



LEGAL DIMENSIONS OF ENVIRONMENTAL CRIME

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Abstract

The environment is all around us, from the air we inhale, to the water we consume, to the ecosystems we live in. These natural resources, however, were not always safeguarded. And as humans progressed, they began to exploit nature. Crime is a crime & so the researcher has tried to establish offenses against the environment as crimes. In this research paper, the researcher has analyzed the development of India's environmental jurisprudence & Environmental laws and penalties. Also, environmental protection in the USA is studied with the environmental criminal legislation to protect the environment. From the non-doctrinal research done, the researcher has analyzed the problems & that the present picture of environmental law is not sufficient. The same is the case with Env offences. However, in most environmental criminal prosecutions, the polluters are legal entities, such as businesses and factories. Without proper penal sanctions, no criminal law will be effective. The inception of such a notion can be traced back to the harmful acts/omissions that result in environmental law infringement. The researcher hopes that this research paper helps understand the link between crime & Env offences, the development of environmental jurisprudence, existing laws & punishments, environmental legislation in the USA, problems persisting in India & introduction of criminal environmental legislation & corporate criminal liability can be a solution.

Keywords: Environmental law, Environmental Crime, Criminal Liability, Corporation.

Table of Contents

Introduction

1. RESEARCH OBJECTIVE
 2. CONCEPT OF CRIME
 3. CRIME & CRIMINAL LAW
 4. CONCEPT OF ENVIRONMENTAL CRIME
 5. MOTIVE BEHIND COMMISSION OF ENVIRONMENTAL CRIME
 6. DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE IN INDIA
 7. AN ANALYSIS OF LAWS & PUNISHMENTS IN INDIA DEALING WITH ENV OFFENCES
 8. BRIGHT TURNS IN ENVIRONMENTAL JURISPRUDENCE
 9. THE SHIFT FROM STRICT LIABILITY TO ABSOLUTE
 10. ENVIRONMENTAL PROTECTION IN USA
 11. PROPER ENVIRONMENTAL CRIMINAL LEGISLATION IN USA: AN EXAMPLE
 12. PROBLEMS PERSISTING IN INDIA
 13. CRIMINAL LIABILITY OF CORPORATIONS: THE LAST RESORT
- CONCLUSION AND SUBMISSIONS

INTRODUCTION

Human activities causing injury to the environment are not new. They are as old as human civilization. Human beings have been continuously using nature's bounty unreasonably in the development process. In past history, such activities were condemned, but they were not recognized as crimes in the strict sense which should get such recognition. Because human interference with nature is increasing due to scientific and technological development, he exploits nature and natural resources without thinking about its harmful impact on the environment. Realizing the dangerous impact of such activities on



humans of this generation and oncoming generations, they shall be recognized as Env offences occupying a place in criminal jurisprudence.

"World's Worst Industrial Disasters" was the "Bhopal Gas Tragedy" in 1984. This is sufficient to confront the devastating effects of profit-driven businesses' harmful activities on the people and the environment. It's intriguing to note how the seriousness of like crimes, when they kill hundreds of innocents, remains undetected, whereas murder is regarded with extreme contempt. Is it true that these offences aren't as terrible as murder? Certainly not. The only way to prevent crimes of such serious nature is to establish a strong legal framework, which now lacks legal standards and court decisions. As a result, the purpose of this paper is to establish environmental crime as a crime & discuss and analyze the general perspective of environmental laws and their problems, also studying how the environment is protected in the USA.

The researchers endeavored to look into some technical issues like:

Issue 1. The crime committed against the environment should be considered civil wrong or a criminal offense and whether the punishment for committing an environmental crime should be tortuous or criminal?

Issue 2. Are there is any problem with the existing environmental laws in India? If yes, what?

Issue 3. Is change in the nature of punishment needed? Or can the introduction of Environmental Criminal Law be a good solution?

Issue 4. Solutions to enhance the position of environmental law. The sample size is 45, which includes four stakeholders, i.e., advocates, judges, environmentalists & aware citizens.

1. RESEARCH OBJECTIVE

To introduce the notion of Env offences and to create a link between crime and the environment, this research paper is centric on certain objectives like:

To analyse the various existing environmental laws in India.

To make comparative with the USA.

To determine the severity of the difficulties with environmental legislation.

To emphasize that corporate criminal responsibility is the last resort.

To make recommendations for effective strategies to enhance the status of environmental legislation.

2. CONCEPT OF CRIME

Crime is a socio-legal phenomenon and can be described in two ways:

According to the legal definition, a crime is a legal violation for which the State's remedy is punishment. 'Salmond' defined crime as an act deemed by law to be harmful to society as a whole, although its immediate victim may be an individual.¹

According to social definition, crime is an act that a social group considers to be sufficiently dangerous to its core interests to justify formal measures to constrain the perpetrator. 'Sutherland' characterises crime as a symptom of social disorganization²

As a result, crime is classified as a public rather than a civil wrong. The former is a breach of public rights and responsibilities that has far-reaching consequences for the whole community. It is a violation of the 'right in rem.' Individuals' private rights are then infringed upon. It is a violation of the 'right in person.' In the case of crimes, the State takes action. The remedy is usually punishment inflicted on the criminal, as opposed to civil wrongs, where the victim takes action to seek restitution, compensation, or damages.

3. CRIME & CRIMINAL LAW

Although the concept of crime is changing, the main ingredients of crime, that is to say, the characteristics of which an act becomes a crime, are more or less the same. There must be external consequences before an act may be classified as a crime. Whether social, personal, emotional, or

¹P.J. Fitzgerald Salmond on Jurisprudence(1999)

²Ibid 3.



mental, a crime has always had a negative influence on society. Second, a punishment should be imposed for an external act or omission. Because if one decides to commit a crime but changes his mind before he does anything about it, he has committed no crime. On the vice-versa, a mere external act does not constitute a crime unless the law prohibits it. As a result, external acts and mens-rea must be combined. Again, there must be a 'causal' relationship between the act performed and the resulting harm or injury. Finally, for an act to be considered a crime, it must be both prohibited by law and penalised by the state.

Law that deals with crime & criminals can broadly be called criminal law. The Law of crime of a particular place can be explained as the body of special rules regulating human conduct promulgated by political authority and uniformly applicable to all members of the classes to which the rules refer and are enforced by punishment administered by the State.³Criminal law must have four key aspects in order to be effective: 1- Political, which indicates that only breaking the State's rules is considered a crime. 2- Specificity denotes that the act to be prosecuted is well defined. 3- Uniformity denotes that the law is applied consistently across the country, without discrimination, and 4- Penal Sanction denotes that members of society are deterred from committing crimes by punishing penalties imposed under criminal law. No criminal law can possibly, be effective without adequate penal sanctions. The main object of criminal law is to protect society, to safeguard the interest of its people from crime and criminals by reducing the occurrences of criminal behavior. The criminal justice system does this by enforcing existing penal laws against wrongdoers.

4. CONCEPT OF ENVIRONMENTAL CRIME

If a given act is regarded as harmful and dangerous for society at large, it may be considered a crime, even if it was not recognized as a crime in the past. The same is the case with Env offences. The environmental crime phenomenon is having multidimensional aspects. The human behavior which disturbs the ecological balance and thereby causes threat to the existence of life on earth comes under the category of environmental crime it includes, on the one hand, the massive and unreasonable exploitation of natural resources, and on the other hand, it includes environmental pollution. Apart from this, the scope of environmental crime lies in the ascertainment of injury to the environment and the ultimate consequences of such act, i.e, threat to human existence. Its harmful consequences are not limited to one generation but may extend to future generation also. Thus, environmental crime is an offence against people, the environment, and nature. It is also an infraction against the State because it is the trustee or owner of the country's natural resources.

The environmental degrading activities of human beings were condemned in the past history of human civilization also, but they were not strictly regarded as a crime because the adverse impact of such activities was not cognizable. But, at present, in the name of development, man is exploiting the natural resources unreasonably & without considering its ill consequences not only on the people but on the entire environment. As a result, the ecological balance, which is a fundamental prerequisite of life, is disrupted. The reprehensive nature of such an act is that it causes harm not only to society but on the whole environment. If such acts are not prevented timely, they prove alarming for present and future generations, for mankind itself, thus in the changed situation, science and technology gave birth to new crime, which is harmful to whole environment, 'environmental crime.' For instance, Water pollution is caused by industrial units releasing effluents into bodies of water; Air pollution is caused by the emission of smoke, fumes, and carbon into the atmosphere; deforestation leads to the destruction of wildlife, an important part of the ecosystem, soil erosion, loss of soil fertility; industries, vehicles, excessive use of pesticides, chemical fertilizers polluting the atmosphere resulting into greenhouse effect; global warming, melting of ice, rising of sea level, depletion of the ozone layer, several health problems, giving death to man by slow poisoning. Human being is indulged in these activities either consciously, unintentionally, or negligently.

³ Sutherland and Cressy *The Principles of Criminology* (1986)



The phrase 'Env offences' does not have an universally accepted definition and is frequently defined based on its ease of interpretation. The inception of such a notion can be traced back to the harmful acts/omissions that result in infringement of environmental law.⁴

According to Y. Situ and D. Emmons, "an environmental crime is an unlawful act or omission that violates the law and is thus subject to criminal prosecution and criminal penalty."⁵ "Env offences include illegal wildlife trade, smuggling of ozone-depleting compounds, illegal trading of hazardous waste, unregulated, and unreported fishing, and illegal logging and wood trafficking," according to the report." according to the United Nations Crime and Justice Research Institute.⁶ In order for an act or omission to be classified as an "Environmental Crime," it must: a) cause direct or indirect environmental damage, and b) be forbidden by law.⁷ Such interpretive answers, while objective, are unsatisfactory in and of themselves. It is classified as a "crime" since it endangers people's health and causes irreversible environmental damage. Such long-term and severe harm would ultimately have negative consequences for current and future generations, undermining the notion of Sustainable Development. The act or omission's severe and far-reaching consequence necessitates the addition of criminal penalties to an environmental offence. When looking at the proposed definitions, a few flaws emerge: For starters, the lack of a universally accepted definition creates uncertainty about what constitutes an environmental crime; second, the definition lacks a well-defined area of activities to encompass; and third, jurisdictional and geographical limitations: what is a crime in one country may not be a crime in another.

5. MOTIVE BEHIND COMMISSION OF ENVIRONMENTAL CRIME

These crimes against the environment are not motivated by something random; they are premeditated, and they are liable for not only environmental damage but also plenty of other consequences.

Many activities are carried out only for the goal of generating money, which is an incentive for commissioning these types of crimes; nevertheless, there are other causes behind these types of Env offences.

To grab control of an area, a product, or a monopoly- Env offences are done to gain control of an area, a product, or a monopoly.

The mens-rea & actus-reus stand to be the 2 major components of crime. But there stand certain exceptions to the doctrine of mens- rea. The general rule states that Mens-rea+ Actus-reus=Crime, but the exception states that Actus-reus= Crime, i.e. mere omission of commission of the act is punishable. Such crimes where mens-rea is not an essential requirement of a crime are termed as crimes of strict liability. The significance of such crimes of strict liability are that the mens-rea need not be proved instead the prosecution just have to prove that the accused have committed the crime. Relevant statutes make it clear whether it is a crime of strict liability or not. These statues are intended to enforce restrictions rather than punish the cruel. It is, in fact, to put pressure upon the thoughtless and force the careless people in the interest of public health & safety to abide by certain standards and certain procedures & regulations.

6. DEVELOPMENT OF ENVIRONMENTAL JURISPRUDENCE IN INDIA

The 20th Century witnessed unprecedented developments in science, technology, in turn, industrialization. Man's activities with nature tremendously increased. He developed a sense that whatever is available to him is not due to the benevolence of nature. His mission of victory, glory has turned into misery for mankind. Present, Environmental Jurisprudence gained momentum.

The Universal Declaration of Human Rights (UDHR) of 1948 guarantees that everyone has the right to a reasonable level of living in order to maintain good health and well-being. This has a reference to an

⁴ C.M Jariwala Corporate Criminal Liability: Reality or Myth

⁵ Y.Situ, D. Emmons Environmental Crime The Criminal Justice System's Role in Protecting the Environment

⁶ UNIC & JRI

⁷ Stuart Bell Environmental Law (2008)

adequate environment. The Indian Constitution, which came into force in 1950, contained, Right to life as a fundamental right u/Art 21 later, the right of a clean environment was also developed as an unremunerated fundamental right under the same article.

Having become conscious of keeping the environment safe, the UNO held its conference at Stockholm in 1972. It confers human being a right to environment coupled with the duty to protect and improve it. From then, global attention is concentrated on human activity and its harmful impact on the environment. To prevent such type of harmful activities number of regulatory, legislative, and administrative steps have been taken.

7. AN ANALYSIS OF LAWS & PUNISHMENTS IN INDIA DEALING WITH ENV OFFENCES

India is one of the signatories to the Stockholm declaration. As a response to Stockholm and to discharge its international obligation u/Art 253 of the Indian Constitution, many legislative steps have been taken. The “Wildlife Protection Act of 1972”, as revised in 1983, 1986, and 1981 (the move towards “CITES-Convention on International Trade in Endangered Species of Wild Fauna and Flora.)” At the international level, he was essential in hastening the passage of this legislation. “The Water (Prevention & Control of Pollution) Act, 1974” amended in 1988. “The Water (Prevention & Control of Pollution) Cess Act, 1977” was amended in 1991. “The Constitutional Amendment Act of 1976”, which established two articles, 48A and 51A(g), as a DPSP and a fundamental obligation of a citizen, respectively, provided a boost to India’s environmental law. The topic ‘forest,’ which was a state subject, moved to the ‘Concurrent List’ in order for the Central Government to create consistent laws and policies for forest protection and conservation. Consequently, the next step was the enactment of- “The Forest (Conservation) Act, 1980”, amended in 1988; “The Air (Prevention & Control of Pollution) Act, 1981”, amended in 1988. In the objects of the Act, it is mentioned that it was enacted as a response to Stockholm, 1972; “The Environment (Protection) Act, 1986”, which also clearly refers to the Stockholm in its objectives; The Public Liability Insurance Act, 1991. However, the list of legal actions provided above is not complete. Aside from judicial actions, a number of administrative actions have been taken.

“The Indian Penal Code of 1860” and “The Code of Criminal Code of 1973” are the main legislations of criminal law in India. The I.P.C was enacted when the environment concern had not gained much momentum. However, it contained certain provisions related to public nuisance.⁸ The sole objective of including the same was to safeguard the public health, safety, etc. Crime against the environment or broadly called environmental pollution, is a nuisance in one way or another. As a result, such a clause may be used to combat Env offences. “A public nuisance is ‘any act or an illegal omission which causes any common injury, danger or annoyance to the public.., or which must cause injury, danger to persons who may have occasion to use any public right.’”⁹ However, penalty, on other hand, seems not proportional to the magnitude of the offence, the penalty provided u/s 290 is a fine of Rs.200/- which does not serve either deterrent or preventive object of punishment. It hardly represents a serious deterrent to industrial polluters where the perpetrators can go free by just paying a penalty of two hundred rupees or even less than that.

Section 277 of the I.P.C. defines fouling the water of a public spring or reservoir as an environmental offence & those found guilty face a potential punishment of 90 days in prison, a max fine of Rs.500, or both. Furthermore, under section 278 of the I.P.C., producing a harmful environment is illegal. Under this provision, deliberately contaminating the atmosphere in any area, rendering it dangerous to the health of individuals living in the area, conducting business in the area, or strolling down a public path, is a grave crime. The offender could face a maximum fine of 500 rupees.

The two provisions mentioned above are directly related to conservation because they use a punitive system to combat water and air pollution. The difficulty with all these natural cases, however, is the character of the punishment is ineffective in terms of deterrence on firms. Which seem more tolerant of serious cases, such as when industries damage the only source of drinking water and its use causes public suffering. Second, whether these provisions are successful in accomplishing the purpose of

⁸Indian Penal Code, 1860, S. 268-290, No. 45 Acts of Parliament, 1860 (India)

⁹ Indian Penal Code, 1860, S. 268-290, No. 45 Acts of Parliament, 1860 (India)

protection of the environment is questionable due to India's criminal law expertise, which requires the full realization of criminal elements as stipulated in sentencing laws, making the delivery of a criminal justice system time consuming.

Sections 133-144 of Cr. PC contain certain provisions of preventive nature. They confer power on the magistrate to issue restraining or injunctive orders for the prevention of public nuisance.

In 1988, the Water and Air Acts were revised to bring them in line with the EPA of 1986, and penalties were increased. The maximum penalty is 6 years in prison and a fine, plus an extra fine of five thousand rupees if the failure continues, and if failure continues beyond one year after conviction, then maximum punishment may extend to 7 years with a fine. The amount of the fine is not fixed. Under the EPA, 1986, maximum punishment prescribed is imprisonment of 5 years or a fine up to 1,00,000 rupees or both, fine of rupees five thousand daily in case of failure continues. If failure continues beyond a period of one year after conviction, the imprisonment may extend to seven years. Generally, punishments should be such that they must be proportionate to the pleasure derived by the pleasure and pain caused to the victim from it. It indicates that the offence is serious and that the punishment should be harsh. It is submitted that the punishment is stringent and deterrent in case of individual wrongdoer. However, in the majority of environmental criminal prosecutions, the polluters are legal entities, such as businesses and factories. In such a case, the penalty and fine prove inadequate and do not act as a sufficient deterrent against them. In such cases, benefits of non-compliance are more than the fine imposed for contravention. Though there are provisions for punishing the companies, heads of the government officers, there are difficulties in proving offences against them.

8. BRIGHT TURNS IN ENVIRONMENTAL JURISPRUDENCE

India did not remain aloof from all these development of environmental protection and improvement. It has amended its basic law and inserted Art. 48-A & 51(9)¹⁰ which imposes duty on state as well as citizens to protect, preserve and improve the environment. Indian Judiciary has also played a very important role in enriching the env jurisprudence. It has declared:

Environmental Rights as Fundamental Right: In the case of "*Subhash Kumar V Union of India*"¹¹, the environmental right as a new fundamental Right was developed.

Public Trust Doctrine: In the case of "*M.C Mehta V Kamalnath*"¹² this doctrine was applied. It declared that the "State is the trustee of all natural resources. Public at large is the beneficiary and State is under legal duty to protect the natural resources."

Precautionary Principle: "*M.C Mehta V Union of India*"¹³ Environmental measures must anticipate, prevent, and address the causes of environmental degradation, according to the report.

Polluter Pay Principle: "*Indian Council of Enviro-Legal Action V Union of India*"¹⁴ held that the responsibility for repairing the damage to the environment and restoration of environmental quality is that of the offending party.

9. THE SHIFT FROM STRICT LIABILITY TO ABSOLUTE

Blackburn J established the strict liability rule in *Rylands v Fletcher*¹⁵, in 1868. This rule declares that anyone who takes anything prone to cause harm into his land, collects it, and preserves it for his own purposes must keep it at his own risk if it escapes, and if the person is failing in doing the same, he is on first noticeresponsible for the damage caused by its escape. The liability under this regulation is severe, and the fact that the objects escaped without the person's intentional activity, default, or omission, or even if he was uninformed of their presence, is no defence.

¹⁰ INDIA CONST.

¹¹1991 AIR 420, 1991 SCR (1) 5

¹² (1997) 1 SCC 388

¹³ I.A.29 [W.P(C) No.4677/85]

¹⁴1996 AIR 1446, 1996 SCC (3) 212

¹⁵(1866) LR 1 Exch 265, (1868) LR 3 HL 330



When science and technology were not yet developed, the notion of strict liability emerged. As new scenarios develop, the law must evolve to meet the difficulties of the new circumstances. Therefore, “*M.C. Mehta V Union of India*”¹⁶ the Apex Court evolved a new principle of liability which English Courts have not done. This new principle is the principle of absolute Liability where the Supreme Court observed that: “Where an enterprise is engaged in a hazardous or inherently dangerous activity resulting for example, in the escape of toxic gas, the enterprise is strictly & absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-à-vis the tortious principle of strict liability.”

There are two major incidents of hazardous gas disasters that led to the establishment of the absolute culpability principle: - 1. Bhopal Gas Leak Disaster & 2. Oleum Gas Leak Case.

1. “Bhopal Gas Leak Disaster”¹⁷: A leak of deadly methyl isocyanate gas occurred at a Union Carbide Corporation, U.S.A. subsidiary in Bhopal (M.P). It was the world’s deadliest industrial accident, killing 2260 people and causing major injuries and consequences. In 1985, while the case was before the Supreme Court, another gas accident occurred at Sriram Foods & Fertilizer Industries. One advocate was killed, while a number of others were injured. In this decision, the Supreme Court developed a new rule called “Absolute Liability” in place of the 1868 rule of strict liability, based on the one-year-old Bhopal disaster.
2. “Oleum Gas Leak Case”¹⁸: The petitioner M.C. Mehta filed a PIL in the Supreme Court under Article 32 of the Indian Constitution after a leak of oleum gas from the Sulphuric Acid Plant resulted in the death of one advocate and injury to several others. The Supreme Court held that the 1868 rule of strict liability does not apply to the socioeconomic conditions of the twentieth century, and in light of the Bhopal Gas Disaster, developed the Principle of “Absolute Liability,” which is not subject to any exceptions under the rule in *Rylands V Fletcher*¹⁹.

10. ENVIRONMENTAL PROTECTION IN USA

In the United States, natural resources were not protected. When the American industrial revolution accelerated in the 1800s, the negative effects on the environment skyrocketed. While the economy grew, the State of the environment began to deteriorate. This was owing to rising population and rising living standards, both of which exhausted natural resources. Factory output also contributes to air and water pollution, as well as society’s reliance on fossil fuels. This went on until 1962, when they were helped by a single book to grasp how environmental damages affected them personally. Rachel Carson wrote a book called “*Silent Spring*.” During Richard Nixon’s presidency, legislators got together in the same decade and decided to safeguard the environment. In 1969, the “National Environment Policy Act” became the first mainstream environmental law. It obliged organisations to consider environmental consequences anytime they embarked on a new project, such as the construction of airports, motorways, or military sites. The following year, the Environmental Protection Agency (EPA) was established. The organisation was formed to bring all of the federal government’s environmental duties under one roof. This covers contaminant research, environmental monitoring, environmental baseline tracking, standard enforcement, and more. Several major environmental legislations were enacted in the decades that followed. The “Clean Air Act, 1963”, “Clean Water Act, 1972” and Endangered Species Act were three of the most well-known. After more than a half-century, the EPA currently oversees more than 30 environmental statutes and executive actions. Beach cleanliness, chemical danger safety, efficient energy protection, pesticide residue, noise control, soil pollution, and more are all covered by these rules. The list of the act includes: “The Emergency Planning & Community Right-to-Know Act, 1986 (EPCRA)”, “Federal Insecticide, Fungicide & Rodenticide Act, 1996 (FIFRA)”, “The Occupational Safety & Health Act, 2020 (OSHA)”, “The Pollution Prevention Act, 1990”, “The Resource Conservation and Recovery Act (RCRA), 1976”, “The Safe Drinking Water Act

¹⁶1987 AIR 1086, 1987 SCR (1) 819

¹⁷ [Indian Express] [<https://indianexpress.com/article/india/bhopal-gas-tragedy-among-worlds-major-accidents-of-20th-century-un-report-5685487/>] [Last visited: 31.03.2022]

¹⁸ M.C Mehta V Union of India, 1987 AIR 1086, 1987 SCR (1) 819

¹⁹(1866) LR 1 Exch 265, (1868) LR 3 HL 330



(SDWA), 1974”, “The Superfund Amendments and Reauthorization Act (SARA), 1986”, “(TSCA), 1976”, etc.

In the USA, these legislation and regulations protect the environment to a considerable extent. The “Clean Water Act of 1972” establishes the types of toxic air pollutants that can be released into lakes and rivers and requires polluters to obtain permission; the “Clean Air Act of 1970” establishes the standard for what types of air pollutants can be released into the air from factories, trucks, and cars and requires polluters to obtain permission. Furthermore, anytime the federal government decides to renovate something, the NEPA compels them to conduct a full environmental examination. The EPA undergoes a big process to make the regulations, but it is a needed analytical process. The United States has been without major new environmental laws for nearly 30 years. But one should pay gratitude to The Supreme Court of the United States. In the case *Massachusetts V EPA*²⁰, in 2007, the Supreme Court ruled that the “Environmental Protection Agency (EPA)” must determine whether carbon dioxide and other greenhouse gases constitute dangerous pollutants under the “1963, Clean Air Act.” To do so, the court disregarded Chevron deference, rejecting the claim where it claimed that it lacked power to regulate non-conventional pollutants. The Environmental legislation have been a boon to the USA for the protection of environment.

11. PROPER ENVIRONMENTAL CRIMINAL LEGISLATION IN USA: AN EXAMPLE

NPR’s Talk of the Nation carried a program in December 2010 titled, “When An Environmental Accident Becomes a Crime.” Neal Conan while inaugurating the program mentioned that “The US Department of Justice announced civil proceedings against BP and other corporations involved in the Gulf of Mexico oil spill last week.” Attorney General Eric Holder made it clear that a federal criminal investigation is also ongoing, with the government aiming to reclaim billions in clean-up costs and natural resource damage. Many advocates believe that environmental calamities such as the BP oil spill and the 1989 Exxon Valdez disaster are definitely crimes, and that prominent executives should be charged with felonies and put to prison. Even when tens of thousands of birds and fish die or toxic sludge contaminates our drinking water, the government normally responds with civil cases.

The “Clean Water Act (CWA), 1972”, also called “Federal Water Pollution Control Act”, is a law that aims at “restoring and protecting the chemical, physical, and biological integrity of the Nation’s waters.” Congress passed the “Oil Pollution Act of 1990 (OPA)”, an addition to the CWA, aftermath of Exxon Valdez disaster, an 11 million gallon oil leak in Alaska that damaged the environment and local economy (the effects on Prince William Sound are still obvious twenty-two years later). The OPA forbids the “discharge of oil or other hazardous chemicals into or upon the navigable waterways of the United States, bordering shoreline, or into or upon the waters of the contiguous zone in such amounts as may be damaging...” This clause guarantees that oil spills will be prosecuted under the CWA’s criminal penalty provisions. Knowingly violating the statute is a felony, while negligent offences are misdemeanours, according to the criminal penalty requirements. (knowing violations are a felony punishable “by a fine of not less than \$5,000 nor more than \$50,000 per day of violation, or by imprisonment for not more than three years, or by both”), and 33 USC 1319(c)(1) (negligent violations, including a violation of 1321(b)(3), are a misdemeanour punishable “by a fine of not less than \$2,500 nor more than \$25,000 per day of violation, or by imprisonment for not more than one year, or by both”).

- United States v. Hanousek²¹: A construction project supervisor in Hanousek was accused of failing to monitor a backhoe operation correctly working near a known oil pipeline, resulting in the spill of a hazardous amount of oil into navigable waters. Hanousek filed an appeal, arguing that the government should have been required to show that he acted with criminal or severe negligence rather than ordinary carelessness. The court followed its ruling in *Weitzenhoff* in affirming the legality of the CWA negligence provision, holding that the CWA is a public welfare act. According

²⁰ 549 U.S. 497 (2007)

²¹ 176 F.3d 1116 (9th Cir. 1999)

to the Hanousek court, allowing criminal punishment for basic negligence is fully appropriate and does not violate due process.

12. PROBLEMS PERSISTING IN INDIA

It has been observed that the concept of 'Env offences' by its name is new, but it is as old as the concept of crime. It has received global attention at present in such types of crimes and consequently to human existence. By studying the evolving concept of Env offences, it has been observed that its nature is somewhat different from an ordinary crime. From the non-doctrinal research done, the researcher has analysed that the present picture of environmental law is not sufficient. It is in the stage of evolution. It is complex, not comprehensive. It suffers from procedural problems, implementation problems & execution problems. It doesn't achieve the deterrent effect. Public participation is lacking. Delay in punishment. Nature of punishment. No specific right in the Indian Constitution.

Uniformity is one of the primary goals of the law. The question is, how far these multi-regulatory systems with overlapping provisions promote this purpose?

Secondly, investigating authority having no power to take direct action and no legal and technical help cannot do its work properly. It has the potential to raise a slew of legal issues during the course of the dispute. Again the entire env-legal system is to be examined on the ground that the problem is not only a legal one, it has a multidimensional aspect. Hence, procedural rules inter preparatory rules do not serve the purpose.

Here the problem is not to stop the development, as the process is the rule of life. But at the same time, we don't want development at the cost of threat to existence. The researcher is of the opinion and has reached to a point that the main problem is the absence of a consolidated criminal law on Env offences and the nature & severity of punishment.

According to research, the major problem lies in the environmental offences committed by the corporate industries because of the backing of the law. The most fundamental flaw in Indian environmental policy is a refusal to acknowledge that env offenses remain severe and can even take the form of a structured crime. Such offences are even low on the priority list for law enforcement. The Indian Law Commission has advised that the current moderate punishments for environmental offences be altered to include stiffer sanctions so that responsible companies do not get away with it. Under the Water, Air & Environment Act, Criminal Liability is imposed on the company,²² person-in-charge, or head of the government departments.²³ These provisions make the HODs, as well as the administrators of the corporation, liable for the acts committed or done by the legal personality. However, vicarious responsibility is an exception to the rule of criminal law, in which culpability is established when both components of act intent are present and there is a direct link between the act performed and the loss sustained. However, when it comes to certain environmental offences and environmental regulations, the notion of vicarious criminal culpability has been embraced. And as such, it requires liberal interpretation for sub-serving the beneficial object of the legislation. But this effort has been diluted by adding a proviso. The proviso added makes it easy for the officers to escape from the punishment by manipulating the official records. Thus, mens-rea has been made an essential criterion for prosecution. This provides managers with a loophole to avoid liability. They can just blame the lower-level personnel and hold them responsible. This is inequitable and unjust.

To set up new industry in industrial zone land requires the government's permission, the land rate will be more with imposed taxes. The land in the eco-sensitive zone needs noc. In the recent past, Reliance Industry wanted to set up a factory in Yavatmal, the government granted permission for the same at Rs. 44 crore and later sold the same factory at Rs. 1 lakh crore being in profit after use. As a compensatory, environment is degraded.

While there is little that has been done, there is a lot that has still to be done.

²²Water Act, Air Act & EPA respS. 47, 40, 16 (USA)

²³Water Act, Air Act & EPA resp S. 48, 41, 17 (USA)



13. CRIMINAL LIABILITY OF CORPORATIONS: THE LAST RESORT

Intentional littering, improper disposal of hazardous waste, and the release of poisonous compounds into the air and water are all examples of how industries pollute the environment. The majority of the acts listed above are well-known to authorities and are not the product of inattention. Such acts show a harmful influence on both the environment and a huge amount of innocents, putting them vulnerable a wide range of respiratory diseases and other issues. For the following reasons, the idea of holding firms legally liable for Env offences has gained popularity.²⁴ Criminal punishments are way far successful at deterring transgressions than other forms of punishment. "Deterrence works best on persons who have never dealt with the criminal justice system and who face serious personal consequences if they are prosecuted or even investigated."²⁵ A criminal charge would jeopardise their company's reputation, as the value of publicity is critical to their employment. Criminal sanctions have far-reaching ramifications. Furthermore, in the absence of an alternative, wealthy persons who could previously dodge accountability by paying even bigger fines might become more ecologically conscientious. Finally, Env offences are frequently so serious that only the criminal justice system can deal with them. As a result, placing criminal culpability on businesses is the absolute last resort.

CONCLUSION AND SUBMISSIONS

Man's paradise is on earth. He's said to be the most beautiful creature on the planet. But with scientific vision and technical might, he has become nature's worst enemy. Given the severe, grave, and flagrant character of Env offences, great effort should be made to define and identify the activities that lead to Env offences. "The effects of such a crime have been aggravated by the lack of a commonly agreed definition, a weak legal framework, and judicial activity." All of these issues need to be prioritised and thoroughly investigated. Otherwise, profit-driven firms would ruin and harm the environment in silence. After all, environmental deterioration is a major, permanent deterioration which impacts the modern generation and so subsequent generations. This COVID-19 virus is a blessing in disguise because it has helped the environment recover from all of the destruction inflicted by humans around the world. While it has resulted in many fatalities, we must remember that nothing is under our control, and we should never try to control anything.

To answer the research questions, the researcher has reached a conclusion that the crime committed against the environment should be considered as a criminal offence and not a civil wrong with a criminal punishment. One of the essential characteristics of criminal law is the imposition of punishment or penal sanction. According to Jeremy Bentham, Punishment need not be so marginal that the benefit of breach would nullify it. The pleasure obtained by the perpetrator from the crime and the suffering given to the victim should be considered while determining punishment. One of the problems persisting is that environmental offences are not taken seriously, and their dreaded consequences are faced for a very long time for which the introduction of A Environment Criminal Law can be a solution and justices with a need of check on compliance of obligations imposed vide the Environmental Protection Laws. Apart from these problems, a major problem lies with the awareness of people, which very quickly needs to be solved. Swift actions must be taken in offences and put in the public domain to deter others from doing so. Duties can be imposed on citizens, and rigorous awareness projects must be undertaken so that future generations should have a peaceful existence.

Looking at the strict and elaborated environmental legislation of the U.S., India can definitely have a better, safe, clean & protected environment with certain changes and shifting or sharing a criminal environmental jurisprudence. Also, in developed countries like Russia, they have to pay the government according to the weight of the waste they dispose which creates deterrence with its strict nature.

Environmental law must transition from civil to criminal culpability for actions that have a considerable impact on the health and well-being of a large number of people while also destroying the environment irreversibly. Criminals must not be given a free pass by the courts.

²⁴ Criminal Enforcement of Environmental Law Joseph F. Dimento

²⁵ Send Corporate Polluters to Jail: Greider Fines Aren't enough



Environmental legislation has to be updated to: a) recognise organised environmental offences as independent and distinct offences; and b) increase the severity of the current low penalties. Environmental laws should be merged into a single, comprehensive piece of legislation that clearly defines environmental offences and their consequences.

Corporations enjoy the benefit of the poor legal framework and destroy the environment with their pathetic excuses. As a result, allowing the complete functioning of absolute culpability in environmental offences is highly advocated.