



Environment Policies, Legislation and Judicial Activism towards Protection of Environment Crimes in India

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ABSTRACT

Nature is utmost valuable and service-oriented element of Society. Survival of Organism is grave concern of nature and its features. The Objects of the Environment provides life and longevity. Environment cater needs of all living things, it rapidly depletion, contamination or damage transforms it into destructive force against all living things. The environment includes everything in our surroundings, including the atmosphere we breathe, the water we drink, and the ecosystems in which we live. India has many noteworthy environmental concerns, which includes pollution of air, water, noise, hazardous waste, biodiversity loss, climate change, and ecosystem degradation. Environmental crimes have a damaging impact on the environment, and also overall quality of life and safety and health of human beings. It degrades ecosystem, eradicates habitats, diminishes forest and animal resources, devastates watersheds, and negatively impacts the quality and quantity of water. To analyses environmental legislation to protect and prevent environmental crimes and also analyses that the present environmental legislation, Judicial Activism is not sufficient to block environmental crimes. The Doctrinal Method has been used for research.

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INTRODUCTION:

Environmental Crime has been used with different prospect by not acknowledging its meaning in true sense, it was called as shade of white-collar crime.¹

Green collar crimes have no universal definition and interpreted intensely. United Nations Crime and Justice Research Institute, interprets, “environmental crimes include various illicit activities, such as 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”² etc. Environmental crimes are known to be profitable international crime. The incidence of environmental crimes is increasing; thus, measures to prevent them should also be strengthened. The primary objective of functional criminal law is to discourage and typically hinder such conduct.

Environmental crimes have nit is in several legislation i.e. Environmental Protection Act 1986 and Water Resources Act 1991³. Environmental crimes are considered grave offences committed against the environment, resulting from the violation of both legal rights and the rights of species. However, for an activity to be considered a crime, it must contravene certain legal regulations and be subject to punishment under the law, which may apply at either a national or global level. Environmental crimes are intentionally or unintentionally committed by actions that disrupt or harm the many components of environment. There are several factors contributing to ineffectiveness of current legislation in discouraging environmental crimes. During its sixteenth session, the Conference of the Parties of UN Convention against Transnational Organized Crime recognized international environmental crimes as a growing kind of criminal activity⁴. The majority of environmental legislation imposed civil penalties and administrative procedures for infractions, but they had little effectiveness in deterring firms, people, or governments. Environmental violations or insults have been regarded as civil wrongs or torts. Damaging the environment meets all the criteria for criminal conduct. Attacking any part of the natural world—its ecosystems, species, or any part of nature itself—is like attacking the state. National and international environmental law systems should establish these actions as statutory crimes.

Consequently, humanizing the environment necessitates punishing it like a criminal (an enemy of mankind). An offence against the environment is a crime that has far-reaching consequences for the lives, well-being, and resources of many people. Their presence is seen as detrimental to the ecosystem.

**METHODOLOGY:**

In pursuance of present research work researcher has adopted the doctrinal method. The doctrinal method involves a comparative, analytical, evaluative and descriptive analysis of Environmental Justice and Judicial Activism in India. In order to study the laws relating to the Environmental Justice it is relied on constitutional provisions, statutory laws related to Environmental Justice and Judicial Activism, books, e-books, e-journals, newspapers, online databases and the views of writers in discipline of Environmental Justice and Judicial Activism.

The objectives Framed for this research work are as under:

- Understanding of Environmental Rights.
- Environmental Jurisprudence in India, which developed historically.
- Theoretical foundation of Environmental Law in India.
- International Documents on Environmental Law.
- Indian Judiciary has contributed in the Development of Environmental Law.
- Growth of Judicial Activism, in Indian Environmental Acts.
- Judiciary by interpreting Constitutional Provision for the Protection of Environment.

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Hypothesis is Development of Environmental Rights in India is the result of proactive participation of the Judiciary by entertaining Public Interest Litigation, which stimulated for the Development of Environmental Rights in India.



RESULT & DISCUSSION:

KINDS OF ENVIRONMENTAL CRIMES: Environmental crimes refer to offenses that are committed against the natural environment and its species. Environmental crimes include activities such as air pollution, water pollution, deforestation, the loss of species, and the illegal disposal of hazardous material⁵. The actions that cause harm to the environment and animals are referred to as green collar crimes. These crimes include the following:

- Poaching
- Illegal trade of wildlife
- Trade of unregulated and illegal products, for financial and material gains.
- Unreported fishing
- Illegal logging
- Illegal mining
- Hazardous waste dumping
- E-Waste dumping

CONSTITUTIONAL LEGAL FRAMEWORK AND ENVIRONMENT: The Stockholm Declaration of 1972 was the first significant commitment to safeguard and preserve the global human environment. The Stockholm Declaration, 1972 has also recognized this principle of equality in environmental management. Principle 1 of the Declaration states:

“Man has the fundamental right to freedom, equality and adequate conditions of life, in environment of a quality that permits a life of dignity and well-being”

As a result of this declaration, the States were obligated to enact legislative measures to safeguard and enhance the environment. In 1976, the Indian Parliament added two articles, namely 48A and 51A, to the Constitution of India. Article 48A specifically states that the state must make efforts to preserve and protect the environment, as well as conserve the forests and animals of the country⁶.

Clause (g) of Article 51A of Indian Constitution mandates that every citizen of India has the responsibility to safeguard and enhance natural environment, which encompasses forests, lakes, rivers, and



animals, and to exhibit empathy for all living beings. Articles 48A and 51A (g) together provide a constitutional duty for both the 'State' and the 'people' to preserve, perceive, protect, and enhance the environment. Each successive generation has a responsibility to effectively develop and preserve the nation's natural resources. The inclusion of the word "protect and improve" in both Articles 48A and 51A (g) suggests that it implies a proactive role for the government in enhancing the quality of the environment, rather than just preserving it in its damaged state.

Moreover, the Preamble of the Constitution proclaims "fundamental rights and freedoms that the people of India aimed to guarantee to all its citizens, including justice, social, economic, and political rights." Environmental justice is included under the concept of justice.

While the specific term "environment" is not used in this context, we can easily see that it incorporates the concept of environmental justice. The environment has become an integral part of our daily lives to the extent that we cannot exclude ecological issues while addressing the socio-economic or socio-political situation of our country.

Regarding this matter, it is crucial to cite an esteemed scholar who states.⁷

*"Environment as a subject, environment as a concern and environment as a part of socio-economic-political structure in the country seems to have taken off. In fact it has entered the structure in such a way that no intellectual, political or even academic discourse is complete without it."*⁸

The Indian Constitution stands out as one of the most exceptional constitutions worldwide since it demonstrates a human rights perspective on environmental preservation through a range of constitutional provisions and interpretations.

Part III of Indian Constitution ensures provision of basic rights to its citizens. Citizens, as well as the High Courts and the Supreme Court, use these rights to address environmental issues. Articles 14, 19, and 21 of this section is connected to environmental concerns. Article 14 pertains to entitlement to equality or equal treatment under the law and the guarantee of equal safeguarding by the law. State has obligation to refrain from violating rights of equality and environment. In essence, this article requires the state to refrain from engaging in discrimination or infringing upon equal rights.

Article 14, in various instances, is also often used to challenge the actions of the government. Activities such as mining operations and other acts that have the potential to affect the environment.⁹



In different scenarios, High Court and Supreme Court uses Article 19(6) to safeguard environment. According to Article 21, individuals are safeguarded in terms of their lives and freedom. This article is not directly related to the environment, but it is often cited and used by the High Court and Supreme Court in many instances. This is because a clean and healthy environment is considered a basic human right. The fundamental rights to life and freedom include the right to a good and healthy environment. Extensions of the right to environment within framework of the right to life has been examined in India in several instances, including the rights to sustain in healthy environments,¹⁰ the right to livelihood and environment, the right to a wholesome environment, and the right to a pollution-free environment.¹¹

Article 253 confers upon the parliament the duty and authority to enact legislation for the purpose of implementing or giving effect to international accords, including treaties, agreements, conventions, and protocols. Article 253, which is equivalent to Article 51(c), imposes the responsibility on the Indian parliament to adhere to or establish legislative measures pertaining to environmental protection. The Indian parliament enacts several environmental regulations in order to adhere to international agreements.

Articles 243-B and 243-G, as established by the 73rd Amendment of the Constitution in 1992¹², grant constitutional status to panchayats and municipalities as local self-government bodies. Articles 243-B and 243-G, as outlined in Schedule VI, confer powers and authorities on these bodies in relation to matters directly or indirectly related to the environment. The aforementioned clauses place a duty on the national, state, and local self-government to ensure compliance with regulations pertaining to agriculture, soil conservation, forestry, minor forest products, the supply of drinking water, health and sanitation, and the preservation of community assets. Schedule XII outlines the responsibilities of urban self-government bodies, such as municipalities and companies, in areas such as urban planning, public health, solid waste management, urban forestry, and environmental protection. It also emphasizes the importance of ecological considerations in these urban development activities. The aforementioned rules place an obligation on the governments, including the central, state, and municipal governments.

Articles 226 and 32 affirm the authority of the High Court and Supreme Court to provide redress for the infringement of basic rights as guaranteed in Part III of the Constitution. The Supreme Court, as per Article 32, and all High Courts, as per Article 226, has the authority to issue directives, decrees, or writs (such as Habeas Corpus, Mandamus, Prohibition, Quo-Warranto, and Certiorari) for valid reasons. These laws are often used by individuals in public interest litigation (PIL) to actively safeguard the environment. These laws serve as the foundation for the majority of Supreme Court and High Court decisions. Many



activists used these tools to safeguard our resources, such as air, water, forests, animals, and the environment, in the best interest of the public.

CRIMINAL ACTS AND ENVIRONMENT: Indian criminal laws address the preservation of the environment by specifically addressing certain aspects. Offences, whether directly or indirectly linked to the environment and its preservation. The Indian Penal Code of 1860 and the Indian criminal procedural laws primarily address issues related to public nuisance, air and water pollution, waste management, public health and safety, and other environmental disturbances. While the Indian criminal code does not only focus on the environment, several articles within it do define and address environmental protection.

There are many sections which directly or indirectly deal with the environmental issues:

Public Nuisance-“Section-268, Negligent act likely to spread the infection to disease dangerous to life- Section 269 and 270 , Adulteration of food and drink Section -272 and 273 , Adulteration of drugs- Section 274,275 and 276, Fouling of water of public spring or reservoir- Section 277, Making atmosphere harmful to health- Section 278, Act respect to poisonous substance - Section 254, Act respect to fire or combustible matter- Section 285, Negligent Act against an animal- Section 289 , Punishment for public nuisance- Section 290 and 291”,

Distraction to public property- “Section 425, 426,430 and 432 (Mischief) , Causing diminution and direct cause water pollution- Section 425 , They were negligently causing death- Section 304-A”.

The judicial magistrate used the Code of Criminal Procedure (1973) in several situations to eradicate the disturbance. Section 133¹³ of the Criminal Procedure Code (Cr.P.C.) provides efficient, prompt, and preventive measures for addressing public nuisances related to air, water, and noise pollution. This clause grants a magistrate the authority to issue an order for the removal of a public nuisance. These orders may be made based on reports received from police officers or information provided by the public, and the court may consider any relevant evidence in making its decision.

ENVIRONMENTAL LEGISLATIONS:

The Wildlife Protection Act, 1972- “The Wildlife Protection Act of 1972 established a comprehensive framework of laws and regulations for safeguarding wildlife in India. The regulation outlined the procedures for establishing public parks, animal sanctuaries, and similar initiatives. According to Section 51(1) of the Act, anybody who violates any provision of this Act or any order issued under it may be sentenced to a maximum of 3 years in imprisonment, fined up to 25 thousand rupees, or both”.



The Water (Prevention and Control of Pollution) Act, 1974- “The Water (Prevention and Control of Pollution) Act was established in 1974 with the primary aim of preventing and managing all forms of water pollution in various water bodies around the nation. It also focuses on the preservation and restoration of the overall quality of aquatic resources. Another crucial aim of this legislation is to create federal and state boards or committees dedicated to the prevention and control of water contamination. This legislation also prevents the discharge of contaminating material into the country's water bodies.¹⁴

The water pollution legislation can be divided into eight chapters and consists of 64 provisions. Chapters 1 and 2 explore the concepts of water contamination, the processes involved in maintaining and restoring water quality, and the creation of central and state bodies responsible for regulating and preventing pollution. Chapter 3 provides a clear definition of joint boards, including their composition, structure, and any specific laws that apply to them. Chapters 5 and 6 include detailed information about the powers, functions, emergency measures, and duties of both the Central and State Boards. Chapter 6 covers topics such as donations, money, budget, annual report, accounting, and audit. Chapter 7 establishes penalties and processes for failure to Section-24 of the Act prohibit the use of streams or wells for pollutant disposal. Section-25 limits new outlets and discharges for industries, operations, or treatment systems that discharge sewage or trade effluents into streams or wells without prior approval from State Pollution Control Boards. Section-41 prescribes punishment for failure to fulfill board instructions under Section-20, 32, 33, and 33A, resulting in penal provisions for violations of these sections. Adhere to water prevention and control regulations”.

The Air (Prevention and Control of Pollution) Act, 1981- “The United Nations Conference on the Human Environment in Stockholm in 1972 recommended that India adopt the Air (Prevention and Control of Pollution) Act of 1981. The purpose of the act is to regulate and prevent air pollution throughout India. The legislation consists of seven chapters that are organised into 54 sections, which is comparable to the Water Act of 1974. Chapter 1 provides a definition of air pollution, whereas Chapters 2 and 3 delineate the duties and operations of the Central and State Boards, respectively. The actions and procedures of these committees are described in Chapter 3. Contributions, funds, budgets, annual reports, accounts, and audits are all covered in Chapter 6. Chapter 7 provides a description of the procedures that boards adopt as well as the penalties and punishments for noncompliance. The act's miscellaneous provisions are detailed in the eighth chapter.

Sections 19 to 31A of Chapter IV include provisions aimed at enhancing air quality, whereas Sections 37 to 43 provide penalties for non-compliance. Section 37 stipulates a maximum penalty of six

years of imprisonment and monetary penalties for non-compliance with certain provisions. Section 38 explicitly states that every act, conduct, or omission mentioned within the same provision is inherently considered a criminal offence. Sections 40 and 41 provide for the legal liability of corporate managers, directors, or persons in authority for criminal offences. Heads of government departments have indirect responsibility for the misuse of provisions outlined in the Act. Section 43 pertains to the recognition of offences, and courts will only recognise offences if they are reported by boards or authorities. The courts have the legal authority to conduct trials and impose penalties on those who have violated the Air Act of 1981.”

The Forest (Conservation) Act, 1980-“ The Forest (Conservation) Act of 1980 was enacted with the intention of preserving the forest and preserving ecology. Furthermore, to foster forest regeneration and expansion within our nation through the establishment of tree planting initiatives, this Act has imposed on the state the restrictions outlined in Section 2, allowing the government and other authorities to make certain decisions without the Central Government's prior approval. Section 3A was appended to the 1988 amendment. Whoever violates or aids in the violation of any law specified in Section 2 shall be subject to simple imprisonment, with the penalty being simplified for offences related to pollution. The penalties for noncompliance with the provisions of the Act are outlined in Chapter VI”.

The Environment Protection Act, 1986- “In response to the pollution concerns raised by the Bhopal tragedy of 1986 and in accordance with the decisions of the 1972 Stockholm Conference, a comprehensive legislative measure known as the Environment (Protection) Act of 1986 was enacted.

This Act, comprising 26 sections and IV chapters, grants the central government broad authority to prevent and control environmental degradation through the establishment of regulations and rules. Penalties for violations of any provision of this Act or rules promulgated there under are also included in EPA 1986. The Central Government has formulated numerous rules and regulations to prevent and control a variety of pollutants by utilising the authority granted by this Act.

This Act also imposes criminal liability in addition to administrative and civil liability. The EPP Act, as well as any rules, instructions, or directions promulgated under it, violate the provisions of Section 15. Failure to comply may result in a maximum of five years in prison, with the sentence being carried over for a period of one year from the date of the sentence”.

The Biological Diversity Act, 2002- “The Act consists of 64 sections and 12 chapters, which provide regulations for the preservation and protection of traditional knowledge, the conservation of endangered

species, and the prevention of biopiracy. Chapter 2, namely Sections 3, 4, 5, 6, and 7, puts limitations and prohibitions on activities connected to biodiversity. It also limits access to biological resources and places constraints on intellectual property applications under Section 6. If any individual violates Sections 3 to 6, they may be subject to a maximum penalty of 5 years of imprisonment and a monetary fine. Section 7 requires anyone to acquire prior notification from the SBB before accessing any biological resources for commercial use or conducting a biological survey. If the violation occurs, he will face a maximum penalty of 3 years in prison”.

THE JUDICIAL PRONOUNCEMENT:

***Union Carbide Corporation v. Union of India (The Bhopal Gas Tragedy Case)*¹⁵:** “The absence of criminal liability imposed on the Union Carbide Corporation in the Bhopal Gas Tragedy, which is considered the most severe industrial tragedy globally, indicates that the establishment of environmental criminal jurisprudence did not start in an auspicious manner. An interim order indicated that the Court had completely absolved the UCC of all criminal liability and that the ongoing criminal investigation was a separate and independent legal proceeding unrelated to the lawsuit. As the Court lacked the authority to discontinue the criminal proceedings, it strongly recommended nullifying the decision. The ruling issued on February 15th, 1989 states that all criminal processes, including contempt proceedings, are nullified and the defendants are considered to be acquitted”.

***M.C. Mehta v. Union of India (The Oleum Gas Leak Case)*¹⁶:** “ This case relates to a further happening of gas leakage that transpired shortly after the catastrophic Bhopal Gas Tragedy. Significant harm inflicted upon both the employees and the local populace resulted from a significant oleum gas discharge that was documented in one of the divisions of Shriram Food and Fertiliser Industries. A lawyer was allegedly among those who perished as a result of the gas release. The court's determination to hold personally liable for this error the chairman, managing director, and other officers, in addition to the operator and chief of the concerned facility, was entirely appropriate. These officers have frequently been regarded as the corporation's intellect, spirit, and body”.

***Dwarka Cement Works v. the State of Gujarat*¹⁷** “The court noted that businesses might evade their responsibility in situations involving environmental crimes by using weak justifications, owing to the absence of strict regulation. Although there is sufficient regulation regarding the environment, it is indisputable that the incidence of environmental crimes is expanding in line with the speed of growth”.



*Tarun Bharat Singh, Alwar v. Union of India and Others*¹⁸ “The court issued a prohibition on mining in the Sariska National Park area. However, reports in 2015 indicate that mining activities in Sariska have been operating at full capacity, resulting in significant environmental damage. No writ petitions have been filed at the Supreme Court, not even under Article 21, which ensures the right to a secure and healthy environment”.

CONCLUSION:

This research paper aims to establish a connection between crimes committed against the environment and crimes committed against humanity. It argues that crimes against the environment should be regarded as crimes against humanity. The environment serves to meet all human needs, and it is our responsibility to ensure its well-being as it has cared for us. The environment is independent of human presence, although people rely on the environment for their lives. The issue of over criminalization is a significant and challenging problem that has to be resolved prior to establishing an effective program for enforcing criminal laws. Owners of privately held businesses occasionally commit corporate crime with a primary motive of personal gain. Employees or management intentionally conduct other crimes to support corporate policies that include violating regulations. Due to negligence or strict and vicarious liability, corporations or their employees commit some crimes.

It is of the utmost importance that we shift the environmental justice system from civil responsibility to criminal penalties for offenses that harm the health and lives of a large number of people and cause irreversible damage to the environment. The use of penal punishments for environmental crimes has been shown to be ineffective. Environmental laws consider the deterrent effect of imposing sanctions on those who violate them. The lack of clarity in defining environmental offenses and the intricate challenges associated with prosecuting violators have led the pollution boards to prioritize preventative measures over legal action. However, the lack of effective enforcement has diminished the possibility of facing consequences. There has been a significant rise in the severity of punitive punishments; however, just increasing the amount of punishment will not achieve the intended impact. The absences of a globally acknowledged definition, moderate sanctions, a weak legal framework, and the lack of judicial activity have intensified the overall repercussions of this crime. It is crucial to prioritize and thoroughly examine all of these gaps or deficiencies with great attention. Otherwise, environmentally harmful firms would persist in neglecting and causing deterioration and damage to the environment. Ultimately, it is not a transient harm to the ecosystem but rather a grave and permanent degradation that impacts not only the current generation but also future generations.

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