

# Criminal Law: Machinery for the Protection of Environment

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**Abstract---** *Criminal Law has consistently been considered as the most proper medium to settle different social, financial and political issues. With the development and the improvement of society, it was seen that there was a continuous move in the law mediating procedure and criminal law was viewed as the most advantageous answer for serious issues. This was the explanation behind figuring one all inclusive code for all infringement of laws and the violators to be punished with imprisonment and fine. In the previous decades, with urbanization and industrialization, a compelling impulse for the assurance and preservation of condition has additionally equipped around the world. Indian rules provided for the security of condition and the Lex loci, for example, The Indian Constitution has made it both a basic right as well as an essential obligation to secure and move in the direction of the preservation of the earth. The problem with Indian enactments lie in the way that these enactments have recently given the components for protection yet needed with respect to successful execution and implementation of the same. However, the inquiry has likewise happened with regards to the connection between criminal law and environmental protection. There have been endless discussions on the connection between criminal law and environmental law, the viability of criminal enactments in ensuring and advancing environmental law and the advantages and disadvantages of environmental protection measures. Along with these lines, more or less, it tends to be expressed in spite of the tremendous efforts by the different state lawmaking bodies and national legislation, environment is being exhausted and it hassled to widespread destruction and devastation which should be controlled. The paper basically aims to point out the possible causes for environmental degradation and the criminal remedies to curb such degradation with special emphasis on the role of criminal law in protection of environment and the interrelationship between environment and criminal law.*

**Keywords---** *Environment, Criminal Law, Degradation, Violation, Protection.*

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## I. INTRODUCTION

The term environment is hard to characterize. In like manner speech it hints environment, yet lawfully, it has an alternate definition altogether. In addition to the fact that it includes air, water, food, sunlight, the living animals and so forth yet additionally incorporate the characteristic powers that encompass a person. Environment is of integral value as it fulfils a number of necessities of life and can also be termed as the life support system.<sup>1</sup>

Environment generally includes the entire range of external acting on an organism, both the physical, biological and other organisms, i.e. forces of nature surrounding an individual.<sup>2</sup>“It also means water, air and land and other human beings, other living creatures, plants, microorganisms and property.”<sup>3</sup>

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Respect for legal standards geared towards the protection of the environment depends upon the existence of criminal penalties at law, which ought to be sufficiently dissuasive as well as able to be adapted to environmental issues. Environmental crime encompasses activities that range from careless behaviors to deliberate actions causing environmental harm. The risk of giving rise to criminal liability, rather than or together with the other types of liability, has the benefit of ensuring more effective environmental compliance. The main reason being, that the cost of civil or administrative penalties can be internalized by the non-compliant juridical persons, without ever actually effecting changes so as to eliminate unlawful impact on the environment. On the other hand, criminal sanctions can play a significant role in deterring environmental crime, in such a way that the fear of criminal prosecution and imprisonment may more likely deter the violation of environmental law. Criminal punishments often target the natural persons, who, in turn, would suffer detrimental social and professional impacts. Thus, the availability of criminal liability in environmental law has the potential of preventing environmental harm and not merely redressing it. Traditional criminal liability requires the illegal act to be intentional as well as committed with mens rea. However, such requirements interfere with the enforcement of offences that have the purpose of protecting the environment. It is crucial that, the courts reflect such concept of an environmental crime. This is not an easy matter at hand, particularly due to the nature of the environmental crime itself. In fact, the environmental crime is often not jurisdiction specific, it relates to damage done to common property and may be committed simultaneously with other crimes. Furthermore, such features of the environmental crime have been made to be balanced out with the legal consequences as deriving from the concepts of the polluter pays principle, the precautionary principle, the protection of biodiversity and the preservation of intergenerational equity.<sup>4</sup> Crime on the other hand means a behaviour which is in violation of criminal law.<sup>5</sup> It means an act for which a punishment has been prescribed and may be imposed upon the person responsible for the same.<sup>6</sup> It also means an act done in violation of a public duty.<sup>7</sup>

Crime and Environment in the globalised world goes almost hand in hand. The major reason for this is that industrialisation and modernisation has led to the depletion of the values necessary for the preservation of the environment. In order to lead a luxurious life, people are forgetting that the growing depletion would lead to serious health issues and in turn would create a massacre for the future generations.

This menace needs to be curbed and so the existing criminal laws in the country aim to protect the environment. However, in spite of the growing concern for protecting the environment, it has been seen that the environment is rampantly disrupted which has caused huge loss to the entire nation. This proves that effective implementation mechanism is lacking and so we need to be more cautious in preserving our environment.

## **II. CAUSES FOR ENVIRONMENTAL DEGRADATION<sup>8</sup>**

- ***Population Explosion***

One of the major causes of environmental degradation is population. It is an ever increasing phenomenon in India. It is increasing day by day and is causing havoc in the society. It results in the ever increasing demands of the people and to fulfil the same, there is always a hue and cry as the resources are limited. So, in order to fulfil the demands, the environment is rampantly destroyed. Therefore, population must be controlled.

- **Industrialisation and Urbanisation**

The development of population has additionally prompted the development of urban communities and urban advancement. Presently, at whatever point there is advancement, there is constantly an opportunity of displacement, rehabilitation and destruction of the environment. Urban communities, rather smart cities today have converted into a jungle of concrete because they can't bear the cost of such measure of populace development. In this way, it is clear that for the population accommodation, there is harm to the environment.

- **Exploitation of Natural Resources**

Since there is a need for natural resources at every stage of our life, it is mandatory for us to use and preserve them. But, the huge population growth and the immense technological advancements hamper it to a vital extent. Moreover, there is no means by which people take the initiative to preserve the same, which adds on the burden of depletion. This, it is advisable that the massive exploitation needs to be stopped as it creates serious problems for the future generations, and so we must move forward towards a more sustainable environment.

- **Man Made Pollution**

Today it is seen that role pay is not being adhered to very properly. The protectors and the conservators of the society are in turn depleting the society. The major problem is that who have been bestowed with the duty of promoting peace and harmony and preserving the environment, are in turn ravishing it to a vital extent. With the issues of immersion of Idols and the sewage wastes into the water bodies, it has been observed that majority of the environment is polluted. This is an issue of concern, and needs to be taken care of very seriously.

### III. NEED FOR ENVIRONMENT PROTECTION

The need for environment protection can be enumerated with the help of a diagram

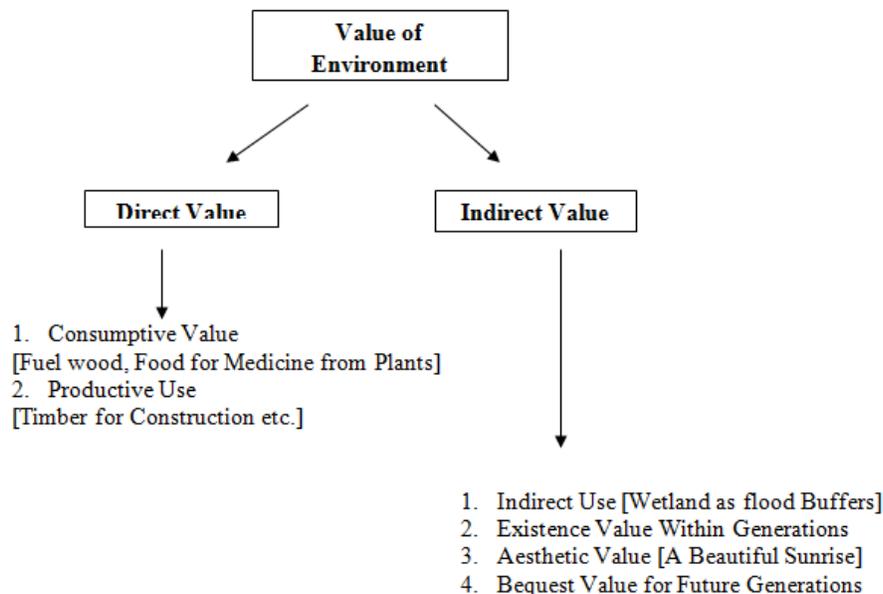


Fig. 1: Diagram Depicting the Importance of Environment<sup>9</sup>

However, the diagram is not the only illustration of what environment offers us. Environment provides us with a plethora of value added goods necessary for our day to day life. Not only does environment need to be preserved, but it also needs to be respected for the value added services it provides us. But, interestingly today, preservation is totally out of the dictionary of most of the urban Indian population. It just craves for the good things but forgets to put in that little extra effort so that life can be worth living. However, the present criminal justice system does attempt to prosecute the criminals and therefore, we should see as to how it ensures the process of preservation of the environment as well as punishment of environment criminals.

#### **IV. ENVIRONMENT PROTECTION THROUGH CRIMINAL LAW**

The protection of environment has become an utmost necessity in the recent decades. The cases of increasing environmental pollution and degradation have become a serious issue affecting the entire mankind at large and so the existing criminal laws in the country have taken serious steps to eradicate such menace.

- ***The Indian Penal Code, 1860***

The Indian Penal is the substantive criminal law of the land. The code has prescribed serious penalties for the offences of public nuisance, adulteration of drugs, negligent conduct with a poisonous substance, negligent conduct with respect to combustible matter, negligent conduct with respect to combustible matter and many more.<sup>10</sup>

The concept of public nuisance basically connotes it to be an act or omission which is illegal in nature and which causes common injury to the public at large. Based on the Latin maxim, *sic uti tuo alium non laedas*, it is known as common nuisance as well and means that a person should enjoy his property in such a way that he doesn't injure the right of another. An act doesn't become *per se* illegal but because it has an injurious effect and is not tolerable by the general public.<sup>11</sup>In the case of *Phirayamal v. Emperor*<sup>12</sup> it was held that an act or illegal omission doesn't necessarily amount to public nuisance unless and until it affects a greater number of people at large.

In the case of *Attorney General v. P. Y. A. Quarick Ltd.*<sup>13</sup> it was held that an isolated act may amount to public nuisance if it is done in such circumstances that it disturbs the general public.

The code prescribes punishment ranging from imprisonment upto six months to two years rigorous imprisonment depending upon the facts and circumstances of each case and the offence committed.

The code also prosecutes persons for manufacture and sale of adulterated drugs or medicinal preparations.<sup>14</sup>It states that if a drug which was being used for medical preparation is adulterated and the drug in the process becomes less effective, then the perpetrator shall be punished with imprisonment for a term of six months and fine which may extend to one thousand rupees or both.

In the case of *Writ v. Bywater*<sup>15</sup> it was held that whenever an accusation or charge has been framed against a person that he has sold an adulterated drug, then, it must be proved beyond reasonable doubt that he had knowledge of the drug being adulterated and if there is no knowledge, then such an allegation doesn't hold water.

It is of poignant importance to note that the code also prescribes punishment for negligently working with poisonous substances, combustible matter and any hazardous or negligent conduct with respect to an animal with an imprisonment for six months or with fine extending upto one thousand rupees or both.

Thus, it is clearly evident from the above discussion that whenever there is an infringement of the rights of the persons at large with regard to any environmental hazard, the substantive law of the land is well equipped to provide adequate remedies for the same by awarding imprisonment or fine and the quantum to be awarded depends upon the gravity of the offence committed.

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

The Code is the procedural criminal law of the law of the land which states about the procedure to be followed whenever there is an instance of public nuisance brought before the court of law. Generally, since all criminal trials are initiated either on police reports or complaints, the Code empowers that whenever any instance of public nuisance is reported, the Magistrate without fail has to act on them. The instances of public nuisance involve: <sup>16</sup>

- Unlawful obstruction to any river, waterway etc.
- Construction of any building or disposal of any substance likely to cause explosion
- Building, tent, structure or tree likely to fall
- Unfenced tank, excavation or well in a public place.

In the case of *Tejmal Puranchand v. State of Maharashtra*<sup>17</sup> it was held that a Magistrate has the power to act on any source from any information received of public nuisance.

The proceedings under Section 133 of the Code are taken under extreme emergency and not when the complainant is unable to obtain any relief from the civil court. <sup>18</sup>

In the case of *Muthuwalam v. K. V. Narayan Nair*<sup>19</sup> it was held that Section 133 of Cr. P. C. entails a person to take action when there has been an invasion of the public rights.

In the case of *Bhagirath Agarwal v. State of Maharashtra*<sup>20</sup> it has been held that Section 133 of the Code is to be used only in the instances where nuisance is in existence and it provides immediate relief.

Section 137 of the Code states that whenever a public right is denied the court can stay the proceedings and commence them once again only when they have been duly given to the public.

Thus, it is clearly evident from the above that the Code takes necessary steps to punish the wrong doers in cases where the guilt has been established beyond reasonable doubt and it must be proved before the court of law.

## **V. ENVIRONMENTAL LEGISLATIONS AND CRIMINAL JUSTICE**

- ***The Indian Forests Act, 1927***

The Act empowers the police officers appointed under the provisions of the Act to confiscate any forest produce together with all tools, boats, carts or cattle used in committing the forest offence. The property used for committing the forest offence can be seized and then reported immediately to the Magistrate having jurisdiction to try the offence, but, if the property belongs to the government and the offender is not known, then the officer must report the same to his superior. <sup>21</sup>

In the case of *Kamlesh Kumar v. State of M. P*<sup>22</sup> It was held that the procedure contained under Section 52 of the Act must be strictly adhered to while seizing any property in connection with the offence.

However, Section 68 of the Act also states that any offence under the Act is compoundable with the leave of the court depending upon the facts and circumstances of the case.

In the case of *State of H.P. v. Sabala*<sup>23</sup> it was held that if the offence is compoundable, then further proceedings can only be barred if the offender has paid the amount of compensation.

- ***The Public Liability Insurance Act, 1991***

The Act was made with a view to provide immediate relief to the victims of an accident involving hazardous substances. The Act was enacted with the object to impose the principle of no fault liability upon the owner of hazardous substances and the provisions of the Act stipulate the owner to compensate the victim irrespective of the fact that the accident occurred due to the victim's default. In case of death, the maximum penalty that was to be paid by the owner of the hazardous substances were Rs. 25,000/-. Thus, it was obligatory for every owner to take out an insurance policy covering potential liability arising from the accident. It is important to note that accident here means any unintended occurrence while handling the hazardous substances.

## **VI. CONCLUSION**

Inference is observed that criminal law has been instrumental in governing the environmental hazards and much relief has been brought about because the penal statutes are strictly interpreted. However, to much ado, it is also seen that proper implementation of the existing laws has not been followed; rather it has been rampantly misused. This is not tolerable. Environment is for all and the need and the protection for the same are also desirable. If environment is not protected, in the years to come there will be hue and cry for the natural resources as they are depleting day by day. Therefore, it is necessary that proper implementation of laws are adhered to and more stringent laws need to be framed to avoid depletion of the environment.

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