

## INCLUSIVITY OF GREEN CRIMES IN THE INDIAN ENVIRO-LEGAL REGIME – NEED OF THE HOUR

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### ABSTRACT

Nature has given us the environment in its purest form and we, being the guardians have failed to take this responsibility on our shoulders. Our failure lies not only in the rampant increase in environmental wrongs but the rise of crimes in this domain. A crime against the environment is a crime against humanity and hence it must attract criminal liabilities as such as it affects human health and damages the environment. The United Nations Crime and Research Institute has found various wrongs like illegal trade in wildlife, use and smuggling of ozone-depleting substances and so on. The corporations and human beings collectively lead to this green crime situation; the scourges of the *Bhopal Gas Tragedy* have still not healed and we have seen a detrimental effect in this regard. Corporations often cause these offences like in the *Rural Litigation* case and *Indian Council for Enviro-Legal Action*. The statutory imperatives of *public nuisance, fouling of water of a public spring*, etc in the Indian Penal Code, 1860 along with procedural counterparts of *removal of nuisance order* and *other cases of urgency* in the Criminal Procedure Code, 1973 are some of the derivatives that have scope for criminality; in the Environment (Protection) Act, 1986 too, there has been due regard of these principles and the undertakings discharging harmful effluents and hazardous substances are punished thereof, which can include a criminality aspect. A discourse on environmental pollution and safeguarding of environment from these ‘crimes’ is also present under the *Dwarka Cement Works* case and the *M.C. Mehta* series of cases. Some steps have been taken towards recognition of the same but green crimes have a long way to go.

**Keywords:** *environment, public nuisance, criminality, green crimes, pollution etc.*

### INTRODUCTION

The Indian experiences with horrendous cases of harm to the environment and ecological damage are seen apparently in the cases of *Bhopal Tragedy*<sup>1</sup> and *Oleum Gas Leak*<sup>2</sup> where the

<sup>1</sup> Union Carbide Corporation v. Union of India, AIR 1990 SC 273.

<sup>2</sup> M.C. Mehta v. Union of India, AIR 1987 SC 1086.

corporations and undertakings have been held responsible for taking away the life of several people which can also be seen in close connection with the crimes that take place when such gravity of the offence is considered. The main concern is that environmental crimes i.e. green crimes, can be put at par with crimes where the crime takes place in the context of hundreds of people and the environment as a whole gets affected at large. So now, the need of the hour is to build such a regime for environmental protection which takes into account the criminal element in the environment as well as the new approach of judges and legislators to inculcate the green criminology into the legal framework and judicial approach and to this end, it is very important to define and conceptualize the green crimes and how can the criminalization of the conducts of industrial undertakings can be given more cogent perspective, another aspect deals with the current framework of law regarding the criminalization of environmental wrongs along with the judicial response in the backdrop to realise where the anomaly is and what can be done to remedy it. The existing situation of criminalized acts in the Indian Penal Code ('IPC')<sup>3</sup>, the process of removal of the same under the Criminal Procedure Code<sup>4</sup> and the criminal imperatives under the Environmental (Protection) Act<sup>5</sup> has been falling short of covering the environmental crimes adequately, the recent judicial trend and the much-needed shift in the position of law towards criminalization is the need of the hour and thus it should be ensured. The very preliminary issue to be dealt with at the outset would be the uncovering of a strait-jacket definition of environmental crime that can be made punishable within the legislative mandate of the law. A strict punishment with a cogent deterrent effect is the way to go, a whole revamp of the legal regime and attitude of the court towards being pro-environment and cutting down these crimes should be welcomed.

### **‘GREEN CRIMES’ - CONCEPT AND MEANING**

Environmental crimes as such do not have a fixed definition but there has been much discussion on what they ought to be in the present times. The main origin of the same can be traced within the broad ideology and principles – that pertain to the acts and omissions that are considered harmful to the environment and balance of ecology. It can be referred to as an unauthorized act, and it is also applicable to the omissions which are violative of law and is to be subjected to

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<sup>3</sup> The Indian Penal Code, 1860 (Act 45 of 1860).

<sup>4</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974).

<sup>5</sup> The Environment (Protection) Act, 1986 (Act 29 of 1986).

criminal sanction or punishment as such<sup>6</sup>. It has also been observed that within the meaning of United Nations Crime and Research Institute's definition of the same that these crimes have a wide variety of illegal activities and illicit trade that pertains to wildlife, the inclusion of substances that deplete the ozone layer and the illegal trade of waste that is hazardous to the environment and so on<sup>7</sup>. So basically for a conceptual underpinning of this phenomenon, it is necessary to observe that environmental crime includes direct or indirect damage to the environment and which is in derogation from the law as such<sup>8</sup>. The environmental issues not only endanger it with consequences that are detrimental to nature but also hurts the idea and conceptions of sustainable development. The wide amplitude of environmental crimes that reach a wide number of people and affect them gives this conception that there has to be criminalization of environmental wrongs. The major cost-benefit analysis does not serve the best interests of society and it is determined that the same is there for the decision of heinous acts; the various undertakings that are majorly the corporations lead to environmental pollution as we have noticed time and again in the environmental regime which, when coupled with the corporate criminal liability that is envisaged under the broad principles of S. 11 of the IPC<sup>9</sup> that state that within the meaning of the definition of person for that Act, a company can also be included within the same and according to the S. 2<sup>10</sup> of the Act, whereby every person who is involved in a crime is liable to be punished within the scheme of IPC.

## THE ISSUE OF CRIMINALISATION OF ENVIRONMENT-RELATED OFFENCES

The main issues that need to be covered when we deal the corporate criminal liability as such are the concepts of criminal liability of corporate nature that involve environmental percepts, though it is generally perused that since the corporate entities do not have a mind of their own, it is highly unlikely that there would be a mens rea in that regard as well<sup>11</sup>. Since the corporation cannot be punished for a crime thus thereby these entities jump the gun whenever the need of

<sup>6</sup> Yingyi Situ and David Emmons, *Environmental Crime* 12 (Sage Publications, 2000).

<sup>7</sup> Ayushi Singh, Is it the Need of the Hour in India?, *The Daily Guardian*, available at: <https://thedailyguardian.com/environmental-criminal-law-is-it-the-need-of-the-hour-in-india/> (last visited on March 02, 2023)

<sup>8</sup> Stuart Bell and Donald McGillivray, *Environmental Law* 254 (Oxford University Press, 2018).

<sup>9</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 11.

<sup>10</sup> *Id.*, s. 2.

<sup>11</sup> C.M. Jariwala, "Corporate Environmental Criminal Liability in India: Reality or Myth" 3 *RMLNLJ* 98 (2013).

criminalizing these wrongs is considered. But there is an ardent need for the imposition of criminal liability upon the corporation directly. Moreover, it is the mandate of the realization of obligations in the realm of international environment law whereby we can incorporate the various sanctions and punishments under the national regimes of a particular country, and it has been observed that there has to be this implication which needs to be observed in the case of corporations that are indulged in the environmental crimes<sup>12</sup>. There are also various approaches to environmental crimes which also suggest that criminal liability would be the only resort in certain cases whereby there is such an adverse effect upon the society and people at large that criminal liability alone would do the justice.

### **Conundrum of Corporate Legal Personality**

In the cases where it is said that criminal liability cannot be the best suited in the cases of corporations can be re-observed by the premise that though the corporations do not have a mind and body of their own generally the directors of a company are considered as minds of the same. In legal parlance too, the mind, soul and body of the company have been attributed to these officers who are the directors of a company<sup>13</sup>. Though generally as such it is considered as an entity that does not have a physical entity but it is indeed an association of persons which cannot be run without the involvement of officers and other allied persons, so basically the idea that the corporations do not have a mind of their own and hence they cannot be held liable for the crimes that are committed towards the environment is misconceived as such. The lifting of the corporate veil in such circumstances can be attributed to bringing such corporations to the book and wherein especially the grave cases of environmental damage come to the forefront it is to be seen that there exist stricter punishments for the same.

### **Underlining the Gravity of Offence**

Another major perusal must be of the consideration of gravity of the offence, wherein in the case of *Union Carbide v. Union of India*<sup>14</sup> it was seen that how harmful gases like Methyl Isocyanate and Hydrogen Cyanide were released in the atmosphere thereby killing 4000 people as such and it is still afflicting the people who are residents of the same area as it has also been the reason for 25000 more deaths as such. The major problems suffered by people like respiratory problems,

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<sup>12</sup> The Resolutions of XVth International Congress on Penal Law (Rio) Res. 12, 14 and 20, 1994.

<sup>13</sup> *Moore v. Brester*, (1944) 2 All ER 515.

<sup>14</sup> AIR 1992 SC 248.

blindness etc which are the reasons for deformities relating to exposure to such gases have had a detrimental impact, not to forget the birth defects and low life expectancy and contamination of soil are some other factors that came to the forefront in this whole fiasco. Thus it can be said that the crimes of such nature that haunt and shock a whole generation as a whole, should be punished in all probabilities. Also, these white-collar crimes that are existing in this arena are to be met with the response of judiciary and legislature in the strictest sense as it is a subset of white-collar crimes. In the environmental regime itself, we have come across various practices like littering in the water bodies thus affecting groundwater as in the case of *M.C. Mehta (Ganga River Pollution case)*<sup>15</sup>, improper disposal of waste as well<sup>16</sup>, release of toxic substances in the air and water bodies<sup>17</sup> to be precise are some other deleterious acts that are being put together by most of the corporations and industries. The major point here is that time and again, these have been considered as negligence as such, it is not setting the right kind of exemplary overtones for a robust enviro-legal regime in India so to just write these instances as mere acts of negligence would not be justice being served right – so a sense of deterrence is to be observed in the decision of these particular cases as it is very necessary to ensure that it becomes an effective mode of punishment. Deterrence will surely work as the best way to ensure that there has been no contact with criminal justice and thereby the prosecution and the investigation would be having several severe consequences<sup>18</sup>. The only way the corporations can understand the gravity of the offences and the consequences the human agency has to suffer is with the deprivation of status as such and the idea of censure. The other systematized effects that can also occur with the inculcation of a corporate criminal liability would be on a personal level of the concerned officer of an undertaking as such and on moral grounds as well it would be made clear that the environmental damage was an attack on mother earth.

## STATUTORY ANALYSIS OF ENVIRONMENTAL CRIMES

The major shortfalls and pitfalls of the criminal regime of environmental crimes are that environmental crimes can also give rise to organized crimes and hence it is very important to

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<sup>15</sup> [1987] 4 SCC 463.

<sup>16</sup> *Vellore Citizens' Welfare Forum v. Union of India*, 1996 5 SCR 241.

<sup>17</sup> *M.C. Mehta v. Kamal Nath*, (1997) 1 SCC 388.

<sup>18</sup> Joseph Dimento "Criminal Enforcement of Environmental Law" 525 AAAPS 134 (2013).

fine-tune it with time. The Law Commission of India in its reports<sup>19</sup> has also mentioned how there has to be an effective amendment of the environmental law in giving the punishments thereby so that the offender does not go scot-free.

### **The Indian Penal Code, 1860**

The IPC which is the stark law in India for the crimes as such in Chapter XIV provides the offences that are affecting public safety, health, convenience, decency and morals thereby. S. 268<sup>20</sup> as such deals with the offence of public nuisance that is made the basis for the punishment of environmental crimes in most of the cases, which in conjunction with S. 290<sup>21</sup> state that the same would be punished with two hundred rupees which is aptly clear that this remedy in the long run and even in the present scenario can never do justice to the blatant violation of the criminal administration system that stands for the ideals of environmental protection and also, this meagre amount of penalty would never suffice in any case regarding the deterrence. Another environmental crime that is considered to be a contemplation of S. 277<sup>22</sup> of the IPC which deals with voluntary fouling of water of a reservoir or any other water body, this is punished with three months imprisonment along with a fine of just five hundred rupees or both, also making the atmosphere as noxious to health thereby is also related to the environmental crime whereby the atmosphere is made noxious which is to be punishable as such with a fine that is equal to five hundred rupees again. As we have seen that the lenient provisions that are there in the criminal legal framework do not create a deterrent effect but the broad ideology is preventing air and water pollution through the means of penal liability. The effective criminal liability of the same must be ensured as there are various deleterious effects regarding the same as far as the mass public suffering<sup>23</sup> is concerned for instance if the people whose lives depend upon the water use it for the same it is going to have disastrous effects as such. Also, since the Indian criminal legal system has water-tight compartments of essentials relating to criminal offences and thereby proving them to utmost fulfilment might be considered as an impediment in ensuring criminal justice as such.

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<sup>19</sup> The Report of the Law Commission of India (Forty-first) 1969; The Report of the Law Commission of India (Forty-seventh) 1972.

<sup>20</sup> The Indian Penal Code, 1860 (Act 45 of 1860), s. 268.

<sup>21</sup> *Id.*, s. 290.

<sup>22</sup> *Id.*, s. 277.

<sup>23</sup> *Vellore Citizens' Welfare Forum v. Union of India*, 1996 5 SCR 241.

### **The Code of Criminal Procedure, 1973**

The CrPC also provides certain measures for the maintenance of public order and tranquillity thereof, within the ambit of Chapter X which also includes the Public Nuisance and other cases that are urgent and belong to the class of nuisance that apprehend a serious implication of apprehension of danger at an urgent level. The main consideration which has to be seen here is in the light of environmental protection viz. S. 133<sup>24</sup> provides for the conditional order that relates to the removal of nuisance whereby the Executive Magistrate is empowered to remove nuisance where the police officer has received a piece of information followed by the consideration of evidence thereof, though it is an effective remedy in the removal of the nuisance related to the environmental wrong it is to be seen that it is again not in a character of criminal and penal liability. Similarly in S. 144,<sup>25</sup> it is seen that the Executive Magistrates can also order the removal of nuisance in very urgent cases as such in the instances of nuisance wherein there is a possibility of a speedy remedy, so the cases of urgent nature in the realm of nuisance and apprehended danger are also dealt with but again they are remedial measures and does not entertain the inclusivity of green crimes as such.

### **The Environment Protection Act, 1986**

The Environment Protection Act provided various measures after the Bhopal Gas Tragedy and the results of the Stockholm Declaration in 1972 as also the various protections under the hazards, which relates to human beings, plants and other creatures. In S. 7<sup>26</sup> the prevention, control, and abatement deal with environmental pollution – to permit or emit the discharged pollutants of the environment, hazardous substances under procedural safeguard are dealt with under S. 8<sup>27</sup> as well. The penal provisions also form a part of this Act and thus in S. 15<sup>28</sup> as such, it provides for the punishment of contravention of rules, which is the maximum punishment of five years and a fine that amounts up to one lakh rupees with an additional fine of five thousand rupees can also be made if the offence is a continuing one and if there is exceeding of contravention as such then the punishment can be made to be done. The offence is also provided under the S. 16<sup>29</sup> of the Act which states the offence under the companies as such whereby the

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<sup>24</sup> The Code of Criminal Procedure, 1973 (Act 2 of 1974), s. 133.

<sup>25</sup> *Id.*, s. 144

<sup>26</sup> The Environment (Protection) Act, 1986 (Act 29 of 1986), s. 7.

<sup>27</sup> *Id.*, s. 8.

<sup>28</sup> *Id.*, s. 15.

<sup>29</sup> *Id.*, s. 16.

officers who were in charge and responsible for the affairs of the company would be liable directly and but there is a stark difference that says that they can escape liability which states that if officers are able to prove that the act was performed without their knowledge and in the events of due diligence for the prevention of offences as such.

## JUDICIAL TRENDS

The non-applicability of the criminal liability upon Union Carbide in the *Bhopal Gas Tragedy* case started on the wrong foot as it was exempted from the liability of criminal charges and the court did not take into account the criminal proceeding and found it unconnected with the interlocutory order with the suit as such and hence the courts did not assume the powers of withdrawing the criminal proceedings, it was deemed that the proceedings of criminal nature and crime were acquitted. Further, again in the *Oleum Gas Leak* case too, it was held that the leakage of the poisonous gas had caused big damage to the workers and people inside the factory, the court in this case rose to the occasion and made the apt observation that there was the liability of Chairman and Managing Director that needed to be accrued as the officers were said to be the mind, soul and body of the body corporate. But the major point of deviation that has been observed in this case was that the court also held that if the body corporate was able to prove that it was a case of Act of God or sabotage they will not be held responsible which was again in the wrong direction and not in line with the idea of criminal liability and its imposition. In the *Dwarka Cement Works v. the State of Gujarat*,<sup>30</sup> it was shown how the major corporations use the absence of availability of penal provisions to open up doors for the directors and other managerial persons of the company to give certain excuses to escape liability and here too, the corporation made a lame excuse to escape from the same by contending that the management of industry was in question in this case and hence they cannot be directly approached in that case anyhow. Further, in another *M.C. Mehta v. Union of India*<sup>31</sup> case, it was marked that the criminal sanctions had to be taken seriously and paid heed to in the normal course of penal proceedings, there was a certain undertaking whereby the shutdown of the industry was ordered but the enterprise in question contended that it has been allowed by the High Court which was then met with contempt notice thus creating an effect of major ripples in the form of not allowing a frivolous claim and thus making the system more conducive to recognize the penal principles of

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<sup>30</sup> (1992) 1 Guj L Her 9.

<sup>31</sup> (2003) 5 SCC 376.



environmental crimes, though the accused was only given one-week imprisonment along with Rs. 1 Lac fine as we can see the imprisonment of 1 week would not fit the bill as such but it was a welcome change as Indian jurisprudence in the criminal landscape had seen the involvement of imprisonment for the first time.

## CONCLUSION AND THE WAY FORWARD

There is an ardent need for environmental liability to make a shift from the basic tort and allied liabilities to the major criminal and penal sanctions that affect the health and life in general as far as the masses are concerned and the people who are affected as a whole in the backdrop of degradation of the environment. The court should be thus strict with their approach and they should not allow the criminals of nature to go without punishment as such. The major approach that is the need of the hour is the inclusivity of separate systematic offences that involve environmental crimes on an organizational basis and thus bringing a change in the law of crimes by making the current liabilities in the form of meagre fines more strict and inflicting a greater sense of deterrence. The scattered legislation in the legislative mandate of the state and environment would not be thus capable of ensuring a good and effective environment management scheme thereby presupposing that there has to be a consolidated piece of legislation that takes care of such offences and it should give stricter stipulated penalties and hence make the penal regime more strict as whole. Now, the major approach of corporations is taking refuge in the loopholes and leniency of the courts and the legislation and thus there has been a rampant disregard for environmental protection in the backdrop; a fully penal and absolute liability would be able to cater to these issues and thus make the whole system more inclusive of the liability that needs to be incorporative of the needs of the present times. The heinous and grave nature of these crimes now must be inclusive of the permanent and separate definition of environmental crime that can cover the position of environmental crime and it is also to be perused that this absence of a definition in the jurisprudence and penal liabilities whereby the punishments are just very lenient and liberal, a weak mandate of the enviro-criminal legal scheme and the absence of justice in that regard. These lacunae should be thus catered to and have to be given the due consideration it asks for. Otherwise, we would only be able to see the profiteering attitude of corporations and their tendency in accruing wealth and neglecting and damaging the environment which is human's common heritage. The environmental crimes or the green crimes

as they stand should be certainly stopped as the effects they generate are quite deep and embedded in the fact that it carries on from generation to generation, the damage takes the shape of irreversible nature and it hurts the very foundation of sustainable development. So, it has to be remedied at the earliest.

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