their discussion around the international initiatives that India took to curb the menace and its implementation at the National level. Alongside, an overview of judicial guidelines that depict the dawn of environmental jurisprudence in India is outlined. In conclusion, to prevent the befall of the environment and human life; the authors advocate for stringer punishments for environmental law violations as also enforcement of the existing laws by joint task forces.

## **KEYWORDS**

Green Crimes, Criminology, National Green Tribunal, Green – Collar Crime, sustainable development.

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## BACKGROUND

*“A crime against greens and humankind is equally atrocious.”*

Injury towards humanity and cruelty to the environment both are equally offensive in nature. There are various sets of offenses that resides in society from time immemorial. Unlike crime against humanity, crime against the environment is recently originated. Primarily, ascertaining green offenses is inevitable for the proper enforcement of environmental laws and the preservation of a healthy environment for humanity. Man's interference in the natural environment reaching a vicious extent causes ecological imbalance. As a result, a serious threat to human health and damage to the environment entitles the law to interfere and neutralize to counterbalance the menaces. The definition of environmental crime depends upon three ingredients, firstly, violation of the environmental legislation of a particular area, secondly, affects both humans and non-humans exploiting planet Earth thus causing imbalance, and embedding man and nature in insecurity. Thus, according to Merriam-Webster Dictionary, an act that is destructive to the environment and that has been criminalized by statute is called environmental crime.<sup>2</sup> Crime and criminology are interrelated to each other. Crime is the act or omission which constitutes an offense and is punishable by law, whereas criminology is the study of crime and criminal behaviour of an individual. Criminology is an age-old concept, introduced around 1889 to manipulate humans and offenses against humans. Subsequently, the focus shifted toward the environment upon launching the term 'Green Criminology' by Prof. Lynch in the year 1992. It is a field that operates as a tool for researching, studying, and associating with environmental crimes and wider environmental harms that are often ignored by mainstream criminology. Green crime is a fast-moving and challenging area in which academicians, policymakers, and practitioners frequently contradict research to define the seriousness of criminality.<sup>3</sup> Green Criminology follows the footmark of critical or radical criminology. The complex, uncertain, and ambiguous nature of these harms reveals the need for a more holistic approach: one that more firmly ties together social and ecological systems.<sup>4</sup> On the contrary, traditional criminology focuses on human victims, considering that, green criminology acknowledges that various living creatures can be the victims when humans misuse the ecosystem. Green Criminological research thus explores crime and notifies unique victims. Thus, Green Criminology is an umbrella term for criminology concerned with the general neglect of ecological issues and biodiversity. Despite such a potential approach, environmental crime in India could not be marked down. According to the

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<sup>2</sup> Merriam-Webster law Dictionary Estd. 1828, <https://www.merriawebster.com/legal/environmental%20crime>.

<sup>3</sup> Angus Nurse, Green criminology: shining a critical lens on environmental harm, DOI: 10.1057/s41599-017-0007-2, PC journal, Pg – 1.

<sup>4</sup> Wesley Tourangeau1, A Systems-Based Approach to Green Criminology, Springer, June 2022

National Crime Records Bureau (hereinafter, NCRB) reports, the rate of crime against the environment is increasing by 4.4% (approx.) per year. For example, in the year 2020-21, 61,767 environmental crimes cases were registered, which raised to 64,471 within 12 months. Concurrently, Wildlife Crime Control Bureau exhibits and analyses that between 2018 and 2020 about 2054 cases were registered for killing or illegal trafficking of wild animals in India, by three years, about 3836 accused were arrested for the crime. The number of cases registered in the year 2018 was 648 and 1099 persons were arrested, followed by 805 cases and 1506 arrests in 2019 and 601 cases and 1231 arrests in 2020.<sup>5</sup> For example – between 2008- 2018, 384 tigers were killed by poachers out of which 961 perpetrator was arrested as pronounced by Wildlife Crime Control Bureau. The issue prevailing in the present comment is to set an awakening tone to the government that must make such mandatory provisions to constitute the National Green Tribunal (henceforth, NGT) benches in every state and remove the divergence of distance and approachability. NGT composes of alarming requisites to set up benches around India and not merely stand as a five pillared structure. In the pioneer letters of the **186<sup>th</sup> Law Commission Report** on “Proposal to constitute Environmental Courts”. The report also mentions that these courts should be constructed in each state or group of states when the law commission suggested the term ‘accessibility of citizens.’ Environmental crime is surely an organized crime, that is planned to injure nature. For example – forest civilians hunt to live and not to crush the ecosystem. But visitors who track into a dense forest usually have the motive to kill wildlife or cut down trees for their own financial gain. Major drivers of environmental crime include economic benefits, sustainable demand, poverty, as well as institutional and regulatory failures. Hence, the community should be conscious of forming a potential environment because the entire human civilization possesses a healthy and hygienic environment. While the history of humanity over the last several millennia is noted for its constant and/or consistent progress in different walks of life, the mysteries of nature have often proved to be quite tempting to be solved by human thinking and actions. Around 3.7 billion years ago life on Earth has discovered due to its atmosphere. Therefore, the proper implementation of environmental jurisprudence is obligatory to maintain the balance between nature and its ecosystem.

## Evolution of Green Criminology

The insertion of the green perspective into criminology is usually claimed to have originated back in the 1990s, and has been strengthening, refreshing, and, in many respects, regarded as a

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<sup>5</sup> Wildlife Crime Control Bureau, Ministry of Environment Forests and Climate Change

relatively 'new' member of this field. A successive development denotes that environmental issues and abuse of nature form a deep layout in some of the earlier literature on the sociology of deviance and criminology, social problems, and political economy. A significant amount of knowledge that could be regarded as a contribution to a 'green criminology' has long existed but has been either forgotten or overlooked. For example, relevant research carried out in the Scandinavian countries has not been acknowledged at large by green criminology because it was produced in Danish, Norwegian, or Swedish.<sup>6</sup> During the contemporary criminological era the state of Europe, the United States, and Oceania focused on the natural environment, naming it 'green criminology.' The term 'green criminology' seems to have been used by Lynch in 1990. In Lynch's use of the term, the objective was to reveal and respond to a 'variety of class-related injustices that maintain an unequal distribution of power while destroying human life, generating hunger, uprooting, and poisoning the entire ecosystem. The durable transformation in developing the notion of 'green criminology' continued till the late twentieth century. In the year 1972 United Nations Convention on Environment in Stockholm, Sweden introduces the environment as a major issue.

## **Stockholm Conference – Pedigree of Environmental Development**

The United Nations Conference on the Human Environment was held in Stockholm from 5<sup>th</sup> to 16<sup>th</sup> June in the year 1972. The conference is considered to be the Magna Carta of environmental law. The conference is treated at par with the Universal Declaration of Human Rights (UDHR), 1948. The said conference may be figured as the first major attempt to save the global problems of conservation and regulation of the human environment by international agreement on a universal standpoint. The then Prime Minister of India Mrs. Indira Gandhi attended the Stockholm Conference. India ratified the Stockholm Convention on January 13, 2006, as per Article 25(4), which enabled it to keep itself in a default "opt-out" position such that amendments in various Annexes of the convention cannot be enforced on it unless an instrument of ratification/ acceptance/ approval or accession is explicitly deposited with UN depositary.<sup>7</sup> Stockholm is a Global treaty to protect the environment and humanity from Persistent Organic Pollutants (POPs).

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<sup>6</sup> David Rodríguez Goyes and Nigel South, GREEN CRIMINOLOGY BEFORE 'GREEN CRIMINOLOGY': AMNESIA AND ABSENCES, , 25, Pg- 1 to 26, 2017.

<sup>7</sup> PIB Delhi, Cabinet approves Ratification of seven Persistent Organic Pollutants listed under Stockholm Convention and delegate its powers for future ratifications for streamlining the procedure, 07 OCT 2020 4:33 PM, <https://pib.gov.in/PressReleasePage.aspx?PRID=1662335#:~:text=India%20had%20ratified%20the%20Stockholm,approval%20or%20accession%20is%20explicitly>.

POPs proliferate in the atmosphere and last for a long time. Gradually it becomes widely distributed and geographically assemble in the fatty tissue of living beings which is toxic to man and wildlife. However, Stockholm Conference was introduced to curtail such POPs from the environment and abolish unacceptable hazards to society. Over 152 countries ratified the Convention and it entered into force, on 17 May 2004.

## **Purpose to commit environmental crime**

Environmental crime is a designed crime and never emerges out of spontaneity. Environmental degradation cannot be tagged as the sole cause of crime against the environment. Such crimes are committed exactly like organized crimes to acquire profit from them. Green crime is a part of White-Collar Crime. It is also found that environmental crime is often used as a weapon to gain control over a territory or to execute some destined crime.

As a result, environmental crime is neither traditional in nature nor arises due to poverty, rage, or economic instability. It is an organized crime and affects society at large.

## **International Treaties – Ratified by India**

### **UN Framework Convention on Climate Change (UNFCCC), 1992.**

In the year 1993, India ratified the convention. The 198 countries that have ratified the Convention are called Parties to the Convention.<sup>8</sup> It aimed to sustain Green House Gas and maintain sustainable development.

### **Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES), 1973.**

India ratified CITES in the year 1976. India prohibits the international trade of endangered wild species. India has placed several measures to control the threats from invasive alien species. This is done by regulating the trade by export certificates and import permits.<sup>9</sup>

### **Basel Convention on Transboundary Movement of Hazardous Wastes, 1989.**

India ratified the Basel Convention in the year 1992 focusing to protect human health and the environment against the adverse effects that may result from the generation, transboundary

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<sup>8</sup> What is the United Nations Framework Convention on Climate Change? <https://unfccc.int/cop27>.

<sup>9</sup> <https://cites.org/eng/disc/what.php>

movements, and management of hazardous and other wastes.<sup>10</sup>

### **Paris Agreement, 2015.**

India ratified the Paris Agreement on 2<sup>nd</sup> October 2016. The Paris Agreement sets out a global framework to avoid dangerous climate change by limiting global warming to well below 2°C and pursuing efforts to limit it to 1.5°C. It also aims to strengthen countries' ability to deal with the impacts of climate change and support them in their efforts.<sup>11</sup>

## **Institution – to escort the law of Green Crime**

- Supreme Court of India
- High Courts
- District and Subordinate Courts
- National Green Tribunal
- National Environmental Appellate Authority
- Central Pollution Control Board
- State Pollution Control Board
- Chief Forest Conservators
- Factory Inspectors
- District Collectors
- Executive Magistrate.

## **Environmental Jurisprudence – Domestic Case Laws**

M.C. Mehta was famous for the development of environmental jurisprudence in India. Subsequently, He was a well-known public interest attorney from India and labelled as a “Pioneer in the field of Environmental Law”. History briefs many landmark judgments for the development of environmental jurisprudence. Judiciary plays a vital role in the protection of the environment.<sup>12</sup>

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<sup>10</sup> Basel Convention, 20<sup>th</sup> National Environment Agency, <https://www.nea.gov.sg/corporate-functions/resources/legislation-international-law/multilateral-environmental-agreements/chemical-safety/basel-convention/main-provisions-of-the-basel-convention#:~:text=The%20overall%20goal%20of%20the,of%20hazardous%20and%20other%20wastes.>

<sup>11</sup> Climate Action, EU Action, [https://climate.ec.europa.eu/eu-action/international-action-climate-change/climateneegotiations/pariagreement\\_en#:~:text=The%20Paris%20Agreement%20sets%20out,support%20them%20in%20their%20efforts.](https://climate.ec.europa.eu/eu-action/international-action-climate-change/climateneegotiations/pariagreement_en#:~:text=The%20Paris%20Agreement%20sets%20out,support%20them%20in%20their%20efforts.)

<sup>12</sup> Sristi Raichandani, 15 Landmark Judgments on environmental Protection, Legaldesire.com, Sep 26, 2020, <https://legaldesire.com/15-landmark-judgments-on-environmental-protection/>.

Therefore some milestone judgments on Environmental jurisprudence are:

**Rural Litigation and Entitlement Kendra & others v. State of Uttar Pradesh and Others 1985 AIR 652, SCR (3) 169.**

The said case is well known as the “Dehradun Valley Case”. The main factor regarding the case was to stop extricating limestone by blasting the hills with dynamite. This practice has also resulted in cave-ins and slumping because the mines dug deep into the hillsides, which is an illegal practice per se. Lack of vegetation builds a threat to many livelihoods. In this case, the concerned court directed Vijay Shree Mines to pay Rs. 3 lakhs to the fund of the Monitoring Committee as the company caused immense damage to the area.

In this case, the apex court declared to maintain a balanced environment and ecological integrity against industrial demands upon forest resources

- mine lessees whom the court directed to terminate their operations later will be provided with new areas open limestone mining firm.
- Eco – a task force of the Central Department was ordered to reforest the area damaged by mining and jobs to be provided to the workers who were displaced due to mine closure on prior notice.

Dynamite is a natural resource. It is used for mining, quarrying, construction, and demolition of industries as raw materials. These raw materials are consumed but not properly used. Proper utilization is most needed, if not then preservation. As a result, the practice to dig deep into the hills and consuming mines beyond usage is categorically a part of green-collar crime.

**Municipal Council, Ratlam v. Shri Vardhichand and Others 1980 AIR 1622, 1981 SCR (1) 97**

Ratlam is a city in the State of Madhya Pradesh in India. Residents of the concerned city filed a complaint before the sub-divisional Magistrate charging that the municipality is not constructing proper drains. As a result, the stinky smell is polluting the environment due to dwelling slums in and around such areas. The Sub-divisional judge directed the municipality to prepare a proper development plan within six months submitted by the residents of Ratlam City (approved by the High Court). Later, residents of the city appealed before the apex court for desired financial support to comply with the direction as issued by the Subdivisional magistrate in Ratlam city. The respondents over it claimed that the municipality is casual about the fact that many alcohol plants are growing which is resulting in Malaria.

Thus, the apex court instructed the municipality of Ratlam to protect the area from pollution caused by alcohol plants, to fulfill the obligation by building sufficient public laterals for men and women separately along with proper water supply and the municipality should realize the emergence of the resources.

Hygiene is a necessity for a locality. The construction of a proper drainage system is the first step toward hygiene. Accordingly, the initiative taken by the residents of Ratlam was apt. Every person has the right to live in a fresh and pollutionless environment.

**M.C. Mehta v. Union of India and others, 1988 AIR 1115 1988 SCR (2); 530 1988 SCC (1); 471 JT 1988 (1) 69.**

The case was the 1<sup>st</sup> River Pollution Case to emerge in environmental public interest legal proceedings. Ganga flows south and so eastward and drains itself into the Bay of Bengal area. Ganga is known to be the lifeline of many civilizations in India.

The said case was concerned with the growth of the industrialized area on the banks of River Ganga, due to which our pious Ganga was getting polluted. The case is also termed as Kanpur Leather Tanneries Case.

The petitioner requested the subordinate court to restrain the respondent from purifying effluents into the Ganga watercourse. to arrest pollution.

Primarily, the court issued a direction under Order I Rule 8 of CPC, and focused on the provisions of our constitutional framework. Likewise, Article 48A and Article 51A were inserted.

The court also directed the publication of test books written to aware citizens of Ganga Pollution and circulate them to educational institutions free of cost. Children should be aware to keep their surroundings clean both outside and inside their house. Clean surrounding leads to a healthy body and a fresh mind. Said programs should train the teachers also so that they could train the upcoming generation with exactitude. The said order by the apex court should be followed all over the country.

Indians worship the river Ganga hand in hand Indians pollute Ganga. Endless industries and civilizations took birth on the bank of the river Ganga. The growth of industrialization is falling

much heavier for river Ganga than for civilians who reside nearby. Polluting water is damaging the quality of the water resources we use. Therefore, the theory first to worship and finally pollutes the same.

**M.C. Mehta v. Union of India and Others, 1987, AIR 1086, 1987 SCR (1)**

Taj Trapezium was the first tentative step in the matter of environmental litigation. Kuldeep Singh. J on the eve of his retirement delivered a landmark judgment in this case popularly known as the 'Taj Trapezium Case'. The Sulphuric Dioxide emitted by the Mathura Refinery and various industries when combined with Oxygen with the aid of Moisture in the atmosphere forms sulphuric acid called 'Acid Rain' which has a corroding effect on the white marble.

The development of industries is essential for the country's economy, but at the same time, the environment and the ecosystem should be protected. Relocation of the industries from the Taj Trapezium zone is to be restored only if the natural gas that has been bought at the doorstep of the Taj Trapezium zone is acceptable to the industries as a substitute for coke. The industries operating in the Taj Trapezium zone are given gas connections to run the industries need not relocate. The whole purpose is to stop air pollution caused by coke.

Taj Mahal is one of the seven wonders of the world. The wonder was built with white marble, but gradually environmental researchers have found a mystery about those white marbles turning yellow. The reason is due to acid rain. Now, at Agra number of coke factories developed, and the omission of sulphur dioxide from such is a crime of course which is one of the famous marble palaces in India. To deface an immense mausoleum of white marble being a masterpiece of Muslim cultural heritage in India is an offense undoubtedly.

**Manoj Mishra v. Delhi Development Authority (Art of living Case) Original Appeal No. 2016.**

The National Green Tribunal (NGT) held Sri Sri Ravi Shankar's Art of Living responsible for the damage to the Yamuna floodplains caused by the holding of the World Culture Festival in 2016.<sup>13</sup> National Green Tribunal directed the organization responsible for damages to deposit initial compensation as fixed by the Expert Committee Rs.120 Crore, later the amount was reduced to 28.73 crores. Analyzing the case, it is found that minimal scientific approach or objective criteria

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<sup>13</sup> Dr. Arbab Mohammed Abdul Rub, Judicial approach towards green-collar crimes in India in light of environmental jurisprudence, Volume 7 Issue 5 – ISSN 2455 2437, JLSR, Pg- 143 to 163, September 2021.

were employed by the tribunal at the time of awarding compensation. NGT-appointed experts blamed Ravi Shankar Ji (Art of living) on the ground for destroying Yamuna floodplains.

The compensation that NGT orders, helps in environmental restoration, and enables us to study the scientific examination and analysis carried out by the tribunal in determining the amount of compensation. The primary goal of a tribunal is to protect the environment.

### Green Crime – Statistical Analysis (NCRB)

YEAR	No. of cases (State / UT wise)
2016	4723
2017	42143
2018	35196
2019	34676
2020	61767

Table 1.1<sup>14</sup>

The above-mentioned table indicates the swing in environmental crimes. The report shows that in the year 2020, the rate of crime is the highest followed by 2017 and 2018. In 2020 the state of Tamil Nadu with 42756 cases in total, and Rajasthan with 9543 cases against the environment resulted to uprise in the crime rate against the environment. On the other hand, in 2017 again the same states with 20914 (TN) and 10122 (RJ) cases subsequently tends to be the root cause for the growth of green crime succeeding with the year 2018.

To conclude, after exploring the NCRB Report for six consecutive years it is quite clear that the state of Tamil Nadu and Rajasthan faces the highest environmental crime following other states of India.

## Conclusion and suggestions

The theory of Green Criminology is a reality. The theory is essential for every aspect of life. Green Criminology is treated as a subheading under White–Collar Crime. According to Sutherland (1949) “crime committed by a person of respectability and high social status in the course of his occupation.” But unfortunately, he discovered a theory one way round, keeping the concept of

<sup>14</sup> National Crime Record Bureau 2016 – 2018, 2018 - 2020

[https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%2011.1\\_2.pdf,h](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2011.1_2.pdf,h)  
[https://ncrb.gov.in/sites/default/files/crime\\_in\\_india\\_table\\_additional\\_table\\_chapter\\_reports/Table%2011.1\\_2.pdf](https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/Table%2011.1_2.pdf).

economic crime in focus. Therefore, environmental jurisprudence lacks a proper definition overall. Planet Earth is dependent upon its environment. The territory over the Earth is the survival kit of a living being. So, those living beings must secure and preserve the environment. They should recognize the fact that they are walking on a path to strike down their existence. **184<sup>th</sup> Law Commission Report** recommended setting up of Environmental Courts in September 2003. The decision was taken up due to the inadequacy of Judicial knowledge on the scientific or technical aspects of environmental issues. The growth of environmental jurisprudence has its root deep in the outcome of Public Interest Litigation (PIL). Sustainable development goals, awareness programs, and the initiative to implement such will set forth a better environment one day. Tribunals and quasi-judicial bodies are entrenched these days to meet curtail the rate of Green Collar Crime, but administration for execution fails every time. The administration is very poor and too slow to investigate. As a result, new categories of environmental crime are introduced. Green Collar Crime is a burning issue of recent times. To stabilize the situation and prohibit the occurrence of such offenses some suggestions from my point of view:

- It is important to pen down a universal definition of the term “environmental or Green – Collar Crime”.
- Laws are made to implement it practically. It is despairing that laws in India are not duly implemented. The investigation machinery runs steadily. It is high time to apply the law straight away.
- Awareness programs, campaigns, seminars, and conferences must be a crucial part of school education so that a human being could spot the state of his environment since childhood.
- Impartial judgments using monetary or political power should be barred strictly.
- Expert Committees as appointed by the National Green Tribunal (NGT) should work passionately so that environment should not be labeled as Victim.
- More eco-crime courts are to be established both on national and international platforms to start with speedy justice for environmental crime.
- Unlike any other chapter as stated in the Indian Penal Code there should be a separate chapter remarkable on Environmental Crimes, and punishments are to be rigorous for them committing Green – Collar crimes.