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AN ANALYSIS OF ENVIRONMENTAL CRIME IN INDIAN CONTEXT

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INTRODUCTION

The term "environment" has its roots in the ancient French word 'environer,' which conveys the ideas of 'surrounding,' 'encasing,' and 'encircling.' It refers to the combination of circumstances and surroundings in which living beings such as humans, animals, and plants thrive, while also encompassing the existence of non-living elements. The environment encompasses the tangible aspects of the planet, and humans play a significant role in shaping this environment. Within the environment, there exists a complex web of physical, biological, and social components that are interconnected not only individually but also collectively in various ways.

Environmental crime pertains to the infringement of regulations designed to safeguard the environment and human well-being. These regulations oversee the quality of air and water and establish the permissible methods for waste disposal and handling hazardous materials. Whether committed by individuals or corporations, violations of environmental laws can lead to charges of white-collar crimes. Offenses against the environment and wildlife involve actions that harm the natural world and the creatures within it, and they constitute a category within global organized criminal activities. Remarkably, this category ranks as the fourth largest in organized crime activities worldwide and is officially recognized by the United Nations Inter-regional Crime and Justice Research Institution.

CONSTITUTIONAL PROVISIONS

Article 48-A- In the Indian Constitution, specifically in Part IV under the Directive Principles of State Policy, there exists a section titled "Protection and improvement of environment and safeguarding of forests and wildlife." This section implies that the government bears the responsibility of protecting forests and wildlife. While the court has traditionally had the authority to impose monetary penalties on those who violate these principles, there is a recent trend where imprisonment is being employed as a punitive measure. This decision is made based on the court's jurisdiction and the seriousness of the offense.

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Article 51-A, In the Indian Constitution, within Part IV under the section of Fundamental Duties, there is an inclusion known as fundamental duty (g). This duty signifies that individuals have an obligation and responsibility towards the environment, encompassing tasks such as safeguarding rivers, wildlife, and demonstrating compassion towards all living beings in their surroundings.

Article 21- Article 21 of the Indian Constitution is renowned for its broad interpretation as it pertains to the right to life and personal liberty. This article guarantees these rights unless they are legally restricted. In the case of *M.C. Mehta vs. Union of India*, it was established that individuals possess the right to a clean and unpolluted environment, and this right should be ensured by the government. Both the government and the citizens share the responsibility of upholding this right for each other. Importantly, this right extends not only to citizens but also to non-citizens.

LEGAL PROVISIONS

1. The Indian Penal Code, 1860

Section 268 accommodates for the offence of public nuisance: A person is held liable for the offence of public nuisance in the event that he engages himself in any act/omission which causes, Common injury; danger/annoyance to the public/people in the vicinity, necessarily causing injury/obstruction/danger/annoyance to persons who may have occasion to use any public right.

Section 290 penalizes the offence of causing a public nuisance with a fine extending up to 200 rupees. It is indeed astonishing to know that felons of such crimes can go scot-free by paying a mere penalty of a maximum of two hundred rupees or even less than that.

Fouling the water of a public spring or supply is considered to be an environmental crime under **section 277** of the IPC. Under this section, to voluntarily corrupt or foul the water of any public spring or reservoir is an offence and the person held liable would be punished with imprisonment for a maximum term of 3 months, or with a maximum fine of 500 rupees, or with both.

The making of an atmosphere noxious to health is punishable under the IPC under **section 278**. Under this section, to voluntarily vitiate the atmosphere of persons in general dwelling or

carrying on business in the neighborhood or passing along a public way is a punishable offence. The offence is bound to be punished with a maximum fine of 500 rupees.

2. The Code of Criminal Procedure, 1973

Chapter X of the Code of Criminal Procedure 1973 deals with the "maintenance of public order and tranquillity". Part B and Part C enumerate provisions relating to Public Nuisance and urgent cases of nuisance and apprehended danger respectively both relevant to be considered for environmental protection.

Section 133 (Part B) accommodates the restrictive order for the evacuation of the nuisance. The District Magistrate, Sub Divisional Magistrate/Executive Magistrate is enabled to pass a restrictive order for the expulsion of the nuisance on a report by the police or based on any other information after considering the evidence.

Section 144 (Part C) provides for urgent powers of the District Magistrate /Sub Divisional Magistrate/Executive Magistrate to issue an order in urgent cases of nuisance or, on the other hand, danger in circumstances where an expedient cure is attractive. This section especially presents wide powers to the magistrate to manage critical instances of nuisance or apprehended danger.

3. The Wildlife Protection Act, 1972

The Wildlife Protection Act of 1972 established a comprehensive framework of rules and regulations aimed at safeguarding wildlife in India. It outlined the procedures for the establishment of public parks, wildlife sanctuaries, and related measures. Section 51(1) of the Act states that any individual who violates any provision of this Act or any orders issued under it can be penalized with imprisonment for a maximum term of three years, a fine that could extend up to 25,000 rupees, or both

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

The Water (Prevention and Control of Pollution) Act, 1974 enacted with the objective of preventing and controlling water pollution, assessing pollution levels and punishing polluters, maintaining or restoring the wholesomeness of water and establishing Central and State Board to carry out the objective of the Act. Sec 42 of the Water Act, 1974 states penalties and fines for certain acts including pulling down pillars, obstructing any person acting under the orders

or directions of the board from exercising his function, damaging any work or property belonging to the board, knowingly or willfully make a false statement in giving any information or for the purpose of obtaining any consent, shall be punishable with imprisonment for a term which may extend to three months or with fine which may extend to ten thousand rupees or with both.

5. The Forest (Conservation) Act, 1980

The Forest (Conservation) Act, 1980 was passed with the object to maintain ecology and preserve the forest of our country and also to regenerate the forest by planting trees and increase the forest by planting trees and increasing the forest growth in our country. This Act has made the restrictions under Sec 2 on the state government and other authorities to make decisions on some matters without the prior permission of the Central Government. Sec 3A was added by the amendment made in 1988. As per this Sec, whoever violates or abets the violation of any law contained under Sec 2 shall be punished with simple imprisonment for any prescribed term which may increase up to 15 days.

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

The Air (Prevention and Control of Pollution) Act of 1981, was a law passed by the Parliament of India to prevent and control the harmful effects of air pollution in India and to establish the Central and State Board and confer on the board the power to implement the provision of the Act and assign to the board functions relating to pollution. Chapter VI of the Act provides penalties for non-compliance with the provision of the Act.

7. The Environment Protection Act, 1986

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

8. National Green Tribunal

The NGT is a specific body that was framed under the NGT Act, 2010 for the powerful and

speedy removal of cases that are connected with the security and conservation of the environment, forests, and other natural resources, and to give relief and compensation for any damages caused to person and properties and to handle various environmental disputes that involve multi-disciplinary issues.

Sec 26 of the NGT Act,2010 provides a penalty for failure to comply with orders of the Tribunal with imprisonment for a term which may extend to three years or with a fine which may extend to ten crore rupees on the other hand with a fine which might reach out to ten crore rupees or with both and in the case of failure that the contravention proceeds, with extra fine which might stretch out to 25 thousand rupees for each day during which such failure or contradiction goes on after conviction for the main such failure or contravention.

Some remarkable principles and doctrines propounded by the Indian Judiciary like: The doctrine of Absolute liability; Polluter Pays Principles; Precautionary Principle, Public Trust Doctrine; Doctrine of sustainable development, etc for the protection of the Environment. The judiciary attempts to fill in the loopholes where there is a frill in the regulation.

LANDMARK CASES

- 1. Municipal Council, Ratlam v. Vardhichand and Others 1980 AIR 1622,1981 SCR (1)** Also known as the Ratlam city case, is considered to be a landmark, and a very important judgement given by the supreme court of India, in this case the court observed the impact of deteriorating urban environment, on the poor living in the urban area in this case, public health was recognized as a human right, which obliged the municipal council, to take proper steps, especially in managing the drainage facilities in Ratlam.
- 2. M.C Mehta v. Union of India (Shriram Industries Case) 1987 SCR (1) 819, AIR 1987 965** Also known as the Shriram gas leak case, is a prominent judgment in the environmental case laws in India, this was a gas leak of food chemicals in the capital of the country, in New Delhi, in this case the court observed that company in under absolute liability, to pay the compensation to the victims of the gas leak, this was the first case in India, in which the concept of absolute liability was introduced, this was also the first case in India in which the accused was penalized, and was asked to pay for the damage caused, and pay compensation to the victims of the gas leak.
- 3. M.C Mehta v. Union of India (Ganga case)1988 AIR 1115,1988 SCC (2) 530** Also known as the Ganga pollution case, this is a case, which is considered to be the most

important case, for rivers and their rights, in this case the court observed, and closed many tanneries around and in the city of Kanpur, Uttar Pradesh, as Ganga is one of the largest rivers in India, there are many industries, which cause pollution. Justice E.S. Venkataramiah observed just like an industry which cannot pay minimum wages to its workers cannot be allowed to exist, a tannery which cannot set up a primary treatment plant cannot be permitted to continue to be in existence.

4. **Tarun Bharat Singh, Alwar v. Union of India and Others 1993 SCR (3) 21, 1993 SCC Sulp. (3)115** In this case the court banned mining in the sariska national park region, but sadly according to reports in 2015 the mining in sariska has been in full swing, it is causing harm to the environment the supreme court, not even under article 21 in which the right guarantees to have a safe and healthy environment.

CONCLUSION

Human activities have caused significant damage to our planet, driven by greed and unsustainable practices. To address this, strict law enforcement and new, stringent laws are essential to act as a deterrent against environmental crimes. This paper advocates for considering crimes against the environment and wildlife as crimes against humanity, emphasizing the reciprocal relationship between humans and the environment.

While there are many thinkers, laws, and activists globally, every individual's role is crucial in either degrading or preserving the environment. COVID-19, despite its tragic consequences, has inadvertently allowed the environment to recover from some human-induced harm. This serves as a reminder that some things are beyond our control, and we should respect the balance of nature. In conclusion, any actions taken to protect the environment should be well-considered, following established principles and laws. The environment is vital for life on Earth, and without it, human existence would be impossible. Despite numerous legislation and principles addressing environmental issues, rising crime rates related to the environment indicate that current measures are insufficient. There is a need for a robust, integrated system that takes a holistic approach to address environmental crimes effectively. Amendments to environmental provisions, including organized offenses and stricter penalties, are warranted to ensure the protection of our planet.

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