

## Environmental Crimes and Laws to Prevent

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*“Plans to protect air and water, wilderness and wildlife are in fact plans to protect man”*

*- Stewart Udall*

**ABSTRACT:** Environmental crimes in essence are transgressions against the environment. Environmental crimes are not always a maneuver rather it also include everyday negligent acts of people leading to exploitation of the environment at multiple levels. At present, several judicial pronouncements have paved way for the environment to be recognized as a legal entity. Into the bargain, legislative initiatives have been made to prevent and preserve the nature and its natural resources both at international as well as municipal spheres. This alludes that environmental crimes is not a new emerging area of concern but the question here is what laws are available in this respect and how effective they are in curbing the issue.

**KEYWORDS:** Environment, Wildlife Trafficking, Natural Resources, Environmental Conservation.

### **INTRODUCTION:**

It is not because of us that the planet is there; it is because of the planet, which we are here. In today's era, the crimes against nature are one of the most momentous threats on earth. Environmental Crimes are the fourth largest category of crimes in the world and is escalating by five percent every year<sup>1</sup>. In order to gain meteoric benefits, we have consumed or rather exhausted our nature resources and nature in general that too in such an incorrigible manner that we are now forced to face the apparent consequences of our deeds. Environmental crime is a collective term which describes a range of illegal activities harming the environment and which aims at preventing individuals or groups from the exploiting, damaging, and stealing natural resources. The most recognized types of the environmental crimes are pollution, illegal trade in wild life, illegal trade of timber, illicit trade of hazardous waste; illegal, unregulated and unreported fishing, and illegal logging. The failure of the governments to take prompt counter measures against the environment crimes, ill-equipped agencies and lack

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<sup>1</sup> UNEP-INTERPOL report, 2016 on the rise of environmental crime: A growing threat to natural resources peace, development and security.

of priority to such instances has added to this flaming blaze. The environmental crimes have gained the characteristics of conventional crimes in recent times. International environmental crime networks have now acquired the characteristics of organized crime groups<sup>2</sup>.

### **IS ENVIRONMENT A LEGAL ENTITY?:**

Professor Christopher D. Stone first discussed the idea which attributes giving legal personality to natural objects in 1970. In his article “*Should Trees Have Standing? Towards Legal Rights for Natural Objects.*”<sup>3</sup> He states a person with legal entity can’t be owned; therefore no ownership can be ascribed to an environmental entity. Entities with standing (law) or locus standi have the right or capacity to bring legal action or appear in the court. He mentions that the environmental entities cannot bring legal action or appear in the court though it could be achieved on behalf of their legal representatives.

In India, discrete environmental elements have been accorded with rights in the recent past, but with no major legislation in this domain, the progress has mostly been brought about by judicial pronouncements. In the case of *Animal Welfare Board of India v. A. Nagaraja & Others*<sup>4</sup> the Supreme Court allowed that the Indian Constitution’s Article 21 right to life extends to non-human animals. Similarly, in the case of *T.N. Godvarman Thirumulpad v. Union of India*<sup>5</sup> the apex court of the country pronounced that for proper justice to environment it was necessary to drift away from the then prevalent anthropocentric perspective to a rather eco-centric one.

The most important judicial pronouncement that opined giving legal entity to the environment came in the year of 2017. The Uttarakhand High Court, in the case of *Mohd. Salim v. State of Uttarakhand*<sup>6</sup> ruled that the two rivers, Gangotri and Yamunotri, are ‘living entities having the status of legal person with all corresponding rights, duties and liabilities of a living person’. On 30<sup>th</sup> March of 2017, the Hon’ble bench of Uttarakhand High Court conferred legal personhood on the rivers of Ganga and Yamuna and all its tributaries and streams. The court cited “the Glaciers, including Gangotri & Yamunotri, rivers, streams, rivulets, lakes, air, meadows, dales, jungles, forests wetlands, grasslands, springs and waterfalls are legal entity/ legal person/ juristic person/ juridical person/ moral person/ artificial person having the status of a legal person, with all corresponding rights, duties and liabilities of a living person, in order to protect and conserve them.”<sup>7</sup> Nearly a year later the Punjab and Haryana High Court came up with similar ruling regarding the status of “legal personhood or entity” to animals in Haryana in pursuance of promotion of their welfare.<sup>8</sup>

What these developments bring forth is that, the issues like climate change and rights of the nature are taking the center stage in the country. We can choose not to speak for nature and

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<sup>2</sup>*Id.*

<sup>3</sup> Christopher D. Stone. “*Should Trees Have Standing-Towards Legal Rights for Natural Objects?*” Southern California Law Review 45 (1972): 450.

<sup>4</sup> *Animal Welfare Board of India v. A. Nagaraja & Others*, AIR 2014 SCC 547

<sup>5</sup> *T.N. Godvarman Thirumulpad v. Union of India & Others* (1997) 2 SCC 267

<sup>6</sup> *Mohd. Salim v. State of Uttarakhand*, 2017 SCC OnLine Utt 367.

<sup>7</sup> *Lalit Miglani v. State of Uttarakhand*, 2017 SCC OnLine Utt 392.

<sup>8</sup> *Kaenail Singh v. State of Haryana*, 2019 SCC OnLine P&H 704.

let it respond with drastic consequences to our actions, or rather give voice It the much deserved voice. Apparently, nature can only have a voice if it is given the rights of a legal entity, and this is exactly what the idea of environmental personhood advocates for.

### **DOCTRINE OF MENS REA AND ENVIRONMENTAL CRIMES**

The concept of Mens rea refers to criminal intent. It is the mental element of a person's intention or knowledge to commit a crime. Unlike most of the criminal offences, environmental offences do not often require specific knowledge or Mens rea. In case of environmental crimes the doctrine of Absolute Liability applies. In the case of *Oleum Gas Leak*<sup>9</sup> case the Supreme Court applied the principle of no-fault liability. The apex court through P.N. Bhagwati opined that the rule of strict liability, evolved in 1868, does not suit to the socio-economic conditions of the 20<sup>th</sup> century

Besides, keeping in mind the then occurred old Bhopal Gas disaster, the court evolved the principle of Absolute Liability. The court held that when any person is dealing with any inherently hazardous substance, he is absolutely liable for any consequences arising out of it the person cannot avail the exceptions provided under the concept of strict liability.

The application of environmental law typically applies absolute liability; otherwise it would be often be impossible for regulators of prosecutors to take effective enforcement action for many cases<sup>10</sup>. This relaxation in the rule of Mens rea has allowed the courts to take prompt actions in many environmental criminal cases.

### **TYPES OF ENVIRONMENTAL CRIME:**

Environmental crime is the crime which directly harms the environment. These illegal activities involve the environment, biodiversity, wildlife and natural resources. International bodies like European Union, United Nation Environment Programme, G8, Interpol, United Nations Interregional Crime and Justice Research Institute, have recognised the following environmental crimes:

- **Crime against Wildlife:** Crimes against forests and wildlife is one of the major environmental crimes which exist internationally. It is the fourth largest crime in the world.<sup>11</sup> The illegal tread in wildlife is around 7-23 Billion dollars annually.<sup>12</sup> The criminals use crude, cruel and illegal tools and practices to capture wild animals and to process them into various products. Thereafter they use unlawful means to transport and tread internationally. The international criminal groups also tread the various parts of the animals like tiger skin, rhino horn, elephant ivory etc. The rising demand from booming economy especially for the use in traditional medicines has also made it more profitable for these international criminal groups to engage in

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<sup>9</sup> M.C. Mehta v. Union of India, AIR 1987 Sc 1086

<sup>10</sup> "Environmental Liability: In-depth". Available at <https://app.croneri.co.uk/topics/environmental-liability/indepth> (Last visited on 23/12/2021)

<sup>11</sup> Samyukta Chemudupati., "Wildlife Trafficking: Here's What You Should Know", Human- Wildlife Interactions. Available at [www.wildlifeconservationtrust.org](http://www.wildlifeconservationtrust.org) (Last visited on 23/12/2021)

<sup>12</sup> *Id.*

crimes against wildlife and forest. Stamping out wildlife crime is a priority for the government as it is the largest direct threat to the future of many of the most threatened and rear species.

- **Crimes against Natural Resources:** Illegal disposing of waste, endangering the air we breathe, our soil and water. The crimes against natural resources like air, water, soil etc impact our health and safety on a daily basis. The use of harmful chemicals in oil blending affects the quality we breathe; illegal release of mercury released from illegal mining into rivers and the sea endangers the water supply and the whole ecosystem as well. Illegal dumping of waste in landfill sites contaminates the soil where food is grown. As a consequence, the crimes against natural resources directly affect the environmental sustainability, public health and safety.

Crimes against natural resources take various forms such as illegal carbon trading, illegal mining activities, illicit trafficking in chemicals etc. The crimes against natural resources are primarily driven by a low-risk with high-reward business model. The various global inequalities such as weak environmental legislation and law enforcement capacity, labour costs etc have created the opportunities for the criminals.

Another important reason behind crime against natural resources is rapid industrialization, urbanization and motorization. Air, water, soil is polluted by use of fossil fuels, release of untreated effluents both tread, industrial sewage effluent and fertilizer run off from farming systems, waste, municipal solid waste etc. Globally 91.3% of the world population is exposed to unhealthy levels of pollution.<sup>13</sup>

Organized crime has been found to be involved in several cases crimes against natural resources. Transnational and cross-over offences are also related to pollution crimes, requiring a coordinated law enforcement response, both at the national level (inter-agency cooperation) and internationally.<sup>14</sup>

- **Crimes related to Hazardous Substances:** The Ministry of Environment, Forest and Climate Change, Government of India defines hazardous waste as any waste which due to its physical, chemical or biological composition is likely to harm health or environment whether alone or in contact with other wastes or substances.<sup>15</sup> These are the byproducts of various industries. The proper treatments of these toxic substances are very expensive and difficult so the companies usually hand over the disposal to other specialized agencies that secretly and illegally dumped these dangerous chemicals throughout the world. Crimes related to hazardous substances include discharge, disposal or dumping of hazardous waste in public spaces and natural habitats, illegal transportation or smuggling of hazardous waste and the storage and treatment of hazardous waste creating a danger to the public and the environment. Illegal hazardous waste dump sites are actually

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<sup>13</sup> Florina Pirlea, Wendy Ven-dee Huang., “*The global distribution of air pollution*”. Available at <https://datatopics.worldbank.org> (Last visited on 23/12/2021)

<sup>14</sup> “*Pollution crime*”. Available at [www.interpol.int](http://www.interpol.int) (Last visited on 23/12/2021)

<sup>15</sup> Hazardous and Other Wastes (Management and Transboundary Movement) Rules, 2016.

environmental time bombs and the contamination created out of this hazardous wastes risk contamination of drinking water, soil and permanent damage to ecosystem.

### **INTERNATIONAL LAW AND ENVIRONMENTAL CRIME:**

International law provides a platform for states to come together and frame a standardized guideline or rules for protection and conservation of environment. Professor Malgosia Fitzmaurice said that “international environmental law is part and parcel of international law” and at the same time “has some special features which have actually contributed to the development of general international law itself. These peculiarities are a reflection of the requirements of environmental protection”.<sup>16</sup> UN has played a key role with its various conferences on environmental protection. the principles of Internadional Environmental Law have been laid down and developed through various conferences and declarations like Stockholm Declaration, the Bruntland Report, the Rio Declaration, Agenda 21, Johannesburg Declaration on Sustainable Development and Johannesburg Plan of Implementation and the Rio+20 Declaration.

- **Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973:** Convention on International Trade in Endangered Species of Wild Fauna and Flora 1973 commonly known as CITES; Washington, 1973 is an international agreement between governments. The main aim of CITES is to protect endangered species by strictly regulating their international tread. It is a legally binding treaty and currently protects more than 5000 species of animal and 29000 species of plants.<sup>17</sup> It encourages the nations to adopt domestic legislation to ensure implementation of its objectives. It works on the concept of permit and prohibition of any of the listed species without its prior permission. It also states that the parties are obliged to take appropriate measures including penal measures to prevent violation of the convention provisions through penalization and confiscation on return of treaded goods.
  
- **Convention on Protection of Migratory Species of Wild Animals 1979:** This is the first international treaty which dealt with migratory species. This is an umbrella convention only global and UN-based intergovernmental organization established exclusively for the conservation and management of terrestrial, aquatic and avian migratory species throughout their range. As per a February 2019 press release by the Ministry, India had non-legally binding MoUs with the CMS on the conservation and management of Siberian Cranes (1998), Marine Turtles (2007), Dugongs (2008) and Raptors (2016).<sup>18</sup>

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<sup>16</sup> See Fitzmaurice, M. (2002). *International Protection of the Environment, Recueil des Cours, Collected Courses of the Hague Academy of International Law 2001*, Vol. 293, p. 21.

<sup>17</sup> Convention on International Trade in Endangered Species of Wild Fauna and Flora (2013).

<sup>18</sup> Om Marathi., *What is the Convention on Migratory Species and how does it matter to India?* Indian Express, New Delhi. Available at [chrome-distiller://bf7604f9-2cda-4af7-8192-8ec7fc2954c7\\_1c0c080bb2e6ada4292590543ad1ded2c02a60199a8ba982b1f3c3ed9b82889e/?title=Explained%3A+What+is+the+Convention+on+Migratory+Species+and+how+does+it+matter+to+India%3F+%7C+Explained+News%2CThe+Indian+Express&url=https%3A%2F%2FIndianexpress.com%2Farticle%2Fexplained%2Fconvention-of-migratory-species-india-6271330%2F](https://chrome-distiller://bf7604f9-2cda-4af7-8192-8ec7fc2954c7_1c0c080bb2e6ada4292590543ad1ded2c02a60199a8ba982b1f3c3ed9b82889e/?title=Explained%3A+What+is+the+Convention+on+Migratory+Species+and+how+does+it+matter+to+India%3F+%7C+Explained+News%2CThe+Indian+Express&url=https%3A%2F%2FIndianexpress.com%2Farticle%2Fexplained%2Fconvention-of-migratory-species-india-6271330%2F) (Last visited on 23/12/2021)

- **Basel Convention on the Control of Transboundary Movements of the Hazardous Wastes and their Disposal 1989:** The overarching objective of the Basel convention is to protect environment and human health against the harmful effects of hazardous wastes. It covers the hazardous wastes and other wastes including household wastes and incinerator as it tries for international cooperation in reduction of hazardous waste generation promotion of proper management restriction of Transboundary movement and a regulatory system. The convention works on the basis of the prior informed consent. The state of export shall notify the state of import and transit and provide them with detailed information on the intended movements of the hazardous wastes and the movement is only possible when all states have assigned with their written consent.

Article 14 of the Convention provides for the establishment of regional or sub-regional centers for training and technology transfers regarding the management of hazardous wastes and other wastes and the minimization of their generation to cater to the specific needs of different regions and sub regions.<sup>19</sup>

- **Stockholm Convention on Persistent Organic Pollutants 2001:** Organic pollutants are those pollutants which remain in the nature for a long period of time and adversely affect the environment and ecology.<sup>20</sup> Persistent organic pollutants or POPs include pesticides such as DDT, industrial chemical such as poly chlorinated biphenyl and other chemicals. It recognizes the potential human and environment toxicity of the POPs and stipulates measures to regulate eliminate and manage the disposal of POPs. To target additional POPs the Convention provides for detailed procedures for the listing of new POPs in Annexes A, B and/or C.<sup>21</sup>
- **Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Tread, 1998:** The Rotterdam Convention is a multilateral treaty to promote shared responsibilities in relation to importation of hazardous chemicals. It deals with the pesticides and industrial chemicals that have been banned or severely restricted for health or environmental reasons on the parties. This creates legally binding obligations on the states with regard to the implementation of prior informed consent procedure and it also encourages the environmentally sound use of the hazardous chemicals.

### **Indian Law and Environmental Crime:**

Implementation of International Environmental Law requires that international legal mechanisms are established and enforced at the national level through appropriate legal regimes. This means that the nation-states should take proactive legislative and judicial

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<sup>19</sup> Basel Convention. Available at [www.basel.int](http://www.basel.int) (Last visited on 23/12/2021)

<sup>20</sup> Article 1, Stockholm Convention on Persistent Organic Pollutants.

<sup>21</sup> Article 8, Stockholm Convention on Persistent Organic Pollutants.

actions within the states to achieve the compliance with the internationally agreed rules and standards. The environmental crimes in India are mainly categorized into five categories as offences against the following national laws:

- **The Forest Act, 1927:** The Forest Act 1927 reflects the British interest of commercial exploitation and economic utilization of the resources. The act reflects the British policy of commercial exploitation and economic utilization rather than the conservation of forest resources. It provides the penalties for the violation of its provisions under section 33, 41 and Chapter 9 of the Act. The offence against forest is defined under section 2(3) as “forest-offence” means an offence punishable under this Act or under any rule made there under;<sup>22</sup> however the penalty provisions of the Act is so restricted where it says the penalty is imprisonment up to six months or a fine of five hundred rupees or both. Forest offences have been classified into two categorized one is trivial offences covered under section 68<sup>23</sup> where the offences are disposed by compounding of offences and secondly there are offences which do not fall under the first category which attracts the punishment of imprisonment up to six months or fine of five hundreds or both. Even though the Act does not have a conservation and management perspective but the penal provision of the Act has prevented many crimes or interferences in the forest area.
- **The Forest Conservation Act, 1980:** The Forest Conservation Act, 1980 was enacted with two objectives i.e. restricting the use of forest land for non forest purposes and for the purpose of conservation of forest that have been reserved under the Indian Forest Act. The Act empowers the central government to constitute a committee to advise it with matters conducted with the forest conservation. Section 3A<sup>24</sup> of the Act provides for the penalty as imprisonment exchangeable up to 15 days for violation of the provisions of the Act.
- **The Wildlife (Protection) Act, 1972:** The Wildlife (Protection) Act, 1972 was the first comprehensive Act of the country enacted to provide for the protection of listed species of wild flora and fauna and establishes a network of ecologically sensitive and important protected areas. India is blessed with dense forests, healthy ecosystems within its border. More than 50 wildlife sanctuaries in India have been designated as tiger reserves and are protected areas under The Wildlife (Protection) Act, 1972.<sup>25</sup> The animals such as The Black Buck, Brow Antlered Deer, Chinkara, Capped Langur, Golden Langur, Hoolock Gibbon, Bengal Tiger, Clouded Leopard, Himalayan Bear, Black Duck, Caracal, Cheetah, Dugong, Fishing Cat etc which have been mentioned in Schedule I of the Act.

<sup>22</sup> Section 2, The Indian Forest Act, 1927.

<sup>23</sup> Section 68, The Indian Forest Act, 1927.

<sup>24</sup> Section 3A, The Forest Conservation Act, 1980 with Amendments, 1988.

<sup>25</sup> Kirti Pandey., “All about India's Wild Life Protection Act, 1972 and the animals protected under the compassionate law” Times of India. 30<sup>th</sup> January, 2021.

The Act is notable for its no fault liability that means Mens rea is not required to be proved for punishing an offender. The punishments of any offences under the Act are given section 51 of the Act.<sup>26</sup> The maximum punishment is provided for offences related to animals specified in Schedule I or Part II of Schedule II of the Act. Hunting within a national park or a sanctuary or altering the boundaries of a national park or hunting within a tiger reserve attracts the highest punishment under the Act. The chargesheets of the crimes can be filed directly by the Forest Department and the enforcement can be performed by agencies such as the Forest Department, the Wildlife Crime Control Bureau (WCCB), the Customs and the Central Bureau of Investigation (CBI).

- **Water (Prevention & Control of Pollution) Act, 1974:** The Act came into force in 1974 and is applicable to the states of Bihar, Assam, Gujarat, Madhya Pradesh, Rajasthan, Kerala, Haryana, Tripura, West Bengal, Jammu and Kashmir and the union territories. The Act is aimed to control water pollution and to restore and maintain the wholesomeness of water for the establishment. The Act also empowers the established bodies such as the central board and the state board to control the water pollution.

The Act functions on the basis of the concept of consent. Under section 25 of the Act says that no person is allowed to set up an industry or start a new operation or processor to any treatment of sewage without prior approval of the state board, the state board may grant him a notice of approval and only after that he is entitled to continue or start a new business.<sup>27</sup>

The penalties for the crimes related to water pollution is provided under section 41, 42, 43, 44, 45, 45A. Section 41(2) prescribes the punishment for six years of imprisonment with fine.

- **Air (Prevention & Control of Pollution) Act, 1981:** The Act was enacted for the prevention control and abatement of air pollution for the establishment. This was the first attempt by the Indian Government in combating the air pollution. The Air Act also function the basis of prior consent. As per a study based on 2016 data, at least 140 million people in India breathe air that is 10 times or more over the WHO safe limit<sup>28</sup> and 13 of the world's 20 cities with the highest annual levels of air pollution are in India.<sup>29</sup> The reasons behind the air pollution are Fuel and biomass burning, Fuel adulteration, Traffic congestion, Greenhouse gas emissions etc. The penalty provisions were added to this Act later to the Act in 1987 amendment. Section 37, 38 and 39 provides for the penalties for the offences against the air pollution.

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<sup>26</sup> See Section 51, Wildlife Protection Act, 1972.

<sup>27</sup> See Section 25, Water (Prevention & Control of Pollution) Act, 1974.

<sup>28</sup> Bernard, Steven; Kazmin, Amy. "Dirty air: how India became the most polluted country on earth", December 11, 2018.

<sup>29</sup> India's air pollution, health burden gets NIEHS attention (Environmental Factor, September 2018).



- **Environment (Protection) Act, 1986:** The Environment (Protection) Act, 1986 was passed by the Indian parliament for implementing the decisions of the Stockholm Conference. It is the general environmental legislation for a comprehensive legal regulatory system in India.  
Section 3 of the Act provides the power to the central government to take all measures that are necessary or expedient for the purpose of protecting and improving the quality of the environment and preventing controlling and abating environment pollution.  
The Environment (Protection) Act, 1986 under section 15 provides the provisions for punishment or penalties or non compliance of the provision of the Act. It provides punishments for the various instances such as non-compliance or violation of the Environment (Protection) Act, 1986, non-compliance or contravention of the Environmental Protection Rules, 1986 and other directions or orders under the rules. Environment (Protection) Act provides with the punishment with imprisonment for a term which may extend to five years or with fine up to one lakh rupees or with both. In case of continued violation an additional fine of up to rupees five thousand per day might be imposed.<sup>30</sup>
- **Hazardous Substances Management in India:** When it comes to the hazardous substances in India, the Environmental (Protection) Act, 1986 provides for various rules under which the management of such substances is regulated. The major rules in this regard are the Hazardous Waste Management Handling and Transboundary Rules, 2008, Manufactures Storage and Import of Hazardous Chemicals Rule, 1989, Hazardous Micro-organisms Rule, 1989 etc. the rules make the handler and the transporter liable for any consequences of handling such hazardous substances in India. The violation these rules will attract the penal provisions of the Environment (Protection) Act, 1986.
- **Biological Diversity Act, 2002:** The act was passed to provide for the conservation of biological resources sustainable use of its components and fair and equitable sharing of benefits arising out the use of such biological resources and knowledge. Compare to the previous legislations which have been discussed above the Biological diversity Act provides for higher level of penalties. The act stipulates all offences under it as cognizable and non-bailable. It provides penalties under section 55, 56 and 59 for violation of rules regarding permission to obtain natural resources, transferring resource results and IPR applications without permission. The penalties under the Act are imprisonment up to five years or fine up to rupees one lakh or if damage exceeds this amount a commensurate amount is also fined. The obtaining of biological resources without permission the punishment is imprisonment is up to three years and fine up to rupees fifty thousand. Any grievances related to the determination of benefit sharing or order of the National Biodiversity Authority or a State Biodiversity Board under this Act shall be taken to the National Green Tribunal (NGT).

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<sup>30</sup> See Section 15(1), Environment (Protection) Act, 1986.

- **Authorities and Institution for Enforcement of Environmental Laws:** It is clearly evident that Environmental Crime has an international character and this means an international regulatory agency is well needed. So the Interpol has actually filled up the position of internationally in the last decade. Interpol is the world largest police organization<sup>31</sup> it facilitates international police cooperation and provides technical and operational support to all police forces. Interpol has identified environmental crime as one of the 19 priority crime areas and it focus on illegal wildlife tread, pollution crimes and the emerging types of environmental crimes like carbon trade, water management etc.

In our country the major authorities or institutes which are engaged in the activities to prevent crimes against environment are the Ministry of Environment Forest & Climate Change, the Central Pollution Control Board, the State Pollution Control Board, State Departments of Environment, Municipal Corporation's enforcement agencies like CBI, Wildlife Control Bureau and the local police authorities. The Wildlife Crime Control Bureau and National Crime Records Bureau supports in the documentation of the reported crimes against environment.

The customs also have a major role to play when it comes to international environmental crimes especially illegal trade in wildlife and forest produces.

### **Environmental Crime & Indian Judiciary:**

In recent years, there has been a succor focus on the role played by the higher judiciary in devising and monitoring the implementation of measures for pollution control, conservation of forests and wildlife protection. Judicial interventions have mostly been triggered by the persistent incoherence in policy-making as well as the lack of capacity-building amongst the executive agencies.

Indian Judiciary has garnered international respect with regard to the extensive interpretation of Article 21 of Indian Constitution which grants "Right to Life"<sup>32</sup> and extending in to include right to wholesome environment.

- **Remarkable Principles Propounded by Indian Judiciary:** The Indian Judiciary has pronounced various principals regarding the environmental crimes through the judgments. Some of the principals are as follows:
- **The Doctrine of Absolute Liability:** In the case of Union Carbide Corporation v. Union of India<sup>33</sup>, the concept of Absolute Liability was invoked by the Supreme Court of India. The apex court stated that an enterprise which is engaged in hazardous or inherently dangerous activity posing a potential threat to the health and safety of the persons working in the factory or residing in the surrounding areas owes an absolute and non

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<sup>31</sup> Available at [www.interpol.int](http://www.interpol.int). (Last visited on 23/22/2021) December 11, 2018 Retrieved 19 March 2020.

<sup>32</sup> See Article 21 in Indian Constitution, 1950

<sup>33</sup> Union Carbide Corporation v. Union of India, AIR 1990 SC 273

delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity.

- **Polluter Pays Principles:** In the case of Vellore Citizen's Welfare Forum v. Union of India<sup>34</sup>, the Supreme Court imposed a pollution fine on the company for causing river and land pollution. The fine amount was to be utilized for restoring the damaged environment and compensation for the affected persons.
- **Doctrine of Sustainable Development:** In case of Rural Litigation and Entitlement Kendra v. State of UP<sup>35</sup>, the Supreme Court of India for the first time dealt with the issue relating to the environment and development; and held that, it is always to be remembered that these are the permanent assets of mankind and or not intended to be exhausted in one generation.

In another case the apex court of the country pronounced that sustainable development has come to be accepted as a viable concept to eradicate poverty and improve the quality of human life while living within the carrying capacity of the supporting eco- system.<sup>36</sup>

- **Oral Evidence or Extra-judicial Confession:** In the case of Sanchar Chand v. State of Rajasthan<sup>37</sup>, the Supreme Court of India held that it is not always possible to get direct evidence against the gang leader in such instances their involvement can be proved and they can be convicted or punished on the basis of oral evidence or extra-judicial confession corroborated by other evidences.

### **Conclusion:**

“Nature never did betray the heart that loved her”- lamented the famous poet William Wordsworth. Our ancestors not only admired nature but also worshiped the same. However, with the passage of time, our greed especially for the speedy economic growth has disturbed the balance between human and various other components of nature i.e. environment. Several problems like urbanization, industrialization, pollution has made the situation so aggrieved that the survival of mankind is putting heavy pressure on the whole eco system. Thus, the overall affect on the environment has caused deterioration of the natural environment, a global problem.

India has drafted various legislations till today to stop the environmental crimes but execution of those laws has been lenient. Lack of strict implementation has created gray areas in the practical life situations which are taken advantage by the environmental criminals. On 28<sup>th</sup> August 2020, the UN Secretary-General Antonio Guterres said that India can lead the world's

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<sup>34</sup> Vellore Citizen's Welfare Forum v. Union of India, AIR 1996, SCC 212

<sup>35</sup> Rural Litigation and Entitlement Kendra v. *State of UP*, AIR 1987, SCC 1037

<sup>36</sup> Vellore Citizen's Welfare Forum v. Union of India, AIR 1996, SCC 212

<sup>37</sup> Sanchar Chand v. State of Rajasthan, AIR 2010, SCC 604

transformation to clean energy and become a “global superpower” in war on climate change.<sup>38</sup>

India through its various legislation and has tried to control pollution and environmental crimes. Not only with the various laws but also with judicial activism numerous approaches have been taken to protect the ecology. All we have to do is to be aware and spread the awareness that if we keep on exploiting the nature then the nature will do it to us in a very cruel way. Proper and strict implementation of the existing laws will ensure reduction in crimes related to environment.

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<sup>38</sup> IANS. “*India can be global superpower in fighting climate change: Guterres*”. The Business Standard, 28<sup>th</sup> August, 2020.